

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**EDIXON ALIRIO VALERA-MARIN,**

**Petitioner,**

v.

**Case No. 2:25-CV-00914-KG-GBW**

**TODD M. LYONS, et al.,**

**Respondents.**

**PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

**I. INTRODUCTION**

Petitioner Edixon Alirio Valera-Marin respectfully opposes Respondents' Motion to Dismiss his petition for writ of habeas corpus under 28 U.S.C. § 2241. (Doc. 7). The government's motion mischaracterizes both the scope of this Court's habeas jurisdiction and the nature of Petitioner's claims. Petitioner does not seek judicial review of a removal order or the government's authority to revoke his parole. Rather, he challenges his unlawful and prolonged detention following the arbitrary revocation of parole—a decision made without notice, hearing, or rational justification. These claims fall squarely within the habeas jurisdiction of Article III courts under 28 U.S.C. § 2241, as repeatedly confirmed by the Tenth Circuit and multiple district courts within this Circuit.

Noncitizens have constitutional rights just like everyone else in the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). And while the new administration may have changed how it prioritizes the removals of noncitizens, it may not do so at the expense of fairness and due process. *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at \*2 (Apr. 7, 2025) (per curiam) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal

proceedings." It also may not do so in violation of its own regulations. *See Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *see also Bonitto v. Bureau of Immigr. & Customs Enft.*, 547 F. Supp. 2d 747, 755 (S.D. Tex. 2008) ("Where individual interests are implicated, the Due Process clause requires than an executive agency adheres to the standards by which it professes its action to be judged." (citing *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959))).

Applicants for admission, "stand[ ] on a different footing." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Applicants for admission, including those noncitizens who are paroled into the United States for a limited purpose, are "treated, for constitutional purposes, as if stopped at the border." *Zadvydas*, 533 U.S. at 693. Accordingly, for an applicant for admission, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Zadvydas*, 533 U.S. at 693; *see also Augustin v. Sava*, 735 F.2d 32, 36 (2d. Cir. 1984) ("Although aliens who petition for admission have no constitutional rights regarding their applications, they do have such statutory rights as Congress grants.").

The government argues that this Court does not have subject matter jurisdiction to review Petitioner's petition. Petitioner opposes the government's motion to dismiss and argues that even as an arriving alien pursuant to § 1225(b), Respondents violated Petitioner's due process rights because they did not comply with the statutorily required process for revoking his parole.

## **II. FACTUAL BACKGROUND**

Petitioner, a Venezuelan citizen and national, presented himself at a lawful United States port of entry on August 18, 2023, seeking asylum. Petitioner fled his country of Venezuela after suffering severe harm/persecution on account of his political opinion. On November 11, 2023, United States Citizenship and Immigration Services (USCIS) issued a positive credible fear determination. Because Respondents determined that Petitioner posed neither a flight risk nor a danger to the community, Petitioner was granted discretionary parole pursuant to INA § 212(d)(5) on November 21, 2023, while his asylum application was pending. During his release, Petitioner obtained a work authorization, established himself as a reputable mechanic in El Paso, Texas, and he married his wife, Ana Laura Villela, a United States citizen. Petitioner complied with the conditions of his parole, reported as required, attended all his hearings at the non-detained immigration court, and did not have any encounter with law enforcement. Petitioner forged ties with his community in El Paso.

On February 12, 2025, Petitioner attended what he believed to be a routine, scheduled immigration check-in appointment with ICE expecting to return to his home. On that day, ICE abruptly revoked his parole—without notice, explanation, or hearing—and immediately detained him. Petitioner was not given any prior notice or warning that he was going to be arrested following his ICE check-in appointment. On June 26, 2025, that government counsel filed Form I-213, Record of Deportable/Inadmissible Alien with vague references to an alleged drug investigation and under baseless allegations that Petitioner was an active member of the Tren De Aragua (TDA) organization. No charges or evidence were ever presented to support the government's allegations in the I-213. While at the Otero Processing Center, in April 2025, Petitioner was among a group of

Venezuelan nationals that were transferred to the Bluebonnet Detention Center in Dallas, Texas for potential deportation under the Alien Enemies Act. The group of noncitizens were all alleged members of the TDA. While at the facility waiting for removal, ICE interrogated the Petitioner regarding any gang involvement and conducted various tattoo inventories. Petitioner does not have any tattoos or indicia of any gang affiliation. Petitioner was eventually transferred back to New Mexico to continue with his removal proceedings. After his transferred back to New Mexico, Petitioner's counsel requested an individualized determination as to whether he posed any flight risk or danger to the community. The request was sent in May 2025 and again September 2025. Counsel never received a response regarding the May 2025 request. On September 25, 2025, ICE denied Petitioner's request for release. No reasons were given for the denial.

