Kara Hartzler
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
kara_hartzler@fd.org

Attorneys for Mr. Mirzaie

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HABIBULLAH MIRZAIE,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 25-cv-2568-JO-KSC

PETITIONER'S SUPPLEMENTAL BRIEFING

Next hearing: Jan. 15, 2026 at 9:30 a.m.

TABLE OF CONTENTS

INTRODUCTION

Habibullah Mirzaie is a citizen of Afghanistan who was granted humanitarian parole to seek asylum in the United States. But despite complying with all his check-in requirements and submitting his affirmative asylum application, Mr. Mirzaie was arrested at Camp Pendleton in September 2025 while he was lawfully working as a delivery man. Without any notice or explanation, ICE ignored his parole status, took him into custody, and placed him in removal proceedings before an immigration judge, thereby terminating his affirmative asylum proceedings.

Mr. Mirzaie filed a habeas petition, and on October 10, 2025, this Court granted his petition in part by ordering his release. The Court then ordered the parties to submit supplemental briefing on the remaining claims in his habeas petition, including "reinstatement of his humanitarian parole status and his affirmative asylum application." Dkt. 17, Minute Order. In this briefing, Mr. Mirzaie shows that this Court has jurisdiction to consider these remaining claims and that both claims succeed on the merits.

First, this Court has jurisdiction to consider the claims asserted in Mr. Mirzaie's habeas petition, for three reasons. First, Mr. Mirzaie's claims are inextricably intertwined with the government's authority to detain him, which this Court has jurisdiction to review. Second, this Court has jurisdiction to consider whether the agency has complied with due process and its mandatory, nondiscretionary duties. Finally, even if Mr. Mirzaie's claims *were* precluded by the Immigration and Nationality Act, which they are not, this Court could review them under the Suspension Clause. Thus, no jurisdictional bars prevent this Court from reviewing Mr. Mirzaie's claims.

Mr. Mirzaie's claims also succeed on the merits. While it is unclear whether the government has formally revoked Mr. Mirzaie's humanitarian parole, the government's actions are unlawful regardless. If the agency did not revoke his

parole, then it violated that parole by detaining him. And if the agency *did* revoke his parole, then it did so in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole have been served. Either way, the agency's actions violated the Administrative Procedures Act and procedural due process. Thus, this Court should reinstate his humanitarian parole status.

The agency's termination of Mr. Mirzaie's affirmative asylum process also violated the Administrative Procedures Act and procedural due process because the agency provided no notice, explanation, or reasons for its decision. Nor can it, because Mr. Mirzaie complied with all the agency's requirements by attending all his check-in appointments, submitting a timely asylum application, and committing no crimes. Thus, this Court should order the government to reinstate Mr. Mirzaie's humanitarian parole and his affirmative asylum application process before USCIS.

STATEMENT OF FACTS

I. As an ethnic and religious minority, Mr. Mirzaie fled Afghanistan to seek asylum in the United States.

Mr. Mirzaie was born in Afghanistan as a member of the Hazara community, an ethnic and religious minority that has endured a history of discrimination and systematic persecution. *See* "The Plight of Hazaras Under the Taliban Government," *The Diplomat,* Jan. 24, 2024, available at: https://thediplomat.com/2024/01/the-plight-of-hazaras-under-the-taliban-government/. Since its takeover in 2021, the Taliban has increasingly incited attacks against the Hazara minority, spawning a series of bombings and other acts of violence. *See id.*

Fearing the escalating violence against Hazaras, Mr. Mirzaie fled Afghanistan with his wife in 2024. They made their way to Mexico, where they used the CBP One application to make an appointment to present themselves at

the border to seek asylum. After waiting three months in Mexico City, they went to the San Ysidro port of entry for their appointment on March 20, 2024. *See* Exhibit A, I-94; Exhibit B, I-213 Record of Deportable/Inadmissible Alien, March 20, 2024.

