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10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE DISTRICT OF ARIZONA**

12 Artyk Osmonaliev,  
 13  
 Petitioner,  
 14  
 v.  
 15  
 John Cantu, *et al.*,  
 16  
 Respondents.

No. 2:25-cv-03531-JJT-DMF

**RESPONDENTS' OBJECTIONS TO  
 NOVEMBER 13, 2025  
 REPORT AND  
 RECOMMENDATION (Doc. 13)**

18 Respondents, by and through counsel, hereby file their Objections to the Report and  
 19 Recommendation ("R&R") dated November 13, 2025 (Doc. 13). Respondents maintain  
 20 that the Petition and other relief claimed should be denied and incorporate by reference  
 21 their Response to the Petition for Writ of Habeas Corpus ("Response") (Doc. 11), and  
 22 Respondents provide the specific objections detailed below.

23 **I. THE R&R IGNORES BINDING CASE LAW ON DUE PROCESS**

24 The R&R determined that Petitioner "has a protected liberty interest arising from  
 25 his previous release on parole pursuant to 8 U.S.C. § 1182(d)(5)," relying on *Zadvydas v.*  
 26 *Davis*, 533 U.S. 678 (2001) and various district court cases. R&R at 8–10. The R&R then  
 27 reasoned that, because Petitioner had a protected liberty interest, he was entitled to  
 28 procedural protections under the Due Process Clause. R&R at 9. The R&R thus determined

1 that, because the Due Process Clause required more procedure than Petitioner was given,  
2 Petitioner is entitled to relief because his parole revocation violated his due process rights  
3 under the Fifth Amendment. R&R at 10. However, the R&R failed to consider binding  
4 Ninth Circuit precedent, which has specifically held that there is no protected liberty  
5 interest in temporary parole.

6 “The writ of habeas corpus shall not extend to a prisoner unless . . . [h]e is in custody  
7 in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241.  
8 Thus, this Court may only grant habeas relief to Petitioner if he can show that his custody  
9 is unconstitutional or unlawful. The Due Process Clause “does not protect everything that  
10 might be described as a benefit[.]” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756  
11 (2005). A person must have a “legitimate claim of entitlement” to a benefit in order for the  
12 Due Process Clause to grant any protections to them, and “a benefit is not a protected  
13 entitlement if government officials may grant or deny it in their discretion.” *Id.* The  
14 decision to revoke parole is squarely placed in the government’s discretionary authority. 8  
15 U.S.C. 1182(d)(5) (stating that parole must be revoked “when the purposes of such parole  
16 shall, *in the opinion of the Secretary of Homeland Security*, have been served[.]”)  
17 (emphasis added); *see also Syed v. Mayorkas*, 2023 U.S. Dist. LEXIS 181847 at \*13 (D.  
18 Ore. Oct. 10, 2023); *Doe v. Noem*, 152 F.4th 272, 286 (1st Cir. 2025). Aliens who present  
19 themselves for inspection at the border must be detained through the completion of their  
20 removal proceedings unless paroled. 8 U.S.C. 1225(b)(2)(A); *see also Jennings v.*  
21 *Rodriguez*, 583 U.S. 281 (2018) (upholding the lawfulness of Section 1225(b)(2)(A)  
22 detention). Thus, it is patently clear that an alien does not have a liberty interest in Section  
23 1182(d)(5) parole, and hence that an alien cannot bring a Due Process Clause claim based  
24 on Section 1182(d)(5) parole.

25 When it was presented with this question, the Ninth Circuit agreed. *Wong v. Immigr.*  
26 *and Naturalization Serv.*, 373 F.3d 952, 967–68 (9th Cir. 2004), *abrogated on other*  
27 *grounds, Pettibone v. Russell*, 59 F.4th 449, 452-53 (9th Cir. 2023). In *Wong*, the plaintiff  
28 brought various claims against immigration officials related to mistreatment that she

1 allegedly suffered while in custody after her Section 1185(d)(5) parole was revoked. 373  
2 F.3d at 958–59. Among her claims was that immigration officials violated her due process  
3 rights by revoking her parole. *Id.* at 967. However, the court could “discern no substantive  
4 liberty or property interest . . . in temporary parole status,” and it stated clearly that “[t]he  
5 INA does not create any liberty interest in temporary parole that is protected by the Fifth  
6 Amendment.” *Id.* at 968.

7 The R&R made no effort to engage with *Wong*. Instead, the R&R cited only district  
8 court cases and dicta from *Zadvydas* to support its contrary conclusion. The Ninth Circuit  
9 has clearly held that Section 1185(d)(5) parole creates no protected liberty interest, and the  
10 R&R’s contrary determination is error.<sup>1</sup> Indeed, other courts in the Ninth Circuit have  
11 determined that *Wong* still controls. *See, e.g., Syed*, 2023 U.S. Dist. LEXIS 181847 at \*13;  
12 *S.A. v. Trump*, 363 F. Supp. 3d 1048, 1085 (N.D. Cal. Dec. 10, 2018). Because binding  
13 precedent requires this Court to reject Petitioner’s due process claim, the R&R’s contrary  
14 finding must be rejected.

## 15 **II. THE R&R RECOMMENDS UNLAWFUL INJUNCTIVE RELIEF.**

16 The R&R recommends that this Court enjoin Respondents from detaining Petitioner  
17 again “absent a meaningful change in circumstances, individualized notice of such, and a  
18 meaningful opportunity for Petitioner to be heard.” R&R at 11. However, Petitioner is  
19 entitled to no such procedure under either statute or regulation, and the Court points to no  
20 authority supporting its grant of such relief.

