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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Erlan Moldogaziev, an adult, Petitioner, v. John Cantu, *et al.*, Respondents.	**Case No. 2:25-cv- 03265-MTL-JFM** **Petitioner's Amended Objections to November 18, 2025, Report and Recommendation (Doc. 18).**

Petitioner respectfully submits the following amended objections to the Report and Recommendation issued on November 18, 2025, ECF No. 18 ("R&R"). As of the writing of these objections, more than 220 federal judges[1] have rejected

[1] Politico, *Trump expands detention and deportation policy* (Nov. 28, 2025), https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861.

the Respondents' new draconian detention policy, and on November 25, 2025, Judge Sykes certified a nationwide class action and declared that "the proper interpretation of the INA preserves a noncitizen's right to an individualized bond hearing after arrest." *Lazaro Maldonado Bautista v. Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) at 14. This Court should follow the majority of these decisions for the reasons below.

I. Standard of Review

A district judge reviews *de novo* those portions of a magistrate judge's report and recommendation to which a party makes proper, specific objections. 28 U.S.C. § 636(b)(1). The Court "may accept, reject, or modify" the recommended disposition. *Id.*

Petitioner objects *de novo* to the R&R's conclusions that:

1. Petitioner is properly treated as an "arriving alien" detained under 8 U.S.C. § 1225(b) notwithstanding his parole and subsequent history in the United States. *See* R&R at 16–17, 23–24.
2. Petitioner's prior grant of parole under 8 U.S.C. § 1182(d)(5) has no effect on his detention authority or status. *See* R&R at 5–6, 23–24.
3. Petitioner's APA challenge (Ground Four) must either be dismissed for improper venue under 8 U.S.C. § 1252(e)(3)(A) or denied as meritless. *See* R&R at 27–31.

These legal conclusions are contrary to the statutory text, to the weight of recent authority (*Sampiao v. Hyde*, *Noori v. Larose*, *G.S. v. Bostock*, and *Lazaro Bautista v. Bondi*), and to the R&R's own recognition that detention- and parole-related claims remain reviewable in habeas and under the APA. *See* R&R at 7–11.

II. The Record and the R&R Confirm That Petitioner Was Granted Parole Under 8 U.S.C. § 1182(d)(5)

The R&R acknowledges that Petitioner "plainly alleges he sought admission and was granted parole," and that these allegations are "supported by the Declaration provided by Respondents and the decision of the Immigration Judge." R&R at 5–6, n. 7. The R&R also later states that "without more, this causes no reason to question the assertions that § 1182(d)(5) was the authority for Petitioner's release." R&R at 23–24. In other words, the R&R accepts that Petitioner was granted parole under 8 U.S.C. § 1182(d)(5)(A). The factual dispute is not whether Petitioner was paroled; it is whether that parole is legally meaningful for purposes of detention authority and for the application of § 1252's jurisdictional limits. The R&R nonetheless treats Petitioner as if the parole were a legal nullity, reasoning that "that Petitioner was paroled into the country does not alter that status" as an "arriving alien" for detention purposes. R&R at 16–17. That conclusion misreads the governing statutes and is inconsistent with the cases the R&R itself cites, as well as the decisions Petitioner relies on.

III. The R&R Misconstrues the Legal Consequences of § 1182(d)(5) Parole

A. *Y-Z-L-H* and *Noori* Recognize That Parole Revocation and Re-Detention Require Individualized, Lawful Justification

In a footnote, the R&R acknowledges that other courts have held § 1182(d)(5) has teeth. It cites *Y-Z-L-H v. Bostock*, which held that § 1182(d)(5) "requires individualized determination to terminate parole, and only on the basis that the original purposes have been served." R&R at 5–6 n.7 (citing *Y-Z-L-H v. Bostock*, No. 3:25-cv-00965-SI, 2025 WL 1898025, at *10 (D. Or. July 9, 2025)). The R&R also notes *Ramirez Tesara v. Wamsley*, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025), which reached the same conclusion. R&R at 5–6 n.7.