II. Mr. Mirzaie is paroled into the United States and allowed to affirmatively apply for asylum through USCIS.

When Mr. Mirzaie and his wife presented themselves at the San Ysidro port of entry on March 20, 2024, they were granted "DT" humanitarian parole under 8 U.S.C. § 1182(d)(5) and issued an I-94 that permitted them to remain in the United States until March 19, 2026. *See* Exh. A, I-94. They were also issued a Notice to Appear and placed in removal proceedings. *See* Exh. B, I-213, March 20, 2024. But several months later, Mr. Mirzaie and ICE counsel filed a joint motion to terminate his removal proceedings because the Notice to Appear was "improvidently issued," since Mr. Mirzaie had been granted humanitarian parole. *See* Exhibit D, Joint Motion to Dismiss. The immigration judge granted the joint motion and terminated his removal proceedings on September 11, 2024. *See* Exhibit C, Order Granting Motion to Dismiss.

Terminating Mr. Mirzaie's removal proceedings allowed him to file his asylum application "affirmatively" through the United States Citizenship and Immigration Services (USCIS), rather than "defensively" through removal proceedings. During this affirmative asylum process, an asylum officer "meets informally with the applicant, considers the documents presented with the asylum application, then decides whether asylum should be granted or whether the matter should be referred to an [immigration judge] for formal adjudication." *Barahona-Gomez v. Reno,* 236 F.3d 1115, 1120 (9th Cir. 2001) (citing 8 C.F.R. § 208.2(a); § 208.14(b)(2)). So individuals who file affirmatively through USCIS are not detained, go through a non-adversarial interview process, and are able to obtain work authorization. *See* 8 C.F.R. § 208.7(a)(1); 8 C.F.R. § 274a.12(c)(11).

After his immigration court proceedings were terminated, Mr. Mirzaie complied with all his check-in requirements and submitted his asylum application to USCIS on January 14, 2025. *See* Exhibit E, Asylum Receipt. USCIS sent him an acknowledgement of receipt of the application stating, "You may remain in the United States until your asylum application is decided." *Id.* Several months later, USCIS issued Mr. Mirzaie a work authorization permit pursuant to 8 C.F.R. § 274a.12(c)(11). All that remained was for Mr. Mirzaie to attend his interview.

III. While making a delivery to Camp Pendleton, Mr. Mirzaie is arrested, turned over to ICE, and placed in removal proceedings with no notice or explanation.

Using his lawful work authorization, Mr. Mirzaie began working as a delivery driver. On September 18, 2025, Mr. Mirzaie was attempting to make a delivery at Camp Pendleton Marine Base. When he approached the gate, he presented his lawfully obtained driver's license.

The military official at the gate instructed Mr. Mirzaie to move over to the side of the lane. Suddenly, the Military Police arrived and blocked his car so he could not leave. Mr. Mirzaie asked several times if he was free to go but was told he could not. He presented proof of his work authorization and proof of his pending asylum application with USCIS, which were ignored. Military personnel detained Mr. Mirzaie for over four hours without explaining what law he had broken or what authority they had to arrest him.

After four hours, ICE officials arrived. They did not have a warrant for his arrest. They did not explain what law he had violated. They did not allege that he had violated the conditions of his parole or that his parole was being revoked. Instead, they handcuffed Mr. Mirzaie and transported him to the ICE facility in downtown San Diego before eventually taking him to the Otay Mesa Detention Center. *See* Exhibit F, I-213 Record of Deportable/Inadmissible Alien, Sept. 20, 2024.

//

Two days *after* Mr. Mirzaie was arrested, ICE issued a warrant for his arrest. *See* Exhibit G, Warrant. Several days after that, ICE issued a Notice to Appear placing Mr. Mirzaie in removal proceedings. *See* Exhibit H, Notice to Appear. This stripped USCIS of authority to proceed with his affirmative asylum application.

IV. Mr. Mirzaie files a habeas petition, and this Court orders him released.

On September 29, 2025, Mr. Mirzaie filed a petition for a writ of habeas corpus. *See* Dkt. 1. In this petition, Mr. Mirzaie asked this Court to find that "the denial of petitioner's affirmative asylum claim by detaining him and commencing new [INA] 240 removal proceedings" violated procedural due process and the Administrative Procedures Act. Dkt. 1 at 21.

