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22
23
24
25
26
27
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TABLE OF CONTENTS

PAGE

INTRODUCTION1
I. Mr. Mirzaie’s release did not moot his claims..... 2
II. Sections 1252(g) and (b)(9) do not strip this Court of jurisdiction to
consider Mr. Mirzaie’s procedural due process and APA claims..... 4
CONCLUSION.....6

1 INTRODUCTION

2 Habibullah Mirzaie is a citizen of Afghanistan who was originally granted
3 humanitarian parole in 2024 and permitted to affirmatively apply for asylum
4 before USCIS. Then ICE—with no notice, explanation, or good cause—suddenly
5 ignored its own parole decision, took him into custody, and placed him in removal
6 proceedings before an immigration judge.

7 In a habeas petition and supplemental briefing, Mr. Mirzaie challenged the
8 government’s decisions to terminate his humanitarian parole status without notice
9 or good cause and place him in removal proceedings, rather than allow him to
10 continue with the affirmative asylum process. *See* Dkt 20. Mr. Mirzaie argued that
11 this Court had jurisdiction to consider both of these claims because 1) they
12 intertwine with the government’s authority to detain him, 2) the agency failed to
13 comply with due process and its mandatory duties, and 3) his claims do not fall
14 within the plain language of 8 U.S.C. § 1252, and if they did, the statute would
15 violate the Suspension Clause and Due Process. Dkt. 20 at 6–14. On the merits,
16 Mr. Mirzaie then argued that the agency’s decision to revoke his parole and place
17 him in removal proceedings violated procedural due process and the
18 Administrative Procedures Act (APA). Dkt. 20 at 14–21.

19 In its supplemental briefing, the government does not dispute any of the
20 alleged facts—that ICE granted Mr. Mirzaie humanitarian parole and allowed him
21 to affirmatively apply for asylum before it changed its mind, arrested him, and
22 placed him in removal proceedings with no notice or good cause. Dkt. 22 at 2.
23 Nor does it defend its actions on the merits or disagree that its actions violated the
24 APA or procedural due process. Dkt. 22 at 2–6. Thus, the government has waived
25 its right to contest any of the facts or the merits of Mr. Mirzaie’s claims.

26 Instead, the government makes a purely jurisdictional argument that “the
27 District Court’s jurisdiction does not extend to ordering the Department of
28 Homeland Security (DHS) to grant a noncitizen humanitarian parole or

1 prescribing the adjudication of an asylum application.” Dkt. 22 at 1. Specifically,
2 it argues that this Court lacks jurisdiction because 1) Mr. Mirzaie’s release renders
3 the habeas moot, and 2) jurisdiction is barred by 8 U.S.C. §§ 1252(g) and (b)(9).
4 Dkt. 22 at 2–6.

5 But Mr. Mirzaie does not ask this Court to “grant” him humanitarian parole
6 or “prescribe” the adjudication of his asylum application. Rather, he simply asks
7 this Court to consider whether the government’s actions violate procedural due
8 process under *Mathews v. Eldridge*, 424 U.S. 319 (1976), or are “arbitrary and
9 capricious” under the APA. What’s more, Mr. Mirzaie already addressed the
10 government’s arguments regarding mootness and jurisdiction under 8 U.S.C.
11 §§ 1252(g) and (b)(9) in its original supplemental brief. Dkt. 20 at 6–14. Because
12 the government does not defeat these arguments (or even address them directly),
13 this Court has jurisdiction to decide Mr. Mirzaie’s claims. And because the
14 government raises no arguments on the merits, this Court should grant
15 Mr. Mirzaie’s petition and order the government to reinstate his parole and
16 USCIS asylum proceedings.