Noori v. Larose stands on the same footing. There, DHS paroled an Afghan alien into the United States after determining he had no criminal history and then later arrested him, terminated his parole, and placed him into expedited removal. *Noori v. Larose*, No. 25-cv-1824-GPC-MSB, slip op. at 2 (S.D. Cal. 2025). The court held that the petitioner had been "paroled into the United States upon a finding that he was not a flight risk or a danger to the community," and had lived and worked here for more than a year. *Id.* at 16. He therefore had a significant liberty interest in remaining free, even "in his parole status," and the termination of that parole and re-detention implicated the Fifth Amendment. *Id.* at 16–19.

Here, the R&R accepts that Petitioner was paroled under § 1182(d)(5), based on both the pleadings and Respondents' own declaration. R&R at 5–6, 23–24. Yet it never analyzes how that parole was terminated, whether the termination complied with § 1182(d)(5) and due process, or whether Petitioner's current detention is lawful in light of his prior individualized release. Instead, the R&R declares that "parole" does not "alter" Petitioner's status as an "arriving alien." R&R at 16–17. That reasoning is squarely inconsistent with *Y-Z-L-H* and *Noori*, which treat § 1182(d)(5) parole as a meaningful, liberty-creating decision whose termination and replacement with mandatory detention must rest on lawful, individualized grounds and not on a categorical policy pivot.

B. The R&R's Reliance on *Thuraissigiam*'s "As If Stopped at the Border" Language Is Misplaced

The R&R leans heavily on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), to conclude that Petitioner remains an "arriving alien" for all purposes, even after parole and years of presence in the United States. R&R at 16–17 (discussing *Leng May Ma v. Barber* and *Thuraissigiam*). However, *Sampiao v. Hyde* directly addresses that very language and explains why it does not do the work the R&R assigns it. There, a noncitizen was initially an "applicant for admission" detained under § 1225(b)(2) but was then released into the United States and placed in § 1229a proceedings,

later arrested repeatedly "pursuant to a warrant issued under Section 1226." *Sampiao v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2607924, at *1–2 (D. Mass. Aug. 29, 2025).

The government cited *Thuraissigiam*, arguing that "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* at *13*(quoting *Thuraissigiam*, 591 U.S. at 139). The court rejected that reliance on *Thuraissigiam*, explaining that:

> This statement has no bearing on Sampiao, who was not paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), which is the sole basis for releasing an applicant for admission under Section 1225(b) into the United States. See *Jennings*, 583 U.S. at 300. Rather, Sampiao was arrested on a warrant citing Section 1226(a), released on an Order of Recognizance issued under Section 1226(a), and then arrested again on another warrant citing Section 1226(a). *Id.* at *13*.

Here, the R&R's own factual findings place Petitioner in the same posture as *Noori* and close to *Sampiao*: he was paroled into the United States under § 1182(d)(5) and then detained again under a different theory of detention authority. R&R at 5–6, 23–24. The question is precisely whether the Government may disregard that parole and treat Petitioner as if he were still "on the threshold of initial entry" for detention purposes despite years of presence and reliance interests simply by invoking a new reading of § 1225.

IV. The R&R Errs in Treating Petitioner's Current Detention as Governed by § 1225 Rather Than § 1226

A. The R&R's "Inside the United States" / "Arriving Alien" Dichotomy Conflicts with *Sampiao, G.S.*, and *Lazaro Bautista*

The R&R reduces detention authority to a rigid dichotomy:

> In sum, if you are 'inside the United States,' your pre-removal detention is governed by § 1226(a)… On the other hand, if you are an arriving alien (whether standing at the border, detained, or paroled into the country), you are not 'inside the United States,' your detention is governed by § 1225, detention is mandatory, [and] there is no right to consideration for release. R&R at 16–17.

This binary framework is exactly what multiple courts, including those the R&R itself cites elsewhere, have rejected.

1. *Sampiao v. Hyde* (D. Mass.)