After ordering the government to respond to the petition, this Court granted the petition in part. *See* Dkt. 11, Order. The Court ordered the government to release Mr. Mirzaie and prohibited the government from re-detaining him during the pendency of the habeas petition without leave of the Court. Dkt. 11, Order. The Court also conditionally appointed undersigned counsel "given the complexity and potential validity of the remaining constitutional, statutory, and procedural issues presented." Dkt. 16, Minute Order. The Court then ordered "supplemental briefing on the remainder of Petitioner's requested relief, including reinstatement of his humanitarian parole status and his affirmative asylum application." Dkt. 17, Minute Order. This briefing follows.

LEGAL ANALYSIS

In his habeas petition, Mr. Mirzaie challenged the detention that violated his humanitarian parole and the agency's actions of cancelling his USCIS asylum proceedings and placing him in removal proceedings before an immigration judge. Dkt. 1. There are two pertinent legal questions in this analysis: 1) whether the Court has jurisdiction to consider these claims; and 2) whether these claims succeed on the merits. The answer to both is yes.

I. This Court has jurisdiction to consider Mr. Mirzaie's claims.

In cases raising similar claims, the government has argued that this Court lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and 1252(b)(9). This argument fails here for at least three independent reasons. First, Mr. Mirzaie's claims are inextricably intertwined with the government's authority to detain him, which this Court has jurisdiction to consider. Second, this Court has jurisdiction to review whether the agency has complied with due process and its mandatory, nondiscretionary duties. Finally, even if Mr. Mirzaie's claims *were* precluded by the statute, which they are not, this Court could review them under the Suspension Clause.

A. Mr. Mirzaie's claims challenge the government's authority to detain him.

Courts have jurisdiction to "decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*, the Ninth Circuit squarely held that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* at 997. Accordingly, the question is whether Mr. Mirzaie's claims "challenge the Attorney General's discretionary authority." *Id.* at 996.

They do not. First, Mr. Mirzaie's claims relate to the government's authority to detain him, and courts have widely held that review of issues related to detention is not barred by § 1252(g) or (b)(9). *See, e.g., Flores–Torres v. Mukasey,* 548 F.3d 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a challenge to immigration detention based on a citizenship claim); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that "assertions of illegal detention [were] plainly collateral to ICE's prosecutorial decision to execute [a detainee's removal" and thus not subject to § 1252's jurisdictional bars); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000)

("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (§ 1252(g) did not apply to a "claim concern[ing] detention"). To undersigned counsel's knowledge, every judge in this district has held that it has jurisdiction to consider claims that an individual is unlawfully detained.

Importantly, all of the claims Mr. Mirzaie asserts in his habeas petition relate to the government's authority to detain him. In his habeas, Mr. Mirzaie's asked this Court to find that "the denial of petitioner's affirmative asylum claim *by detaining him* and commencing new [INA] 240 removal proceedings" violated procedural due process and the Administrative Procedures Act. Dkt. 1 at 21 (emphasis added). As this claim suggests, the government's cancellation of USCIS proceedings and commencement of removal proceedings is inextricably intertwined with its authority to detain him, for two reasons.

First, the government paroled Mr. Mirzaie into the United States through the CBP One App to allow him to apply for asylum. Exh. A, I-94. Mr. Mirzaie's I-94 states that this parole does not expire until March 19, 2026. *See id.* The government has never claimed that it revoked this parole, nor has it provided evidence that it was revoked. Yet ICE detained Mr. Mirzaie as though it *had* been revoked.

Importantly, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *12 (D. Or. July 9, 2025) (noncitizen should not be returned to custody unless the purposes of the parole have been served). Additionally, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, parole revocation (and thus the noncitizen's re-detention) only occurs

when the parole's purpose is served and the noncitizen receives written notice of the revocation.

Here, neither occurred. Mr. Mirzaie was paroled into the United States to apply for asylum, and "the purposes of such parole" have not yet "been served" because his asylum claim has not been adjudicated through either through an affirmative or a defensive proceeding. 8 U.S.C. § 1182(d)(5)(A). Moreover, there is no indication that Mr. Mirzaie's parole has been revoked, nor has he received any written notification of a revocation, as the regulations require. 8 C.F.R. § 212.5(e). So by placing Mr. Mirzaie in removal proceedings, where he can be—and in fact, *was*—detained, the government violated its own parole order, in violation of statutory and regulatory authority.