17 **I. Mr. Mirzaie’s release did not moot his claims.**

18 In his supplemental brief, Mr. Mirzaie argued that this Court has
19 jurisdiction to consider his claims, for three independent reasons. First,
20 Mr. Mirzaie’s claims are inextricably intertwined with the government’s authority
21 to detain him, which this Court has jurisdiction to consider. Dkt. 20 at 6–9.
22 Second, this Court has jurisdiction to review whether the agency has complied
23 with due process and its mandatory, nondiscretionary duties. Dkt. 20 at 9–11.
24 Finally, even if Mr. Mirzaie’s claims *were* precluded by § 1252, which they are
25 not, this Court could review them under the Suspension Clause. Dkt. 20 at 11–14.

26 The government does not engage with or directly respond to any of these
27 arguments. Dkt. 22 at 1–6. Instead, it first argues that because “[t]he sole relief
28 sought by the Petition filed in this matter was Petitioner’s release from detention,”

1 his petition is moot because there are “no remaining claims to be ruled upon.”
2 Dkt. 22 at 3.

3 But release was not the “sole relief” Mr. Mirzaie’s petition sought. In fact,
4 his “Prayer for Relief,” which the government purports to rely on (Dkt. 22 at 3),
5 specifically requested that this Court “[d]eclare that the denial of petitioner’s
6 affirmative asylum claim by detaining him *and commencing new 240 removal*
7 *proceedings without an individualized determination to return him to 240 removal*
8 *proceedings* violates the Due Process Clause of the Fifth Amendment.” Dkt. 1 at
9 21 (emphasis added). In other words, Mr. Mirzaie argued that both his detention
10 *and* his placement in removal proceedings violated due process.

11 Count One of the petition similarly argued that the “refiling of an NTA
12 [Notice to Appear] with no explanation and no apparent rational” was a “clear
13 violation of Mr. Mirzaie’s right to due process.” Dkt. 1 at 17. It pointed out that
14 applying for asylum affirmatively before USCIS provided Mr. Mirzaie a
15 “substantial benefit” because it allowed him a “second opportunity to file for
16 asylum should USCIS deny the original application.” Dkt. 1 at 16. Furthermore,
17 Count Two of the petition argued that the government violated the APA by
18 “categorically revoking Petitioner’s humanitarian parole” without considering his
19 “individualized facts and circumstances.” Dkt. 1 at 18. So the plain language of
20 Mr. Mirzaie’s habeas petition challenged—not only his detention—but the
21 termination of his affirmative asylum proceedings before USCIS and the
22 revocation of his humanitarian parole. Contrary to the government’s argument,
23 then, there are “remaining claims to be ruled upon.” Dkt. 22 at 3.

24 At a minimum, Mr. Mirzaie explained in his supplemental brief that his
25 non-detention claims were inextricably intertwined with the government’s
26 authority to detain him, which this Court has jurisdiction to consider. Dkt. 20 at
27 6–9. Specifically, the cancellation of Mr. Mirzaie’s USCIS asylum proceedings
28 affects the government’s authority to detain him by 1) revoking his parole, in

1 violation of the statute and regulations, and 2) subjecting him to mandatory
2 detention. Dkt. 20 at 6–9. And when a petitioner’s claims for relief “necessarily
3 imply the invalidity of their confinement and removal,” such claims “fall within
4 the core of the writ of habeas corpus” that this Court has jurisdiction to consider.
5 *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (quotations omitted).

6 Because the plain language of Mr. Mirzaie’s habeas petition challenged the
7 termination of his affirmative asylum proceedings and the revocation of his
8 humanitarian parole under procedural due process and the APA, these are
9 “remaining claims to be ruled upon.” Dkt. 22 at 3. And at a minimum, these
10 claims cannot be divorced from the government’s authority to detain Mr. Mirzaie
11 going forward, which this Court also has jurisdiction to consider. Accordingly,
12 this petition is not moot.