In *Sampiao*, CBP initially treated the petitioner as an applicant for admission under § 1225(b)(2) but then detained him "pursuant to a warrant issued under Section 1226(a), released on an Order of Recognizance pursuant to Section 1226(a), and served [him] with a Notice to Appear" commencing § 1229a proceedings. 2025 WL 2607924, at *2, 7. When ICE later claimed he was really detained under § 1225(b)(2) and therefore ineligible for bond, the court squarely rejected that position: the "question is whether Section 1225(b)(2) mandates the detention of a noncitizen, like Sampiao, who has been released into the United States and then arrested pursuant to Section 1226… and is otherwise subject to

Section 1226(a)'s discretionary detention framework." *Id.* at 7. The answer is no: for such individuals, "Section 1226(a) establishes a discretionary detention framework," and § 1225(b)(2) does not override it. *Id.* at *3, 7–8.*

2. *G.S. v. Bostock* (W.D. Wash.)

Similarly, *G.S. v. Bostock* recognized that noncitizens in full § 1229a removal proceedings—whom the Government attempts to re-characterize as subject to § 1225(b)(2)—are properly detained under § 1226, with access to bond, and have a liberty interest in remaining at liberty once released. *G.S. v. Bostock*, No. 2:25-cv-01255-JNW, slip op. at 6, 16–17 (W.D. Wash. Oct. 8, 2025).

The court emphasized that § 1226(a) is the "default rule" governing detention of noncitizens "present in the United States," and even after release on bond or parole, the Government may not simply re-detain *without a change in circumstances*. *Id.* at 6–7 (discussing *Jennings* and *Hernandez*)(emphasis added).

3. *Lazaro Bautista v. Bondi* (C.D. Cal.)

In *Lazaro Bautista v. Bondi*, petitioners, like Petitioner here, had been arrested inside the United States, placed in § 1229a proceedings, and then subjected to a new DHS policy re-labeling them "applicants for admission" subject to mandatory § 1225(b)(2) detention. *See* Civ. Minutes – Gen., *Lazaro Bautista v. Bondi*, No. 5:25-cv-01873-SSS-BFM, at 2–4 (C.D. Cal. Nov. 20, 2025).

The court rejected DHS's expansive reading of "applicants for admission" and held that § 1226(a) remains the governing detention authority for noncitizens already in the country who have not been determined inadmissible by an "examining immigration officer" under § 1225. *Id.* at 12–14.

Crucially, the court found that reading § 1225 to swallow § 1226 would render § 1226 "superfluous," which the statute does not permit, and held that § 1226(a) "is the appropriate governing authority over Petitioners' detention." *Id.* at 13–14.

4. The R&R's Dichotomy Cannot Be Reconciled with These Cases

The R&R insists that once an individual is categorized as an "arriving alien," that status persists for all detention purposes even after parole and presence in the interior, such that § 1225 always governs and bond is categorically unavailable. R&R at 16–17, 23–24. However, *Sampiao*, *G.S.*, and *Lazaro Bautista* hold the opposite: detention authority depends on the actual statutory basis of custody (warrant under § 1226 vs. expedited inspection under § 1225), not on a label. Once DHS has released or arrested a noncitizen inside the United States under § 1226(a), it may not retroactively re-characterize their detention as § 1225(b) to strip them of bond and due process rights.

The R&R's broad rule that any "arriving alien," even if paroled and living in the United States, is forever subject to mandatory § 1225 detention and no bond

consideration stands in deep tension with this growing body of authority and should be rejected.

V. The R&R's Treatment of APA Jurisdiction and Venue Under § 1252(e)(3)(A) Is Erroneous

With respect to Ground Four, the R&R describes Petitioner's APA challenge as asserting that the Secretary violated the APA "by modifying an 'interim' rule without following proper notice and comment procedures," citing the 1997 interim rule at 62 Fed. Reg. 10,312, 10,323. R&R at 28–29.The R&R then concludes that if Ground Four is a challenge to the "validity" of the rule or its modification, § 1252(e)(3) "would appear to require that such a challenge be brought in the District of Columbia," and in any event, the interim rule "has since been superseded" by the January 2025 designation, so Ground Four should either be dismissed for improper venue or denied as meritless. R&R at 27–31. The R&R thus reads § 1252(e)(3)(A) as mandating that any challenge touching on expedited-removal related rules or designations must be brought in the District Court for the District of Columbia, and that this Court lacks jurisdiction or is an improper venue to hear Petitioner's APA claim.