While it remains unclear whether the government has formally revoked Mr. Mirzaie's parole,[1] this Court retains jurisdiction regardless. If the agency did not revoke his parole, then his detention in September 2025 violated the agency's own parole decision. And if the agency *did* revoke his parole, then it did so in violation of the statute and regulations, which require written notification and a determination that "purposes of such parole have been served." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i). Either way, this Court has jurisdiction to review the status of Mr. Mirzaie's parole and the government's authority to detain him.

Second, the termination of Mr. Mirzaie's USCIS proceedings and his placement in proceedings before an immigration judge subjected him to detention

---

[1] At a hearing on October 10, 2025, Respondents were equivocal on whether the agency had revoked Mr. Mirzaie's parole. When this Court inquired whether there was "actually a revocation" of parole, government counsel responded: "ICE's position would be that the humanitarian parole was revoked; however, Respondents do acknowledge that the regulations require written notice, and that written notice was not provided at the time of apprehension." Transcript, Oct. 10, 2025, at 6-7.

under 8 U.S.C. § 1226, which governs custody determinations in removal proceedings. And under § 1226(b), an immigration judge "may revoke" a grant of parole without following the procedural protections of 8 C.F.R. § 212.5(e)(2)(i). Importantly, the Board of Immigration Appeals' recent decision in *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025), requires immigration judges to hold that individuals in removal proceedings charged with the grounds of inadmissibility (such as Mr. Mirzaie) are subject to mandatory detention and ineligible for bond. In other words, the agency's termination of USCIS proceedings and initiation of immigration court proceedings meant that an immigration judge could 1) revoke Mr. Mirzaie's parole, and 2) declare that he was subject to mandatory detention under *Yahure Hurtado.* Thus, Mr. Mirzaie's substantive claims cannot be divorced from the question of his detention.

In sum, the cancellation of Mr. Mirzaie's USCIS asylum proceedings affected the government's authority to detain him by 1) effectively revoking his parole, in violation of the statute and regulations, and 2) subjecting him to mandatory detention. The Supreme Court recently clarified that when petitioners' claims for relief "necessarily imply the invalidity of their confinement and removal," such claims "fall within the core of the writ of habeas corpus." *Trump v. J. G. G.*, 672 (2025) (quotations omitted). Because the government's authority to detain Mr. Mizaie is thus inextricably intertwined with the claims in his habeas petition, this Court has jurisdiction to consider them.

B. This Court has jurisdiction to consider claims alleging that the government failed to comply with its mandatory duties and due process.

Even if Mr. Mirzaie's claims were *not* inextricably intertwined with the government's authority to detain him, they would still not be jurisdictionally barred. That is because the jurisdictional bars of § 1252 do not bar review of claims that ICE is "failing to carry out non-discretionary statutory duties and provide due process." *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL

1810210, at *3 (W.D. Wash. June 30, 2025); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard").

That is precisely what Judge Curiel recently held in a similar case. In *Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *1 (S.D. Cal. Oct. 1, 2025), the petitioner was (like Mr. Mirzaie) an asylum seeker from Afghanistan who "presented himself at the U.S. Port of Entry in San Ysidro, California and applied for admission with a CBP One application." Immigration officials "paroled him into the United States" under the same type of "DT" humanitarian parole as Mr. Mirzaie. *Id.* But after the government cancelled the petitioner's removal proceedings and placed him in expedited removal, he filed a habeas petition, and the government argued that §§ 1252(g) and (b)(9) stripped the court of jurisdiction to hear his claims. *Id.* at *5.

Nevertheless, Judge Curiel found that he had jurisdiction to hear the claims, noting that "Petitioner does not challenge the decision to commence proceedings." *Id.* at *6. Instead, "Petitioner challenges the legality of the revocation of humanitarian parole in violation of the law and dismissal of ongoing removal proceedings without due process." *Id.* So even assuming the agency's revocation of parole "constitutes a decision or action to adjudicate cases," that action is not "in the discretion" of the agency under § 1252(g) where it was "'not performed in accordance with the mandatory procedures.'" *Id.* (quoting *Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008) (alterations omitted)).

