UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WASHINGTON MURILLO CASTILLO, Petitioner, v. ACTING FOD JONATHAN FLORENTINO, ICE, *et. al;* Respondents.	Case No.25-cv-16728 (MCA)

REPLY TO GOVERNMENT'S ANSWER TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

"Courts have given great weight to the manner in which [the Department of Homeland Security] treated the petitioner in determining which detention statute applies." *See Rivera Zumba v. Bondi*, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025).

Here, Petitioner was arrested by DHS twice, once on October 10, 2022, and again on August 1, 2025. On both occasions, DHS has treated Mr. Murillo Castillo pursuant to 8 U.S.C. § 1226(a). At his initial entry and arrest in 2022, DHS issued a legally insufficient Notice and Order of Expedited Removal, which fails to comply with 8 C.F.R. § 235.3(b)(2). *See* ECF No. 6-2. Two months later, DHS authorized a temporary parole releasing Petitioner pursuant to 8 U.S.C. § 1226(a)(2)(B), after making a custody determination that he was neither a danger to the community nor a flight risk. *See* ECF No. 6-7. DHS never revoked Mr. Murillo Castillo's conditional parole. Instead, it unlawfully dismissed Mr. Murillo Castillo's asylum application on June 12, 2025, to re-arrest him in Newark, New Jersey, through the issuance of a warrant pursuant to 8 U.S.C. § 1226. *See* ECF No. 6-8, Notice of Dismissal of Form I-589, and ECF No. 6-3, Warrant for Arrest of Alien (pursuant to sections 236 and 287 of the Immigration and Nationality Act).

Mr. Murillo Castillo sought a custody redetermination by the immigration judge, which was denied. The immigration court, however, did not cite *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019). Instead, the Order states that "[Mr. Murillo Castillo] entered without inspection and is present in the United States without admission. Under *Matter of Yajure Hurtado*, the respondent is ineligible for bond." See ECF No. 6-5.

The issue in this case is not as straightforward as the one articulated in the Government's response: "this case concerns the longstanding law that ICE must detain [noncitizens] like Petitioner who are apprehended near the border soon after entry." *See* Respondents' Answer to Petition for a Writ of Habeas Corpus ("Gov't Resp.") at ECF No. 6. That's because Mr. Murillo Castillo's arrest at

issue (the August 2025 arrest) did not happen at the border, nor did it happen soon after entry. His second arrest occurred in Newark, New Jersey, almost 3 years after his entry.

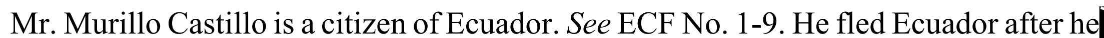
When Mr. Murillo Castillo presented himself at the border in 2022, he entered the U.S. with the knowledge and consent of DHS because they issued him a parole to enter. Since his conditional release, Mr. Murillo Castillo has done everything the government asked him to do. He followed the affirmative asylum process in the United States for those not placed into 240 proceedings under 8 U.S.C. § 1229a. He timely filed his asylum application and applied for and received his work authorization while waiting for his asylum interview. Now, three years later, DHS wants to reverse course and argue that Mr. Murillo Castillo's arrest at his check-in at 970 Broad Street in 2025 should be treated as if he were "apprehended near the border soon after entry."

The Government's authority to re-arrest a noncitizen and revoke their release is not only proscribed by statute and regulation, but also by the Due Process Clause. "This most basic American principle—that individuals placed at liberty are entitled to process before the government reimprisons them—has particular meaning here." *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R. & R. adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

Therefore, release is the only appropriate remedy for Mr. Murillo Castillo's unlawful re-detention. Having once exercised its discretion to parole Mr. Murillo Castillo into the United States and allow him to build a life in compliance with every condition imposed, DHS cannot—years later and without any material change in circumstance—recast him as someone "apprehended near the border soon after entry" to justify mandatory detention. The Due Process Clause and the habeas statute require more. *See* 28 U.S.C. § 2243. The Court should therefore order Mr. Murillo Castillo's immediate release from custody—subject to appropriate conditions of supervision, if necessary—as "law and justice require."

BACKGROUND

STATEMENT OF THE FACTS

Mr. Murillo Castillo is a citizen of Ecuador. *See* ECF No. 1-9. He fled Ecuador after he 

Fearing for his life, he traveled to the United States and sought protection. *See* Ex. C.