13 **II. Sections 1252(g) and (b)(9) do not strip this Court of jurisdiction to**
14 **consider Mr. Mirzaie’s procedural due process and APA claims.**

15 In his supplemental brief, Mr. Mirzaie also explained that his claims do not
16 fall within the plain language of the § 1252(g) and § 1252(b)(9) jurisdictional
17 bars. Dkt. 20 at 11–13. Specifically, his claims do not challenge the Attorney
18 General’s authority to “commence proceedings, adjudicate cases, or execute
19 removal orders” under § 1252(g) because: 1) his asylum proceedings had already
20 “commenced” before USCIS; 2) he does not challenge the agency’s decision to
21 “adjudicate” his case—only the arbitrary decision to switch from one adjudicator
22 (USCIS) to another (immigration court); and 3) he could not challenge the
23 agency’s ability to “execute [his] removal order” given that he doesn’t have one.
24 Dkt. 20 at 11–12. Nor do his claims fall within the plain language of § 1252(b)(9),
25 which applies only to “judicial review of an order of removal” and does not
26 eliminate the ability of a court to review claims that are “independent of
27 challenges to removal orders.” *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir.
28 2007) (quotations omitted); Dkt. 20 at 12–13. And if these provisions somehow

1 *did* strip this Court of jurisdiction, he argued that it would violate the Suspension
2 Clause. Dkt. 20 at 13–14.

3 The government addresses none of these arguments. Instead, it merely
4 asserts that “DHS’s decision to revoke Mr. Mirzaie’s parole status and commence
5 removal proceedings are squarely within the sole discretion of the Attorney
6 General.” Dkt. 22 at 4. But as Mr. Mirzaie also explained in his supplemental
7 brief, Dkt. 20 at 9–11, the jurisdictional bars of § 1252 do not bar review of
8 claims that ICE is “failing to carry out *non-discretionary* statutory duties and
9 provide due process.” *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL
10 1810210, at *3 (W.D. Wash. June 30, 2025) (emphasis added); *see also D.V.D. v.*
11 *U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025)
12 (§ 1252(g) did not bar review of “the purely legal question of whether the
13 Constitution and relevant statutes require notice and an opportunity to be heard”).
14 He also explained that this is precisely what Judge Curiel recently held in a
15 strikingly similar case involving an Afghani asylum seeker. Dkt. 20 at 10
16 (discussing *Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149
17 (S.D. Cal. Oct. 1, 2025)).

18 The government tries to distinguish *Noori* by arguing that while “a court
19 may conclude that parole revocation must be supported by an individualized
20 determination,” such a conclusion may only be made “in the context of a detained
21 petitioner.” Dkt. 22 at 5. But Judge Curiel issued his written decision in *Noori*
22 *after* the petitioner’s release. *See Noori*, 2025 WL 2800149, at *1. Thus, nothing
23 distinguishes this case from the thorough and well-reasoned decision in *Noori*.

24 Finally, the government argues that this Court lacks jurisdiction to “intrude
25 upon the Attorney General’s authority to revoke its parole decision, initiate
26 removal proceedings, or adjudicate Mr. Mirzaie’s asylum application as it stands.”
27 Dkt. 22 at 5–6. But Mr. Mirzaie asks the Court to do none of these things. All he
28 asks is that this Court apply the well-honed tools of the three-step *Mathews v.*

1 *Eldridge* test and the APA to determine whether the agency is acting within its
2 constitutional and statutory bounds. If the agency is acting lawfully, then the
3 government is correct that this Court may not “intrude” on the agency’s actions.
4 But if the agency is *not* acting lawfully, then this Court must do what courts have
5 always done—order the agency to conform its actions to the law.

6 **CONCLUSION**

7 Because this Court has jurisdiction to consider Mr. Mirzaie’s claims, and
8 because the government has waived or forfeited any argument on the merits, this
9 Court should GRANT the habeas petition and order the government to reinstate
10 Mr. Mirzaie’s parole and USCIS asylum proceedings.

11
12 Respectfully submitted,

13
14 Dated: December 18, 2025

s/ Kara Hartzler

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