



Respectfully Submitted,

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**TABLE OF CONTENTS**

**PRELIMINARY STATEMENT** ..... 1

**UPDATED FACTUAL BACKGROUND** ..... 1

**ARGUMENT** ..... 3

**I. The Court Should Hold That the Revocation of Mr. Doe’s Parole  
    Violated the APA and Due Process** ..... 3

        A. This Court Has Jurisdiction to Adjudicate Mr. Doe’s APA and Due  
        Process Challenges Relating to Parole ..... 4

        B. Respondents Violated the Statute, Regulations, and Due Process When  
        They Revoked Mr. Doe’s Parole..... 7

**II. The Court Should Deny Defendants’ Motion to Dismiss the APA Claims  
    Relating to Defendants’ Processing of the I-130 and I-485**.....10

**CONCLUSION** .....12

**TABLE OF AUTHORITIES**

**Cases**

*Barríos Garcia v. U.S. Dep’t of Homeland Sec.*, 25 F.4th 430 (6th Cir. 2022). 6, 10, 11, 12

*Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018) ..... 5

*Escalona v. U.S. Dep’t of Homeland Sec.*, No. 1:20-cv-613, 2021 WL 5546710 (W.D. Mich. Aug. 23, 2021) ..... 11

*Espinoza v. Kaiser*, No. 1:25-cv-01101, 2025 WL 2581185 (E.D. Cal. Sept. 5, 2025) ..... 3

*Gonzalez v. Cuccinelli*, 985 F.3d 357 (4th Cir. 2021)..... 11

*Hassan v. Chertoff*, 593 F.3d 785 (9th Cir. 2010)..... 6

*Hatchet v. Andrade*, 106 F.4th 574 (6th Cir. 2024) ..... 4

*I.N.S. v. St. Cyr*, 533 U.S. 289 (2001)..... 6

*K.E.O. v. Woosley*, No. 4:25-cv-74, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025) 10

*Kucana v. Holder*, 558 U.S. 233 (2010)..... 5, 6

*Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) ..... 7

*Mantena v. Johnson*, 809 F.3d 721 (2d Cir. 2015) ..... 4

*Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1952796 (W.D.N.Y. July 16, 2025)..... 5, 8, 9

*Mathews v. Eldridge*, 424 U.S. 319 (1976) ..... 9

*Munoz Materano v. Arteta*, No. 25-civ-6137, 2025 WL 2630826 (S.D.N.Y. Sept. 12, 2025)..... 3

*Noori v. Larose*, No. 25-cv-1824, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025) ..... 3

*Orellana v. Francis*, No. 25-cv-04212, 2025 WL 2402780 (E.D.N.Y. Aug. 19, 2025) ..... 5, 10

*Pak v. Reno*, 196 F.3d 666 (6th Cir. 1999) ..... 4

*Patel v. Barr*, No. 20-3856, 2020 WL 4700636 (E.D. Pa. Aug. 13, 2020)..... 11

*Samirah v. O’Connell*, 335 F.3d 545 (7th Cir. 2003)..... 7

*Tapco Prods. Co. v. Van Mark Prods. Corp*, 446 F.2d 420 (6th Cir. 1971)..... 8

*Telecomms. Research & Action Center v. F.C.C.*, 750 F.2d 70 (D.C. Cir. 1984)... 11

*Villa v. Att’y Gen. of the U.S.*, 742 F. App’x 682 (3d Cir. 2018) ..... 12

*Y-Z-L-H- v. Bostock*, No. 3:25-cv-965, 2025 WL 1898025 (D. Or. July 9, 2025).. 5, 6, 8, 10

**Statutes**

8 U.S.C. § 1182(d)(5)(A) .....5, 7, 8  
8 U.S.C. § 555(b)..... 11

**Other Authorities**

Jasmine Garsd, *Wrong turn leads to hundreds of immigrant arrests at the Detroit-Canada border bridge*, NPR (Apr. 24, 2025)..... 9

**Regulations**

8 C.F.R. § 212.5(e) ..... 7

## **PRELIMINARY STATEMENT**

Respondents can revoke or deny parole, but they may not violate the statute, the regulations, or due process. The Immigration and Nationality Act (INA) does not shield them from judicial review of these legal and constitutional issues. Therefore, the Court should hold that it has jurisdiction over Mr. Doe's parole claims, and that Respondents' actions violated the Administrative Procedure Act (APA) and due process. Like other courts, it should remedy these violations by ordering Mr. Doe's release.