21 Immigration authorities may grant parole to an inadmissible alien, but they can also  
22 revoke parole, and both decisions are confined to their discretion. 8 U.S.C. § 1182(d)(5).  
23 The exercise of discretion to revoke parole is completely unfettered, and it does not require  
24 individualized determinations. *Doe v. Noem*, 152 F.4th 272, 286–87 (1st Cir. 2025).

25  
26  
27 <sup>1</sup> To the extent that the R&R may have believed that *Wong* was in tension with the Supreme  
28 Court’s dicta in *Zadvydas*, it should be noted that *Wong* was issued after *Zadvydas* (and  
indeed, *Wong* cites *Zadvydas* repeatedly), so *Zadvydas* cannot be interpreted to overrule  
*Wong* in any way.

1           The R&R’s basis for ordering this sweeping relief is the Due Process Clause—  
2           which, as discussed above, cannot ground relief for Petitioner because there is no liberty  
3           interest in discretionary parole. *Wong*, 373 F.3d at 967–68. Even if it could, the R&R points  
4           to no source of law whatsoever that requires or even authorizes Respondents to conduct  
5           processes like the ones it recommends.

6           Moreover, implementing the procedures directed by the R&R would be  
7           unmanageable. The R&R extends relief indefinitely. If a Notice to Appear is issued that  
8           subjects Petitioner to new removal proceedings that result in a removal order, ICE would  
9           need to take him into custody to facilitate his removal. Similarly, if he is released but ICE  
10          determines he has become a flight risk or danger, ERO would need to re-detain him. ICE  
11          should not be—and is not—required to give Petitioner advance notice of its intention to re-  
12          detain him under those circumstances, much less to prove that detention is warranted prior  
13          to its occurrence. The Supreme Court has upheld the constitutionality of basic processes of  
14          providing hearings post-detention. *See, e.g., Reno v. Flores*, 507 U.S. 292, 309 (1993)  
15          (rejecting a procedural due process claim that “the INS procedures are faulty because they  
16          do not provide for automatic review by an immigration judge of the initial deportability  
17          and custody determinations”); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting  
18          the “impressive historical evidence of acceptance of the validity of statutes providing for  
19          administrative deportation arrest from almost the beginning of the Nation”). Instead of a  
20          guarantee of pre-detention review by an Immigration Judge, aliens detained under  
21          § 1226(a) are provided with multiple avenues to seek review of their detention once they  
22          are in custody – a process which the Ninth Circuit has already held is constitutionally  
23          sufficient. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir. 2022). The  
24          Ninth Circuit held that that the “existing agency procedures” sufficiently protect liberty  
25          interest of aliens and “mitigate the risk of erroneous deprivation.” *Id.* at 1209. “In short,  
26          the agency’s decision to detain Rodriguez Diaz was subject to numerous levels of review,  
27          each offering Rodriguez Diaz the opportunity to be heard by a neutral decisionmaker.

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1 These procedures ensured that the risk of erroneous deprivation would be ‘relatively  
2 small.’” *Id.* (quoting *Yagman v. Garcetti*, 852 F.3d 859, 865 (9th Cir. 2017)).

3 Other courts, including those in this judicial circuit, have rejected the premise that  
4 the Constitution requires an extra hearing before an alien can be arrested under 8 U.S.C.  
5 § 1226(b). *See, e.g., United States v. Cisneros*, No. 19-CR-00280-RS-5, 2021 WL  
6 5908407, at \*4 (N.D. Cal. Dec. 14, 2021) (“[t]he law does not require a hearing before  
7 arrest” where a noncitizen released from ICE custody had been picked up by the San  
8 Francisco Police Department for assault). Other courts have also recognized that there is  
9 no “due process right to a pre-detention hearing where a noncitizen, subject to pending  
10 removal proceedings...is at risk of being re-detained after being at liberty for more than  
11 two years.” *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at \*11 (S.D.N.Y.  
12 Aug. 20, 2021); *accord Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL  
13 1669356, at \*8 (N.D. Okla. June 12, 2025) (“On careful consideration of the statute, the  
14 implementing regulations, and the BIA’s decisions in *Sugay* and *Valles-Perez*, the Court  
15 rejects petitioner’s claim that the DHS has no authority to revoke a bond issued by an  
16 immigration judge.”); *Alvarez v. Rivas*, 2025 U.S. Dist. LEXIS 200979 at \*5 (D. Ariz.  
17 October 10, 2025) (rejecting a pre-detention hearing as “beyond the scope of the Petition”).

18 Moreover, it is well established that “detention during deportation proceedings [is]  
19 a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510,  
20 523 (2003); *see also Reno*, 507 U.S. at 306; *Carlson v. Landon*, 342 U.S. 524, 538 (1952)  
21 (“Detention is necessarily a part of this deportation procedure.”). In every case in which  
22 detention incident to removal proceedings has arisen, the Supreme Court has concluded  
23 that it is constitutional. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think  
24 it clear that detention, or temporary confinement, as part of the means necessary to give  
25 effect to the provisions for the exclusion or expulsion of aliens would be valid.”).  
26 Moreover, the Ninth Circuit also held in *Rodriguez Diaz* that the Due Process Clause does  
27 not require a second bond hearing when a petitioner is subject to ongoing detention.  
28 *Rodriguez Diaz*, 53 F.4th at 1203. The procedural process provided to Petitioner, if he is

1 re-arrested, is constitutionally adequate and no additional process should be required, much  
2 less the process required by the R&R.

3 For all the foregoing reasons, Respondents request that the Court accept the  
4 objections stated above, and reject the R&R.

5 RESPECTFULLY SUBMITTED November 19, 2025.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of November, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/M. Beickert  
United States Attorney's Office