On or about October 13, 2022, Mr. Murillo Castillo presented himself at the U.S. border, expressed a fear of return, and was taken into DHS custody. *See* ECF No. 6-2. He remained detained for approximately two months, until DHS determined that he was neither a danger to the community nor a flight risk and released him on conditional parole pursuant to 8 U.S.C. § 1226(a). See ECF No. 6-7.

While living in the United States under this conditional parole, Mr. Murillo Castillo did everything the Government asked of him. On or about November 14, 2023, he affirmatively filed a Form I-589, Application for Asylum, with U.S. Citizenship and Immigration Services ("USCIS"), which accepted the filing. See Ex. A. He later applied for and received employment authorization on September 10, 2024 valid until September 9, 2029. *See* Ex C. DHS did not initiate expedited removal or re-detain him when his temporary parole expired in or around October 2023.

On June 12, 2025, after the administration issued its Enforcement Discretion Memo concerning expedited removal, DHS abruptly dismissed Mr. Murillo Castillo's pending asylum application and issued him a notice directing him to report to ICE for a credible fear interview. See ECF No. 6-8. Mr. Murillo Castillo complied and appeared as instructed at ICE's office at 970 Broad Street in Newark, New Jersey, on August 1, 2025. He was subjected to a credible fear process and was found to have a credible fear of persecution.

Despite that finding and his years of compliance on conditional parole, ICE re-arrested Mr. Murillo Castillo at his check-in on August 1, 2025, and issued a new Warrant for Arrest of Alien citing

8 U.S.C. § 1226. *See* ECF No. 6-3. He has been detained at all times since that arrest without bond. When he sought a custody redetermination, the Immigration Judge denied bond, finding him ineligible under *Matter of Yajure Hurtado*, solely because he had entered without inspection, notwithstanding DHS's prior determination that he could safely be released and his unbroken record of compliance while on conditional parole. *See* ECF No. 6-5.

RELEVANT STATUTORY AND REGULATORY BACKGROUND

A. Statutory Framework

a. *Section 240 Proceedings vs. Expedited Removal*

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"), Congress established the two main processes for removing noncitizens deemed ineligible to enter or remain in the United States. See Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996); see also *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020).[3] The "usual removal process" is commonly referred to as "Section 240" and is codified in 8 U.S.C. § 1229a. *Thuraissigiam*, 591 U.S. at 108. Section 240 proceedings involve an evidentiary hearing before an immigration judge, where a noncitizen may "attempt to show that he or she should not be removed." Id.; *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872, __ F. Supp. 3d __, 2025 WL 2192986, at *3 & n.4 (D.D.C. Aug. 1, 2025) ("*Coalition*"). This process was established by Congress to create "a 'streamlined' removal process . . . '[f]or illegal aliens already present in the U.S.'" *Coalition*, 2025 WL 2192986, at *3 (quoting H.R. Rep. 104-469, at 12, 107–08 (1996)). In these proceedings, noncitizens have a right to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). The proceedings themselves are recorded, typically take place over the course of multiple hearings and months, and, upon a decision by the immigration judge, either party may appeal to the Board of

Immigration Appeals ("BIA"). *Coalition*, 2025 WL 2192986, at *3; see also 8 C.F.R. §§ 1003.1, 1240.15; *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), (E.D.N.Y. Nov. 28, 2025).

Expedited removal is a process that begins, and often concludes, outside of immigration court. Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A).

The lone exception to this rule is if a noncitizen indicates an intention to apply for asylum or a fear of persecution, in which case "the officer shall refer the [noncitizen] for an interview by an asylum officer to conduct a credible fear interview." 8 U.S.C. § 1225(b)(1)(A)(i)–(ii). If the asylum officer determines that an alien does not have a credible fear of persecution, "the officer shall order the alien removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). Upon a noncitizen's request, an immigration judge shall expeditiously review a determination "that the alien does not have a credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

Congress did not bestow DHS with limitless authority to fast-track noncitizens for removal without further hearings. Instead, it limited DHS's authority to apply expedited removal only to certain non-citizens "who have not been admitted or paroled into the United States and who cannot show, to the satisfaction of the immigration officer, that they have been continuously present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii). *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 121–22 (2020) (explaining that an applicant is subject to expedited removal only if, *inter alia*, he "has not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" and is designated for expedited removal); *Coalition for Humane Immigrant Rights v. Noem*, 2025 WL 2192986 (D.D.C. Aug. 1, 2025)[1] (describing §

[1] While this matter is currently on appeal, *Coalition for Humane Immigrant Rights, et al v. Kristi Noem*, et al, 25-5289 (D.C. Cir.), the underlying decision has not been stayed.