During Petitioner's contested hearing before the Immigration Judge, counsel for the government failed to present any evidence to substantiate the allegations that Petitioner engaged in any criminal activity or that he was affiliated with the TDA. Since February 2025, Petitioner has been detained at Otero County Processing Center. In May 2025, counsel for the Petitioner requested The Immigration Judge denied asylum based on firm resettlement but granted Petitioner's withholding of removal and CAT protection on June 27, 2025. This was based on testimony, which the immigration court found credible, and evidence on record, that Petitioner's life would be in danger in Venezuela if removed from the United States. The government did not appeal the order of withholding of removal and CAT deferral of Petitioner's removal to Venezuela. However, Petitioner did appeal the denial of asylum. Petitioner's appeal to the Board of Immigration Appeals remains pending, meaning the removal order is not final. Nevertheless, DHS continues to

detain Petitioner indefinitely under 8 U.S.C. § 1225(b), without any individualized custody review.

### **III. LEGAL STANDARD**

To survive a motion to dismiss under Rule 12(b)(1) or Rule 12(b)(6), a habeas petition needs only alleged facts showing unlawful restraint of liberty. Because habeas corpus safeguards a fundamental liberty interest, courts must construe habeas petitions liberally and resolve ambiguities in favor of the petitioner. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). A habeas petition should not be dismissed at the pleading stage unless it appears beyond doubt that the petitioner can prove no set of facts entitling him to relief.” *Hall*, 935 F. 2d. at 1106.

Federal courts retain jurisdiction under § 2241 to evaluate the legality of executive detention, including immigration detention, unless Congress has clearly and unequivocally withdrawn such jurisdiction. *Soberanes v. Comfort*, 388 F.3d 1305, 1310–11 (10th Cir. 2004); *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1273 (10th Cir. 2018) Thus, dismissal under Rule 12(b)(1) is proper only if it is clear from the face of the petition that the Court lacks jurisdiction or the petitioner’s claim is moot. A habeas petition should therefore proceed to merits review whenever it alleges that 1) the petitioner is in custody under U.S. authority, and 2) such custody violates the Constitutional, laws, or treaties of the United States. *Soberanes*, 388 F.3d at 1311.

### **IV. ARGUMENT**

#### **A. The Court Has Jurisdiction Under 28 U.S.C. § 2241 to Review Unlawful Detention**

Petitioner brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241. The Tenth Circuit has squarely held that district courts have jurisdiction to review the

legality of immigration detention under § 2241, even where removal proceedings are pending. *See Soberanes v. Comfort*, 388 F.3d 1305, 1310–11 (10th Cir. 2004); *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1272–73 (10th Cir. 2018). Section 2241 “authorizes a district court to grant a writ of habeas corpus whenever a petitioner is ‘in custody in violation of the Constitution or laws or treaties of the United States.’” *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)(3)). “Federal courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the constitutionality of their detention.” *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at \*6 (S.D.N.Y. June 12, 2018) (citing *Demon v. Kim*, 538 U.S. 510, 516–17 (2003)). “Jurisdiction over 28 U.S.C. § 2241 habeas petitions are properly limited to purely legal statutory and constitutional claims and does not extend to review of discretionary determinations by immigration judges.” *Id.* (quotation and brackets omitted). The Court must “summarily hear and determine the facts and dispose of the matter as law and justice require.” 28 U.S.C. § 2243.

The government argues that 8 U.S.C. § 1252(e) narrows the scope of the Court’s judicial review of orders of removal under §1225(b)(1). *Vaupel v. Ortiz*, 244 F. App’x 892, 894 (10th Cir. 2007). The Court is unable to review whether a noncitizen is inadmissible or entitled to relief from removal. *Id.* 895. Petitioner agrees with Respondent that this Court cannot review whether Petitioner is in fact inadmissible or even the discretionary decision to revoke his parole.

However, Petitioner challenges the way the government has re-detained him to revoke his parole. This Court unquestionably has jurisdiction to review Petitioner’s claims that the government has violated his statutory and constitutional rights to due

process by re-detaining him. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (citing 28 U.S.C. § 2241(c)(3)); *Baez v. Bureau of Immigr. & Customs Enft*, 150 F. App'x 311,312 (5th Cir. 2005) (per curium) (courts retain the power to hear statutory and constitutional challenges to immigration detention when those claims do not challenge the final order of removal).