Additionally, the Court should deny Defendants' motion to dismiss Plaintiffs' claims relating to the adjudication of their USCIS applications. Those claims are not ripe for adjudication at the motion to dismiss phase and should be deferred until after the Court adjudicates the habeas petition and, if necessary, the parties complete discovery.

## **UPDATED FACTUAL BACKGROUND**

The habeas petition and complaint lays out the relevant factual background. Pet. (Doc. No. 1), at ¶¶ 26-36. Mr. Doe notes that while Respondents indicate that his July parole request was denied because "officers believed he was not honest about his reason for trying to cross the Ambassador Bridge," the document it cites does not support this statement or give any information about the topic of the

purported inconsistent statements. Mot. to Dismiss (Doc. No. 7), at 3; Pet, Exh. M (Doc. No. 1-14), at PageID.98. Undersigned counsel participated telephonically in the parole interview and there was no discussion of the circumstances of Mr. Doe's April 14 arrest at that interview.

Additionally, since Mr. Doe and Mr. Smith filed this petition and complaint, U.S. Citizenship and Immigration Services (USCIS) has apparently begun adjudication of Mr. Smith's pending I-130 petition and Mr. Doe's pending I-485. First, on October 14, 2025, USCIS issued a request for evidence relating to the I-485, requesting a copy of Mr. Doe's birth certificate and a medical exam. Habeas Reply, Exh. P (Doc. No. 8-3). All applicants for adjustment of status must submit a medical exam completed by a designated civil surgeon. *Id.* After counsel inquired with ICE personnel, ICE responded that ICE will not transport Mr. Doe to a civil surgeon to complete the exam, rather, a civil surgeon must travel the Northlake Processing Center to do the exam. Habeas Reply, Exh. Q (Doc. No. 8-4). In contrast, at other ICE detention centers ICE transports detainees to these medical exams as a matter of course. Habeas Reply, Exh. R (Doc. No. 9).

On October 16, 2025, USCIS issued a Notice of Intent to Deny Mr. Smith's I-130 Petition on behalf of Mr. Doe. Mot. to Dismiss, Exh. 3 (Doc. No. 7-4). This notice indicates that USCIS plans to deny the petition because the parties were not in each other's physical presence during their wedding ceremony, and have not

consummated the marriage. *Id.*; *see* 8 U.S.C. § 1101(a)(35). Prior to their remote marriage, Mr. Smith and Mr. Doe attempted to arrange an in-person ceremony at the Northlake Processing Center, but received no response from ICE about the procedure for doing so. Habeas Reply, Exh. S (Doc. No. 8-6). Contrary to the ICE Performance-Based National Detention Standards (PBNDS), this procedure was never made available to Mr. Doe. Immigration and Customs Enforcement, 2011 Operations Manual ICE Performance-Based National Detention Standards 5.3, at 367-368;<sup>1</sup> Doc. Nos. 8-6, 8-7. Mr. Smith, through counsel, filed a response on October 28, 2025. Habeas Reply, Exh. T (Doc. No. 8-7).

## ARGUMENT

### **I. The Court Should Hold That the Revocation of Mr. Doe's Parole Violated the APA and Due Process**

The government may not revoke a noncitizen's parole without complying with applicable regulations and due process. *See, e.g., Noori v. Larose*, No. 25-cv-1824, 2025 WL 2800149, at \*13 (S.D. Cal. Oct. 1, 2025); *Munoz Materano v. Arteta*, No. 25-civ-6137, 2025 WL 2630826, at \*16 (S.D.N.Y. Sept. 12, 2025); *Espinoza v. Kaiser*, No. 1:25-cv-01101, 2025 WL 2581185, at \*6 (E.D. Cal. Sept. 5, 2025). Respondents' motion to dismiss only strengthens the conclusion that they violated 8 C.F.R. § 212.5(e) and due process when they revoked Mr. Doe's parole and denied

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<sup>1</sup> Available at <https://www.ice.gov/doclib/detention-standards/2011/5-3.pdf>.

his subsequent parole request. The Court should reject their effort to shield these violations of law from review and order Mr. Doe's release.

A. This Court Has Jurisdiction to Adjudicate Mr. Doe's APA and Due Process Challenges Relating to Parole

Respondents' argument that 8 U.S.C. § 1252(a)(2)(B)(ii) prevents this Court from exercising jurisdiction over Mr. Doe's parole-related claims is unavailing. Mot. to Dismiss at 6-9.