1225(b)(1) as reaching only "arriving" noncitizens and those who "have not been admitted or paroled into the United States" and "cannot affirmatively show" two years of continuous presence); *Make the Road N.Y. v. Noem*, No. 1:25-cv-00190 (JMC), 2025 WL 2494908, at *6–7 (D.D.C. Aug. 29, 2025) (recognizing that people "who have been here longer than two years—and who are therefore not eligible for expedited removal under the statute—are at risk of being removed this way as the Government implements the 2025 Designation"); *Patel v. Tindall*, No. 3:25-cv-373-RGJ, (W.D. Ky. Oct. 3, 2025) (reiterating *CHIRLA*, that only two statutory categories are eligible for expedited removal—arriving aliens and certain recent entrants who cannot show two years of continuous presence—and holding that conditional parole is still parole and therefore does not authorize expedited removal); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-06065 (NJC) (E.D.N.Y. Nov. 28, 2025) (quoting § 1225(b)(1)(A)(iii)(II) and treating the two-year continuous-presence requirement as a threshold for designation).

Expansion of Expedited Removal

Congress did not bestow DHS with limitless authority to fast-track noncitizens for removal without further hearings. Instead, it limited DHS's authority to apply expedited removal only to certain noncitizens "who have not been admitted or paroled into the United States and who cannot show, to the satisfaction of the immigration officer, that they have been continuously present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii). See *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 121–22 (2020) (explaining that an applicant is subject to expedited removal only if, *inter alia*, he "has not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" and is designated for expedited removal); *Coal. for Humane Immigrant Rts. v. Noem*, No. 1:25-cv-00872 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1, 2025) (describing §

1225(b)(1) as reaching only "arriving" noncitizens and those who "have not been admitted or paroled into the United States" and "cannot affirmatively show" two years of continuous presence); *Make the Road N.Y. v. Noem*, No. 1:25-cv-00190 (JMC), 2025 WL 2494908, at *6–7 (D.D.C. Aug. 29, 2025) (recognizing that people "who have been here longer than two years—and who are therefore not eligible for expedited removal under the statute—are at risk of being removed this way as the Government implements the 2025 Designation"); *Patel v. Tindall*, No. 3:25-cv-00373-RGJ, 2025 WL 2823606, at *5 (W.D. Ky. Oct. 3, 2025) (reiterating CHIRLA, that only two statutory categories are eligible for expedited removal—arriving aliens and certain recent entrants who cannot show two years of continuous presence—and holding that conditional parole is still parole and therefore does not authorize expedited removal); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-06065 (NJC), (E.D.N.Y. Nov. 28, 2025) (quoting § 1225(b)(1)(A)(iii)(II) and treating the two-year continuous-presence requirement as a threshold for designation).

Detention Authorities

The INA prescribes three basic mechanisms for detention for noncitizens: 8 U.S.C. § 1225, for arriving aliens and applicants for admission; § 1226, the default detention statute; and § 1231, for post–final-order detention.

If a noncitizen passes a credible fear interview, they are permitted to apply for asylum through Section 240 proceedings. See 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

Following the enactment of IIRIRA, the U.S. Department of Justice's Executive Office

for Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

Thus, the INA distinguishes between noncitizens seeking entry into the United States and those "already in the country." See Jennings v. Rodriguez, 583 U.S. 281, 289 (2018).

In the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

Section 1225(b)(1) provides for mandatory detention of noncitizens subject to its provisions—that is, a noncitizen "arriving in the United States" who seeks to apply for admission. Applicants who indicate a fear of persecution if returned to their country of origin "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV).

Applicants who do demonstrate a credible fear "shall be detained for further

consideration of the application for asylum." § 1225(b)(1)(B)(ii). Detention is "mandate[d] . . . throughout the completion of applicable proceedings and not just until the moment those proceedings begin." Jennings, 583 U.S. at 302. Under the statute, applicants are not entitled to a bond hearing. See id. at 301.

Section 1225(b)(1) applies to a noncitizen who is arriving in the United States or at a port of entry and may be placed into expedited removal proceedings if the Department of Homeland Security determines that they are inadmissible under §§ 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid entry document), and the noncitizen is either arriving in the United States, has not been admitted or paroled into the United States, and cannot show that they have been continuously present in the United States for two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Re-Detention

Under § 1226(a), the Attorney General may release a detainee on bond either through ICE or by order of an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." *Id.* § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id.* § 1003.19(e).