Section 1252(e)(3)(A) By Its Terms Governs Systemic Challenges to the "Validity of the System," Not As-Applied or Detention-Focused Claims

Section 1252(e)(3)(A) provides that "judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia" to challenge (i) whether such section, or any regulation issued to implement such section, is constitutional; or (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law."

By its title and scope, § 1252(e)(3) is aimed at "[c]hallenges on the validity of the system", that is, facial or programmatic attacks on the written rules themselves, not as-applied challenges to how DHS has treated a particular individual. Petitioner's claim, as described in the Petition and by the cases on which he relies, is not that § 1225(b) or the 2025 designation are facially invalid; but it is that Respondents applied those provisions unlawfully to him, particularly by ignoring his prior parole and by re-detaining him without lawful authority or individualized process.

That is the same distinction *Noori* drew when it entertained APA claims related to expedited removal and the 2025 designation without treating § 1252(e)(3) as a jurisdictional bar. *Noori*'s APA causes of action alleged that Respondents had (1) "unlawfully detained Petitioner categorically without

individualized consideration," (2) violated 8 C.F.R. § 239.2(a) in dismissing § 240 proceedings, and (3) unlawfully applied expedited removal to "individuals who were 'paroled' into the United States." *Noori*, slip op. at 5 (summarizing Second, Fourth, and Fifth Causes of Action). The court adjudicated those APA claims on the merits, without invoking § 1252(e)(3)(A) or transferring the case to D.D.C. *Id.* at 22–24.

In *Guerrero Orellana v. Moniz*, the District of Massachusetts squarely rejected the government's position that claims like Petitioner's must be brought exclusively in the District of Columbia under 8 U.S.C. § 1252(e)(3)(A). The court held that detention-based statutory and constitutional challenges, such as misclassification under § 1225 or unlawful denial of a bond hearing, are not "systemic" attacks subject to § 1252(e)(3)(A), but instead ordinary as-applied detention challenges properly brought in habeas in the district of confinement. *See Orellano* Order at 8–11 (holding §§ 1252(b)(9) and 1252(g) do not bar district-court jurisdiction over challenges to the lawfulness of detention). The court further confirmed jurisdiction under both 28 U.S.C. § 2241 and 28 U.S.C. § 1331, concluding that none of the INA's jurisdiction-stripping provisions apply to a habeas challenge seeking release from unlawful detention. *Id.* at 8–11 (rejecting government's argument that the petition was a collateral attack on removal proceedings).

Importantly, the court rejected the Respondents' position that a noncitizen arrested in the interior can be subjected to mandatory detention as an "arriving alien" under § 1225(b)(2)(A). It emphasized that § 1225(b)(2)(A) applies only where an "examining immigration officer" determines that a person is *currently* "seeking admission," a present-tense requirement that interior arrests do not satisfy. *Id.* at 16–17 (holding that a noncitizen "apprehended while residing in the United States does not satisfy the condition that he be 'seeking admission'"). The court also explained that although such an individual may statutorily be an "applicant for admission," that fact alone does not place him within § 1225(b)(2)(A), because the statute's plain text imposes additional prerequisites that are absent in interior-arrest cases. *Id.* at 17.