Other courts have held the same. In *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020), the Supreme Court held that § 1252(b)(9) "does not present a jurisdictional bar" where those bringing suit "are not asking for review of an order of removal," "the decision to seek removal," or "the process by which removability will be determined." (quotations

and alterations omitted). And in *Vasquez Garcia v. Noem*, 25-cv-02180-DMS-MMP, 2025 WL 2549431, Dkt. 7 at *8 (S.D. Cal. Sept. 3,2025), Judge Sabraw held that "§ 1252(g) does not limit the Court's jurisdiction in the present case" because the petitioners were "enforcing their constitutional rights to due process in the context of the removal proceedings—not the legitimacy of the removal proceedings or any removal order."

Here, Mr. Mirzaie similarly challenges the legality of the government's arbitrary decision to cancel his USCIS asylum process and place him in proceedings before an immigration judge without notice, an opportunity to be heard, or any justification. Because these actions were "not performed in accordance with the mandatory procedures," they were not undertaken "in the discretion" of the agency. *Noori*, 2025 WL 2800149, at *6; *see also United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954) (holding that agencies must adhere to their own binding regulations, both substantively and procedurally). Accordingly, this Court is not jurisdictionally barred from reviewing them.

C. Mr. Mirzaie's claims do not fall within the plain language of § 1252 and if they did, the statute would violate the Suspension Clause and Due Process.

Finally, Mr. Mirzaie's claims do not fall within the plain language of the § 1252(g) and § 1252(b)(9) jurisdictional bars. And even if they did, this Court could still review them under the Suspension Clause.

Section 1252(g) precludes judicial review of an agency decision to "commence proceedings, adjudicate cases, or execute removal orders." "The Supreme Court has instructed that we should read § 1252(g) narrowly." *Ibarra-Perez v. United States*, 154 F.4th 989, 991 (9th Cir. 2025) (citing *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 487 (1999); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). That is

because, as a general matter, establishing unreviewability is a "heavy burden," and "where substantial doubt about the congressional intent exists, the general presumption favoring judicial review of administrative action is controlling." *Block v. Cmty. Nutrition Inst.,* 467 U.S. 340, 351 (1984).

Here, Mr. Mirzaie's challenge does not fall within any of the three categories of § 1252(g). He does not challenge the agency's decision to "commence proceedings" under § 1252(g) because his asylum proceedings had already "commenced" before USCIS. Nor does he challenge the agency's decision to "adjudicate" his case—only the arbitrary decision to switch from one adjudicator (USCIS) to another (immigration court) mid-stream. And Mr. Mirzaie could not challenge the agency's ability to "execute [his] removal order" given that he doesn't have one. Reading § 1252(g) "narrowly," *Ibarra-Perez*, 154 F.4th at 991, thus shows that Mr. Mirzaie's claims do not fall within any of these three categories.

The same is true of § 1252(b)(9). This section bars "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States[.]" 8 U.S.C. § 1252(b)(9). But the Ninth Circuit holds that this statute, by its plain language, applies only to "judicial review of an order of removal" and does not eliminate the ability of a court to review claims that are "independent of challenges to removal orders." *Singh v. Gonzales,* 499 F.3d 969, 978 (9th Cir. 2007) (quotations omitted). Rather, § 1252(b)(9) was designed to limit noncitizens to "one bite of the apple with regard to challenging an order of removal," precluding, for instance, claims that the BIA erred in finding an individual "ineligible for asylum, withholding of removal, and relief under the [Convention Against Torture]." *Martinez v. Napolitano*, 704 F.3d 620, 622–23 (9th Cir. 2012). Thus, determining jurisdiction under § 1252 "requires a case-by-case inquiry turning on a practical

analysis" of the noncitizen's circumstances. *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011).

Here, Mr. Mirzaie does not challenge any decision that the BIA or a circuit court could review as part of a final order of removal. Nor could he, since the agency has yet to issue a decision regarding his removal. Rather, he seeks review of the agency's parole revocation and termination of his USCIS asylum proceedings, which do not relate to the substance of his removal proceedings. Thus, neither provision in § 1252 strips this Court of jurisdiction to hear his claims.

But even if the government's expansive reading of § 1252 *were* correct, this Court could still hear Mr. Mirzaie's claims under the Suspension Clause. Under the Suspension Clause, "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I ¶ 9, cl. 2. Courts have held that even when "Congress intended to strip all courts of jurisdiction over [a petitioner's] claim, the Suspension Clause of the Constitution nonetheless requires that [he] may bring his challenge through the writ of habeas corpus." *Ragbir v. Homan*, 923 F.3d 53, 57–58 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020). In determining the reach of the Suspension Clause, courts are required to consider "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008).