First, while § 1252(a)(2)(B)(ii) strips federal courts of jurisdiction to review discretionary determinations, § 1252(a)(2)(D) restores jurisdiction over constitutional claims or questions of law. *Hatchet v. Andrade*, 106 F.4th 574, 579 (6th Cir. 2024). Mr. Doe raises a question of law relating to Respondents' compliance with their own procedures and a constitutional claim about the inadequacy of their review of his custody status. Pet. at ¶¶ 74-78.

Under *Accardi* and progeny, federal courts may review an agency's failure to follow its regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-67 (1954). This procedural claim is distinct from a challenge to the substance of the underlying decision. *Pak v. Reno*, 196 F.3d 666, 674 (6th Cir. 1999); accord *Mantena v. Johnson*, 809 F.3d 721, 729 (2d Cir. 2015) ("Regardless of whether the substantive revocation decision is shielded from judicial review, no party has provided authority to suggest that the *procedure* surrounding the substantive decision is similarly shielded. We hold that it is not, particularly where the

procedural requirements are codified in statute or in regulations.”); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 328 (D.D.C. 2018) (holding that a challenge to the way in which a parole decision is made rather than the substance of that decision is reviewable). Indeed, *Accardi* itself made clear that even when a decision is ultimately discretionary, Courts can require that the government exercise that discretion in accordance with the law. *Accardi*, 347 U.S. at 268. Similarly, whether Respondents violated due process in their revocation of Mr. Doe’s parole or adjudication of his subsequent parole request is a “constitutional claim” over which this Court has jurisdiction. *Orellana v. Francis*, No. 25-cv-04212, 2025 WL 2402780, at \*4 (E.D.N.Y. Aug. 19, 2025); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1952796, at \*7 (W.D.N.Y. July 16, 2025).

Additionally, and in the alternative, the statute does not give the agency unfettered discretion over decisions to revoke parole. 8 U.S.C. § 1182(d)(5)(A). Rather, while the initial parole decision is discretionary, the statute provides for termination only when “the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served.” *Id.*; *Orellana*, 2025 WL 2402780, at \*4; *Y-Z-L-H- v. Bostock*, No. 3:25-cv-965, 2025 WL 1898025, at \*8 (D. Or. July 9, 2025). Therefore, § 1252(a)(2)(B)(ii) does not bar review of whether this procedure has been followed. *See Kucana v. Holder*, 558 U.S. 233, 247 (2010) (holding that this provision only strips jurisdiction “when Congress itself set out the

Attorney General’s discretionary authority in the statute”); *Barrios Garcia v. U.S. Dep’t of Homeland Sec.*, 25 F.4th 430, 443 (6th Cir. 2022) (same).

Finally, if any ambiguity remains, canons of construction counsel in favor of exercising jurisdiction. First, under “the presumption favoring judicial review of administrative action,” “[w]hen a statute is reasonably susceptible to divergent interpretation, we adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review.” *Kucana*, 558 U.S. at 251. Second, an interpretation of the statute that would strip jurisdiction over Mr. Doe’s parole claims would raise serious Suspension Clause questions. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 314 (2001). Therefore, the Court should decline that interpretation and exercise jurisdiction over Mr. Doe’s parole claims.

The cases Respondents cite are distinguishable. In *Hassan v. Chertoff*, the Ninth Circuit found that the government had complied with the requirements of 8 C.F.R. § 212.5(e), and that it correctly determined that the parole had “served its purpose.” 593 F.3d 785, 789-90 (9th Cir. 2010). Thus, the Court actually did review the very issues Mr. Doe challenges here. *See Y-Z-L-H-*, 20205 WL 1898025, at \*7 (noting that the *Hassan* court “analyzed whether the parole was properly revoked under the statutory and regulatory requirements before concluding that the revocation was lawfully authorized”). In *Samirah v. O’Connell*, the noncitizen did

not challenge the procedures followed, but rather the substance of the parole revocation decision at issue. 335 F.3d 545, 547 (7th Cir. 2003). Even so, the court held that a habeas court might still have jurisdiction, but did not reach that issue because the noncitizen was not in custody and therefore unable to invoke habeas jurisdiction. *Id.* at 549. Therefore, these cases do not undermine the conclusion that this Court has jurisdiction to adjudicate Mr. Doe's legal and constitutional challenges to the revocation of his initial parole and denial of his subsequent parole request.