The reasoning of the Report and Recommendation in this case conflicts directly with *Orellano*. Here, as in *Orellano*, the government relied on *Matter of Hurtado* and similar cases to argue that Petitioner is a perpetual applicant for admission subject to § 1225 mandatory detention solely because he once entered without inspection. The District of Massachusetts rejected that precise theory, concluding that the government's "arriving alien" reasoning is foreclosed by the statutory text and that DHS cannot use § 1225(b)(2)(A) to override § 1226 for individuals already residing in the interior. *Id.* at 16–17. This Court should follow

the persuasive and detailed analysis in *Orellano* and reject the R&R's contrary interpretation of §§ 1225 and 1226.

A. *Noori*'s Treatment of APA Claims Confirms That Such As-Applied Challenges Are Proper in the District Where the Petitioner Is Detained

Noori confirms that district courts retain jurisdiction and venue to adjudicate APA claims intertwined with habeas challenges to detention and parole revocation, even where expedited removal and the 2025 designation are in the background. *Noori* court exercised jurisdiction under 28 U.S.C. §§ 2241 and 1331 and the Suspension Clause. *Noori*, slip op. at 5–7. Judge Curiel considered § 1252(a)(2)(A) and § 1252(e) and held that they did not bar review where petitioner did not challenge Noori's expedited removal order itself but the legality of his detention and parole revocation. *Id.* at 14–15. Lastly, Judge Curiel reached the merits of the APA claims about categorical parole revocation and wrongful use of expedited removal against a paroled individual. *Id.* at 22–24.

If, as the R&R suggests, § 1252(e)(3)(A) required that such APA challenges be brought only in D.D.C., *Noori* would have been wrongly decided. Yet the R&R cites *Noori* in other contexts and offers no explanation for why *Noori*'s approach to jurisdiction and venue is incorrect.

B. The R&R's Alternative Merits Rationale for Denying Ground Four Is Also Flawed

Even apart from venue, the R&R suggests that Ground Four fails because the 1997 interim rule at 62 Fed. Reg. 10,312 has been "superseded" by the January 2025 designation and related guidance. R&R at 28–31. But *Noori* and *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025), both recognize serious questions about how the 2025 designation applies to individuals, like Petitioner, who entered and were paroled before its effective date. *Noori*, slip op. at 5–6, 14–15 (discussing the 2025 designation and retroactivity concerns); R&R at 16–17 (describing *Salcedo Aceros* and the January 2025 designation). Those questions are legal and factual merits issues appropriate for adjudication under the APA, not a basis to declare the claim categorically non-justiciable in this district.

VI. This Court Retains Habeas and APA Jurisdiction Over Petitioner's Claims

Finally, it bears emphasis that the R&R itself correctly recognizes this Court's core habeas jurisdiction over detention-related claims. R&R at 7–11.

Once that much is accepted, there is no coherent basis to treat Petitioner's detention-focused APA claim challenging how Respondents applied detention authority to him as categorically barred by § 1252(e)(3)(A) or as improperly venued in this Court. *Lazaro Bautista* and *Noori* confirm that detention-focused APA claims can and should be adjudicated in the district where the petitioner is detained, alongside the habeas claim.

VII. Conclusion

For all of these reasons, Petitioner respectfully requests that the Court:

1. Reject the R&R's conclusion that Petitioner's detention is governed by § 1225 and that he is categorically ineligible for bond or individualized release;
2. Hold that Petitioner's prior grant of parole under § 1182(d)(5) and subsequent presence in the United States render § 1226(a) the proper detention authority, entitling him at minimum to an individualized bond determination;
3. Reject the R&R's venue and jurisdiction analysis under § 1252(e)(3)(A) and hold that this Court has jurisdiction and is a proper venue to adjudicate Petitioner's APA claim; and
4. Grant the Petition, or at a minimum order Respondents to provide Petitioner with a prompt, individualized bond hearing under § 1226(a) and vacate any categorical denial of such a hearing premised on § 1225(b).

Dated: November 28, 2025

/s/ Eli Goldmann
Eli Goldmann
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2025, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Arizona by using the CM/ECF system, which will send notice of such filing to all parties that have appeared in this case.

Counsel in the case are registered CM/ECF users and thus service will be accomplished by the CM/ECF system.

/s/ Eli Goldmann
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