In *Noori,* Judge Curiel applied these factors to hold that review was also available under the Suspension Clause. *See* 2025 WL 2800149, at *9. Judge Curiel explained that "although Petitioner is not a citizen, he was paroled into the United States upon a finding that he was not a flight risk or a danger to the

community," and has "remained here for more than a year," "received a work authorization," and "developed ties to the community." *Id.* Judge Curiel also noted that the petitioner was "apprehended and detained within the United States," and there was "no evidence that Petitioner is a danger to the community or a flight risk—in fact, Respondents decided to parole Petitioner when he arrived without ties to the community after determining that he did not have any criminal history and then approved a work authorization." *Id.* Judge Curiel thus concluded that "even if Section 1252 precluded the Court from reviewing Respondents' decision to terminate Petitioner's parole and detain him, the Court would have jurisdiction to review this decision under the Suspension Clause." *Id.*

Here, the facts in Mr. Mirzaie's case are materially identical to those in *Noori*. Mr. Mirzaie was "paroled into the United States upon a finding that he was not a flight risk or a danger to the community," has "remained here for more than a year," "received a work authorization," and "developed ties to the community." *Id.* Thus, as in *Noori*, the *Boumediene* factors weigh in his favor, and at a minimum, this Court has jurisdiction to review his claims under the Suspension Clause.

II. On the merits, the government's actions violated the Administrative Procedures Act and due process.

Moving to the merits, Mr. Mirzaie presents two claims. First, he argues that the agency's effective revocation of his parole violated the Administrative Procedures Act and procedural due process. Second, he argues that the agency's termination of his affirmative asylum proceedings before USCIS also violated the Administrative Procedures Act and procedural due process.

A. Revoking Mr. Mirzaie's parole and subjecting him to detention violates the Administrative Procedures Act and Due Process.

As recounted above, the government paroled Mr. Mirzaie into the United States through the CBP One App to allow him to apply for asylum. Exh. A, I-94. According to Mr. Mirzaie's I-94, this parole did not expire until March 19, 2026.

Id. But when ICE detained Mr. Mirzaie on September 18, 2025, it did not say whether it was revoking his parole or not. Either way, the government's actions violate the Administrative Procedures Act and Due Process.

1. The government's actions violated the Administrative Procedures Act.

Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged agency action to be upheld, the agency "must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs,* 463 U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

Here, regardless of whether the agency formally revoked Mr. Mirzaie's parole or not, it violated the APA. If the agency did *not* revoke his parole, then it inexplicably violated its own parole decision by detaining Mr. Mirzaie in September 2025—six months before his parole was set to expire on March 19, 2025. *See* Exh. A, I-94. Doing so violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Mr. Mirzaie was still on parole, yet the agency decided to detain him. *Motor Vehicle Mfrs,* 463 U.S. at 52. And nothing suggests that there *was* a "rational" reason for this choice, given that Mr. Mirzaie had filed an asylum

application, complied with all the conditions or his parole, and had no criminal history. This was the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C. § 706(2)(A).

But assuming the agency *had* revoked his parole, it also violated the APA. As explained, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); s*ee also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of parole when "neither humanitarian reasons nor public benefit warrants the [noncitizen's] continued presence." 8 C.F.R. § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may only revoke parole and re-detain a noncitizen when the parole's purpose is served or no humanitarian reasons warrant it *and* the noncitizen receives written notice.

None of this occurred here. Because "the purpose[ ] of [Mr. Mirzaie's] parole" was to allow him to apply for asylum, that purpose has not yet "been served" because his asylum claim has not been adjudicated through either an affirmative or a defensive proceeding. 8 U.S.C. § 1182(d)(5)(A). Moreover, the "humanitarian reasons" for Mr. Mirzaie's parole—to allow a Hazara minority to seek asylum protection from the Taliban—have not changed. 8 C.F.R. § 212.5(e)(2)(i). What's more, Mr. Mirzaie never received any written notification of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole, this decision violated both the statute and the regulation and was "not in accordance with law" under the APA. 5 U.S.C. § 706(2)(A).