B. Respondents Violated the Statute, Regulations, and Due Process When They Revoked Mr. Doe's Parole

The statute provides that parole may be terminated when its purposes have been served, 8 U.S.C. § 1182(d)(5)(A), and the regulation further provides that written notice of such termination is required. 8 C.F.R. § 212.5(e). Contrary to Respondents' argument, they did not comply with these requirements in this case. *See Resp.* at 10. Respondents point to a warrant for arrest form and custody determination form that were apparently issued on the date that they detained Mr. Doe. *Resp.*, Exh. 3 (Doc. No. 6-4); Exh. 4 (Doc. No. 6-5). These documents, however, make no mention of Mr. Doe's parole and incorrectly indicate that he was detained under 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225(b). *Resp.*, Exh. 4 (Doc. No. 6-5); *see, e.g., Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at \*5-8 (E.D. Mich. Aug. 29, 2025) (discussing the difference between

these statutes). They therefore suggest that Respondents were not even aware that Mr. Doe had been paroled at the time they were issued, and certainly do not, as Respondents indicate, “provide him the reason for his detention.” Resp. at 10.

Rather, the record is devoid of any indication that the agency ever determined that “the purposes of [his] parole . . . have been served.” See 8 U.S.C. § 1182(d)(5)(A); *Mata Velasquez*, 2025 WL 1953796, at \*10. Respondents paroled Mr. Doe in 2023 to permit him to seek asylum, which he was in the process of doing when he was arrested. Mot. to Dismiss at 2; see *Y-Z-L-H-*, 2025 WL 1898025, at \*12. They never provided any reason why they revoked his parole eight months before its expiration, and Respondents’ efforts to justify that decision now are unconvincing. Resp. at 11.

Respondents indicate that Mr. Doe “gave inconsistent statements to immigration officials” when he they encountered him near the Ambassador Bridge, which “strongly suggest[ed] that Doe was attempting to leave the country.” Resp. at 11. Nothing in the record provides support for this statement. Cf. *Tapco Prods. Co. v. Van Mark Prods. Corp.*, 446 F.2d 420, 429 (6th Cir. 1971) (noting that statements of counsel are not evidence). The document Respondents cite is a parole worksheet completed months later, in August 2025, indicating that the interview conducted at that time differed from the “initial encounter interview.” Pet., Exh. M (Doc. No.1-

14). It does not say in what way the statements differed and, regardless, cannot justify a revocation decision that happened months earlier. *Id.*

In contrast, the declaration of Deportation Officer Steven Hackett provided by Respondents describes the April 14 encounter and merely states that Mr. Doe “made a wrong turn based on erroneous GPS directions.” Resp., Exh. 1 (Doc. No. 6-2), at ¶ 8. This explanation is highly credible given that this is a common occurrence at the Ambassador Bridge. Jasmine Garsd, *Wrong turn leads to hundreds of immigrant arrests at the Detroit-Canada border bridge*, NPR (Apr. 24, 2025),<sup>2</sup> see also Pet. at ¶ 27 n.2. Officer Hackett’s declaration does not provide any indication that Respondents disbelieved that explanation or found that Mr. Doe was a flight risk. Therefore, the Court should disregard Respondents’ attempt to justify the revocation decision after the fact.

Finally, neither the revocation of Mr. Doe’s initial parole nor the subsequent denial of his parole request comported with due process. Due process requires that Respondents give Mr. Doe notice and “the opportunity to be heard at a meaningful time and in a meaningful manner” before depriving him of his liberty. *Mata Velasquez*, 2025 WL 1953796, at \*11 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In this context, a meaningful opportunity to respond requires a clear

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<sup>2</sup> Available at <https://www.npr.org/2025/04/24/nx-s1-5374937/immigrant-arrests-detroit-canada-border-bridge-detention>.

explanation of why the government is revoking release. *K.E.O. v. Woosley*, No. 4:25-cv-74, 2025 WL 2553394, at \*6 (W.D. Ky. Sept. 4, 2025). Here, again, Respondents did not give Mr. Doe any opportunity to be heard or explanation at the time that they revoked his parole. When they denied his subsequent request, they invoked his lack of an address, despite indicating that he had provided an address, and supposed inconsistent statements, without saying what those statements were. Pet. at ¶ 77; Exh. M (Doc. No. 1-14), at PageID.95, 98. Notwithstanding Respondents' later attempts to rationalize these explanations before this Court, Mot. to Dismiss at 11, these documents did not provide Mr. Doe sufficient explanation for Respondents' decisions and thus "thwart[ed his] ability to contest that action." *K.E.O.*, 2025 WL 2553394, at \*6.