Nothing in 8 U.S.C. § 1252(e) prevents the Court from considering Petitioner's challenge to the way the government revoked his parole or considering whether the government followed its own regulations in doing so. *See Zadvydas*, 533 U.S. at 687-88 (holding that a § 2241 petition is the proper vehicle for a petitioner to use to challenge the legality and constitutionality of post-removal period detention); *Oyelude v. Chertoff*, 125 F. App'x 543,546 (5th Cir. 2005) (courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition"); *Mantena v. Johnson*, 809 F.3d 721, 728-29 (2d Cir. 2015) (even when a "statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges" and when procedural requirements bind an official's exercise of discretion, "courts retain jurisdiction to review whether those requirements have been met").

Petitioner's petition does not challenge his removal or his actual inadmissibility; he challenges the way the government revoked his release, which he contends was done without due process and in violation of ICE's own regulations. Petitioner's due process and statutory claims are not barred by 8 U.S.C. §1252(e).

Petitioner respectfully requests this Court to assert jurisdiction over his due process and statutory claims.

**B. The Revocation of Parole Was Arbitrary, Capricious, and Contrary to Law**

The statutes and regulations governing immigration and removal proceedings afford important procedural safeguards to detainees. *See United State v. Caceres*, 440 U.S. 741, 760 (1979). For Petitioner’s re-detention to be constitutional, the government must have complied with both the applicable statutory provisions and its own regulations. *Id.* (when federal regulations afford individual rights and protections, the Supreme Court has insisted on requiring an agency’s compliance with its own regulations). Respondents violated Petitioner’s due process rights by purporting to revoke his parole without complying with the regulations governing such revocations.

As the Supreme Court has explained, “U.S. Immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Pursuant to 8 U.S.C. §1182(d)(5)(A), the Secretary of Homeland Security has discretion grant noncitizens parole into the United States if parole would generally be justified only on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit,” provided the noncitizens present neither a security risk nor a risk of absconding. The Secretary of Homeland Security has discretion to terminate 8 U.S.C. § 1182(d)(5)(A) parole when “in [her] opinion,” “the purposes of such parole . have been served.” “[T]hereafter[,]” the formerly-paroled noncitizen “shall forthwith return or be returned to the custody from which he was paroled” and the noncitizen's “case shall continue to be

dealt with in the same manner as that of any other applicant for admission to the United States. 8 U.S.C. §1182(d)(5)(A).

Pursuant to 8 C.F.R. 212.5(e)(2)(i), written notice to the noncitizen prior to the parole revocation is required. There is no indication in this record that Petitioner was given any prior notice- much less written notice- that he was going to be arrested during his routine check-in. See *Orellana v. Francis*, No. 25-CV-4212, 2025 WL 2402780 at \*6 (E.D.N.Y. Aug. 19, 2025) (“Respondents have failed to provide credible, direct evidence demonstrating that Petitioner received notice, let alone adequate notice.” (emphasis in original)). The relevant regulation imposes regulatory constraints on the decision to revoke parole that were not complied by the Respondents in Petitioner’s case. Respondents did not provide an explanation or reasoning for why or how they revoked Petitioner’s parole. Revocation of parole requires case-by-case assessment to comply with the statute and must address the reason an individual received parole initially. *Mata v. Kurzdorfer*, 2025 WL 1953796 at \*10–11 (citing *Y-Z-L-H v. Bostock*, No. 3:25-cv-965, 2025 WL 1898025 (D. Or. July 9, 2025); *Doe v. Noem*, 778 F. Supp. 3d 311, 339 (D. Mass. 2025) (“The statute thus seems to contemplate termination of parole on an individual, rather than categorical, basis.”)). The government has not provided, nor does it allege in its motion to dismiss, an indication that Respondents made any assessment before revoking Petitioner’s parole or the existence of a statutory basis for revocation. Although parole under § 1182(d)(5)(A) is discretionary, DHS’s actions must not be arbitrary or capricious. Here, DHS provided no explanation or evidence for revoking Petitioner’s parole—only a vague reference to 'information gathered.' Such unsupported assertions fail even the deferential review applicable to agency discretion. Respondents

have not shown that Petitioner's parole was lawfully revoked or that Petitioner was provided with written notice of the revocation. Petitioner was arrested and re-detained in violation of the statutes and regulations that govern the revocation of parole. He was in full compliance, working with authorization, and obeying the laws of the United States. Petitioner met and married his wife, a United States citizen, and was planning on starting his family.

"Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Deft. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) ("It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it."). Multiple courts have held that the government's failure to follow its own immigration regulations may warrant the release of a detained noncitizen. *See, e.g., Bonitto*, 547 F. Supp. 2d at 756; *Zhu v. Genalo*, No. 1 :25-cv-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Guillermo MR. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017). ("While ICE does have significant discretion to detain, release, or revoke

aliens, the agency must still follow its own regulations, procedures, and prior written commitments." ). The government has violated Petitioner's due process rights by failing to comply with its own regulations. The regulations were promulgated to safeguard due process rights of noncitizens, even those subject to §§ 1225(b)(1) and (b)(2).

### **C. Petitioner's Prolonged Detention Without Review Violates the Fifth Amendment**

Even assuming detention under § 1225(b) was initially lawful, it cannot be indefinite or unreviewed. In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held that post-removal detention beyond six months becomes unreasonable. In *Matthews v. Eldridge*, 424 U.S. 319, 334-35 (1976), the Supreme Court set out a three factor test in determining the adequacy of process in the context of civil immigration confinement: 1) the private interest that will be affected by the official action; 2) the value, if any, of additional or substitute procedural safeguards; and 3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail *Matthews* 424 U.S. at 334. The Supreme Court stated, "freedom from imprisonment- from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690. Moreover, individuals who have been conditionally released from detention have a protected interest in their "continued liberty." *Young v. Harper*, 520 U.S. 143, 147 (1997). A "parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions," that "liberty [interest] is valuable and must be seen as within the protection the [Due Process clause] such that "its termination calls for some orderly process." *Morrissey v. Brewer*, 408 U.S. 471 (1972) (The liberty of a parolee, although

indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee”).

First, Petitioner has a liberty interest in his continued release under his parole. He was free from November 2023 to February 2025. He has a job as a mechanic and a wife. He complied with all the terms of his parole conditions. There is no principled reason to find that Petitioner does not have an overwhelming liberty interest in his continued release that may not be removed without due process.

Second, the risk of erroneous deprivation of Petitioner’s rights is high. The regulation enacted by the government itself are intended to ensure that noncitizens who have been released on parole do not arbitrarily have that parole revoked. By failing to follow its own regulations, the government has denied Petitioner notice of its intent to revoke his parole. The risk of arbitrary and erroneous deprivation under these circumstances is undeniable significant.

Third, the burden imposed on the government does not outweigh Petitioner’s interests. The government has an interest in removing noncitizens, ensuring compliance, and protecting the public. However, it does not have any interest in ignoring its own regulations that are intended to ensure that the discretion afforded to the government’s agents is not exercised arbitrarily.

A noncitizen has a significant liberty interest in remaining out of custody once parole is granted. *See Ousmane Savane v. Ladeon Francis*, United States District Court, S.D. New York, 1:25-cv-6666-GHW (September 28, 2025) (; *See Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025)

(“Those in [Petitioner's] position, a noncitizen granted the liberty of release pending removal proceedings, have due process rights . a reliance interest in her continued freedom.”); *Guzman v. Andrews*, No. 25-cv-1015, 2025 WL 2617256 at \*6 (E.D. Cal. Sept. 9, 2025) (“The Court finds that petitioner has a protected liberty interest in his release.”); *Zhu v. Genalo*, No. 1:25-CV-06523, 2025 WL 2452352, at \*5 (S.D.N.Y. Aug. 26, 2025) (“Petitioner's liberty interests are implicated by his re-detention even if ICE has discretion to revoke his [detention].”); *Pinchi v. Noem*, No. 5:25-cv-5632, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (“[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.”). In *Ousmane*, the court held the petitioner in that case, who was detained pursuant to § 1225(b), was not afforded any process- including the basic written notice requirement already required by regulation, and “no process at all is plainly inadequate.” *See Ousmane Savane v. Ladeon Francis*, United States District Court, S.D. New York, 1:25-cv-6666-GHW (September 28, 2025)

Petitioner alleges that DHS arbitrarily revoked parole without due process and continues hi prolonged detention without review, violating the Fifth Amendment. Accepting these allegations as true, they suggest entitlement to relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009).

## V. CONCLUSION

For the foregoing reasons, the Court should deny Respondents’ Motion to Dismiss, retain jurisdiction under 28 U.S.C. § 2241, and order DHS to provide an

individualized bond or custody hearing within fourteen (14) days, or release Petitioner under reasonable supervision.

Respectfully submitted,

*/s/ Brenda M. Villalpando*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of October 2025, I electronically filed the foregoing through the CM/ECF system, which will send notice to all counsel of record.

/s/ Brenda Villalpando

Brenda Villalpando