//

That is precisely what Judge Curiel concluded in *Noori*, 2025 WL 2800149, at *13. Relying on the same authority cited above, *Noori* concluded that "to meet statutory and regulatory requirements, revocation should only occur when (1) the parole's purpose is served or (2) when humanitarian reasons and public benefit are no longer warranted, and the noncitizen is provided written notice." *Id.* The first requirement was not met because the petitioner "applied for asylum and was still in the middle of those proceedings when Respondents issued and executed the revocation." *Id.* And even though the petitioner was provided a "generic notification" of his revocation, the second requirement was not met because "humanitarian reasons still warrant the Petitioner's presence in the country." *Id.* At a minimum, Judge Curiel held, parole revocation "requires an individualized determination," which the government had not provided because it failed to explain "why the Petitioner would now be considered a flight risk or danger to the community." *Id.*

Here, as in *Noori*, the government failed to meet the statutory and regulatory requirements for parole revocation. In fact, the government here did not even provide Mr. Mirzaie a "generic notification" of revocation, as it did in *Noori*. *Id.* Thus, the government here "has acted arbitrarily and capriciously in violation of the APA." *Id.*

2. The government's actions violated procedural due process.

Not only did the government's effective revocation of parole violate the APA, it also violated procedural due process. The Fifth Amendment guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. To determine a violation of procedural due process, courts weigh the traditional factors of (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, these factors easily weigh in Mr. Mirzaie's favor.

First, the private interest at issue is Mr. Mirzaie's deprivation of liberty—i.e., remaining on parole, rather than being detained. *See Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("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."). Not only is Mr. Mirzaie's general liberty interest substantial, he has an added interest in remaining out of custody so he can work with his attorney to prepare his asylum case. What's more, Mr. Mirzaie's work authorization is contingent on his parole status, and revocation of his parole will directly impact his ability to provide for himself and his family. Thus, the first factor weighs heavily in Mr. Mirzaie's favor.

Second, the procedures the agency used to determine whether to revoke Mr. Mirzaie's parole presented a high risk of erroneous deprivation of liberty. To date, the agency's actions surrounding Mr. Mirzaie's parole have completely failed to comply with the statute, the regulations, and even the agency's own decision. After granting Mr. Mirzaie humanitarian parole in March 2024, the agency inexplicably revoked this parole a year-and-a-half before it expired. Exh. A, I-94. It did so even though Mr. Mirzaie had attended all his check-in appointments, had no criminal history, and had timely filed an asylum application. Exh. E, Asylum Receipt. The agency did not claim that "the purposes of such parole . . . have been served," 8 U.S.C. § 1182(d)(5)(A), nor that the "humanitarian reasons" for his parole no longer existed, 8 C.F.R. § 212.5(e)(2)(i). Because consideration of any of these factors should have led to a different result, the risk of erroneous deprivation of Mr. Mirzaie's parole without these procedures was high, and this factor weighs heavily in his favor.

Finally, any government interest in revoking Mr. Mirzaie's parole is minimal. Mr. Mirzaie has complied with all his check-in requirements, has no criminal history, has timely applied for asylum, and does not represent a danger or

a flight risk. All the government need do is comply with its *own decision* to grant Mr. Mirzaie parole until at least March 19, 2026. Thus, the *Mathews v. Eldrige* factors weigh heavily in Mr. Mirzaie's favor, and his revocation of parole violates procedural due process.

B. Terminating Mr. Mirzaie's USCIS asylum proceedings violated the Administrative Procedures Act and Due Process.

For similar reasons, the agency's termination of Mr. Mirzaie's affirmative asylum process before USCIS violated both the APA and procedural due process.

1. The government's actions violated the APA.

As with its revocation of parole, the government's termination of Mr. Mirzaie's affirmative asylum proceedings before USCIS was "arbitrary" and "capricious" under the APA. 5 U.S.C. § 706(2)(A). After he was originally placed in removal proceedings, the government acknowledged that this was inconsistent with his humanitarian parole and jointly filed a motion to dismiss the Notice to Appear as "improvidently issued." Exh. D, Motion to Dismiss. This permitted Mr. Mirzaie to pursue a more non-adversarial route to asylum through USCIS. *See Barahona-Gomez v. Reno,* 236 F.3d at 1120.