Respondents' actions relating to Mr. Doe's parole violated due process as well as the statute and regulations. Therefore, this Court should join other courts around the country and remedy his unlawful detention by ordering his release. *See, e.g., K.E.O.*, 2025 WL 2553394, at \*7; *Orellana*, 2025 WL 2402780, at \*7; *Y-Z-L-H-*, 2025 WL 1898025, at \*14.

## **II. The Court Should Deny Defendants' Motion to Dismiss the APA Claims Relating to Defendants' Processing of the I-130 and I-485**

"A claim of unreasonable delay is necessarily fact dependent and thus sits uncomfortably at the motion to dismiss stage and should not typically be resolved at that stage." *Barrios Garcia*, 25 F.4th at 451 (quoting *Gonzalez v. Cuccinelli*, 985

F.3d 357, 375 (4th Cir. 2021)). Therefore, the Court should decline to dismiss these claims pursuant to Rule 12(b)(6) prior to discovery. *See Escalona v. U.S. Dep't of Homeland Sec.*, No. 1:20-cv-613, 2021 WL 5546710, at \*6 (W.D. Mich. Aug. 23, 2021). Defendants' discuss of the factors from *TRAC v. FCC* further reinforces this conclusion. Mot. to Dismiss at 13-19 (citing 750 F.2d 70 (D.C. Cir. 1984)).

At this stage, there is no support in the record for Defendants' statement that USCIS "generally adjudicates I-130 petitions in the order they are received." Mot. to Dismiss at 15; *see Gonzalez*, 985 F.3d at 375 ("While a 'first in, first out' approach with enumerated exceptions may be a rule of reason, we do not know enough about how the agency implements its rules and exceptions."). The Sixth Circuit has specifically cautioned against relying on lengthy processing times or the absence of a statutory deadline to deny an unreasonable delay claim at the 12(b)(6) stage. *Barríos Garcia*, 25 F.4th at 454. Moreover, while the length of time that Mr. Smith and Mr. Doe's applications have been pending might not be unreasonable in every case, Mr. Doe's continued detention and ongoing removal proceedings render the delay unreasonable in light of "the necessity of the parties." 8 U.S.C. § 555(b); *see Patel v. Barr*, No. 20-3856, 2020 WL 4700636, at \*6 (E.D. Pa. Aug. 13, 2020).

In any event, since Plaintiffs filed this complaint Defendants do appear to have begun adjudicating both the I-130 and the I-485. Mot. to Dismiss, Exh. 3 (Doc. No. 7-4); Habeas Reply, Exh. P (Doc No. 8-3). Defendants have issued a Notice of Intent

to Deny the I-130 and Plaintiff has filed a response. Habeas Reply, Exh. T (Doc. No. T). As discussed in Mr. Doe's reply to Respondents' response in opposition to his habeas petition, if he is released, he will arguably become eligible as a "spouse" under 8 U.S.C. § 1101(a)(35) because he will be able to consummate his marriage. Reply (Doc. No. 8), at 11. And, of course, if Mr. Doe is no longer in custody Mr. Smith and Mr. Doe will no longer have such a pressing need for rapid adjudication of the applications. *See Barrios Garcia*, 25 F.4th at 451-52 (noting that courts should consider the nature and extent of the interests prejudiced by delay). In contrast, if Mr. Doe remains detained and Defendants deny the I-130, plaintiffs may amend their complaint to challenge that decision and the constitutionality of § 1101(a)(35). *See Villa v. Att'y Gen. of the U.S.*, 742 F. App'x 682, 684 (3d Cir. 2018) (noting, but not deciding, questions about the statute's constitutionality).

Therefore, Mr. Smith and Mr. Doe respectfully request that the Court deny Defendants' motion to dismiss their claims relating to the USCIS applications and defer further adjudication of those claims until after adjudicating Mr. Doe's habeas claims.

### CONCLUSION

For the foregoing reasons, Mr. Smith and Mr. Doe respectfully request that the Court deny Respondent-Defendants' motion to dismiss and grant Mr. Doe's

habeas petition based on Respondents' violations of law relating to the revocation of his parole.

Dated: October 29, 2025

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### CERTIFICATE OF SERVICE

I certify that on October 29, 2025, the foregoing document was filed using the Court's CM/ECF system. The U.S. Attorney has entered an appearance and will receive a copy via ECF.

/s/Rebecca Hufstader

Rebecca Hufstader, Esq.