But a year later—when Mr. Mirzaie had filed an asylum application with USCIS and was still in full compliance with his parole conditions—the agency inexplicably changed its mind. It appears to have done so only because of Mr. Mirzaie's random (but entirely lawful) delivery to Camp Pendleton and the military's interrogation and detention of him. *See* Exh. F. Indeed, the agency did not create a warrant for Mr. Mirzaie's arrest until two days *after* that incident. In other words, the agency's decision to terminate Mr. Mirzaie's USCIS asylum proceedings and issue a new Notice to Appear seems to have occurred solely as a result of Camp Pendleton's decision to detain him and turn him over to ICE.

This was "arbitrary" and "capricious." 5 U.S.C. § 706(2)(A). To uphold its decision, the agency "must explain the evidence which is available, and must

offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs,* 463 U.S. at 52. Here, the "available evidence" shows that USCIS was adjudicating Mr. Mirzaie's timely-filed asylum application. Exh. E, Asylum Receipt. Yet with no explanation or reasons, the agency terminated his USCIS proceedings and put him in proceedings before an immigration judge. Exh. H, Notice to Appear. Looking at this "available evidence," the agency cannot offer any "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs,* 463 U.S. at 52. Nothing in Mr. Mirzaie's lawful delivery to Camp Pendleton and his unjustified arrest provides a motive for terminating his USCIS asylum proceedings. Thus, the government's actions violated the APA.

2. The government's actions violated procedural due process.

For similar reasons, the government's termination of Mr. Mirzaie's USCIS asylum proceedings also violated procedural due process under a weighing of the *Mathews v. Eldridge* factors. 424 U.S. at 334–35.

First, Mr. Mirzaie's interest in applying for asylum through USCIS is high. As explained, in an affirmative asylum adjudication, an asylum officer "meets informally with the applicant, considers the documents presented with the asylum application, then decides whether asylum should be granted." *Barahona-Gomez v. Reno,* 236 F.3d at 1120. Importantly for asylum seekers who are fearful or have experienced trauma, "[t]he asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public." 8 C.F.R. § 208.9(b). If asylum is denied, the case will be "referred to an [immigration judge] for formal adjudication," thereby giving the individual two bites at the apple. *Barahona-Gomez v. Reno,* 236 F.3d at 1120. What's more, the USCIS process allows Mr. Mirzaie to obtain work authorization and avoid the mandatory detention that would likely occur in removal proceedings under *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, the first factor weighs heavily in Mr. Mirzaie's favor.

Second, the "procedures used" to determine whether to terminate Mr. Mirzaie's USCIS asylum proceedings presented a high risk of the erroneous deprivation of that interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35. Frankly, the agency did not appear to use *any* "procedures" to make this decision. All it did was respond to Camp Pendleton's unjustified and unlawful detention of Mr. Mirzaie by taking him into custody and issuing a new Notice to Appear. The agency provided no explanation for its decision to terminate USCIS proceedings, nor could it, since Mr. Mirzaie had filed a timely asylum application, complied with all his check-in appointments, and engaged in no criminal activity. Thus, the second factor also weighs heavily in Mr. Mirzaie's favor.

Finally, the government's interest is negligible. Absent evidence that Mr. Mirzaie poses any danger or threat to society, the government has no reason to try to bypass the USCIS asylum process. If Mr. Mirzaie's application is denied, the government can then place him in removal proceedings. So the only "risk" to the government is that Mr. Mirzaie will spend some time out of detention lawfully employed before being put in removal proceedings. Given the minimal burden this places on the government, combined with Mr. Mirzaie's weighty interests on the first two factors, the *Mathews v. Eldridge* factors lean heavily in his favor. Accordingly, this Court should find that the government's termination of his USCIS affirmative asylum proceedings violated due process.

Conclusion

Because this Court has jurisdiction to consider Mr. Mirzaie's claims, and because these claims succeed on the merits, this Court should GRANT the habeas

//

//

//

//

//

petition and order the government to reinstate Mr. Mirzaie's parole and USCIS asylum proceedings.

Respectfully submitted,

Dated: November 13, 2025

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Mirzaie
Email: kara hartzler@fd.org