As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F.

Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

Courts have stated that conditional parole "provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a 'danger to persons or property' and 'is likely to appear for any further proceeding.'" *Delgado-Sobalvarro v. Attorney Gen. of U.S.,* 625 F.3d 782, 787 (3d Cir. 2010); *See also Matter of Castillo-Padilla,* 25 I&N Dec. 257, 261 (BIA 2010).

DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the "discretion of the district, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9).

Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": It cannot lawfully re-arrest or re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings," without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "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 v. Davis*, 533 U.S. 678, 690 (2001). And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

ARGUMENT

I. Petitioner Is Not Subject To Expedited Removal Under 8 U.S.C. § 1225(B)(1) Because The Expedited Removal Order Is Legally Deficient and Not In Compliance With 8 C.F.R. § 235.3(B)(2).

Respondents present a 2022 "Notice and Order of Expedited Removal" that is legally insufficient

for expedited removal under the regulations. *See* ECF No. 6-2. It lacks supervisory approval, proof of service, and acknowledgment. *Id.* It is essentially incomplete.

If an immigration officer determines that a non-citizen "*is* arriving" in the United States and is inadmissible under §§ 212(a)(6)(C)(fraud or misrepresentation), or 212(a)(7), of the Immigration and Nationality Act ("INA"), the officer shall order the noncitizen removed from the United States. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

The expedited removal process is articulated in 8 C.F.R. § 235.3(b)(2). When subjecting noncitizens to expedited removal, the Department of Homeland Security officers are obligated to follow the regulations and to:

- Provide interpretative assistance as needed;
- Create a record of the facts of the case and the individual's statements;
- Advise the individuals of the charges against them and give them an opportunity to respond;
- Document an expressed fear of return or intention to apply for asylum;
- Provide individuals who have expressed fear with a written disclosure describing the credible fear process and certain rights in and consequences of that process and an opportunity to consult with other persons of their choosing prior to a credible fear interview;
- Obtain supervisory review and concurrence of issuance of an expedited removal order; and
- Serve the individual with the expedited removal order.

See 8 C.F.R. §§ 235.3(b)(2), (b)(4), (b)(7), 235.15(b)(2)(i)(A)-(B), (b)(4); 8 U.S.C. § 1225(b)(1)(B)(iv).

If the individual expresses a fear of return to their country of origin or a desire to apply for

asylum, they must be referred for an interview with an asylum officer regarding that fear. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. §§ 235.3(b)(4), 235.15(b)(4).

In this case, the Government presented an incomplete Form I-860, for which the Respondents sought to enforce. *See* ECF No. 6-1. DHS failed to obtain supervisory review and concurrence to issue an expedited removal order. *See* ECF No. 6-1, Notice and Order of Expedited Removal; 8 C.F.R. § 235.3(b)(2). Notably absent from the Notice and Order is a determination that Petitioner was found to be inadmissible as charged in the Order. *See* Id. There is no supervisor's name or signature, as required by regulations. Moreover, the Notice and Order also left a blank Certificate of Service. It also leaves the "Acknowledgment" section blank.

Without reaching the merits of whether the Petitioner was lawfully subjected to Expedited Removal —which included a credible fear interview 3 years after being paroled and present in the United States, and failing to provide an opportunity to establish he wasn't subject to expedited removal as per 8 C.F.R. § 235.3(b)(6) — Petitioner argues that it was DHS's intention *not* to apply Expedited Removal when Petitioner initially entered the United States in October 2022.

To support this, Petitioner states that DHS did not complete the process as evidenced by a legally deficient Notice and Order of Expedited Removal, which is not compliant with 8 C.F.R. § 235.3(b)(2). After being detained for about 3 months, DHS issued Petitioner a conditional parole under 8 U.S.C. § 1126(a)(2)(B) and released him into the United States.

On November 14, 2023, Petitioner affirmatively filed a Form I-589, Application for Asylum with U.S. Citizenship and Immigration Services ("USCIS"). USCIS did not reject the application or issue a credible fear interview. Instead, it received the application and provided a receipt notice and scheduled Petitioner for biometrics. *See* Ex. A, Mailing Notice for Application for Asylum and Withholding of Removal and Biometrics Notice. When DHS received Mr. Murillo Castillo's application for work authorization, it approved it on September 10, 2024 valid until September 9,

2029. *See* Ex. B. DHS did not arrest Petitioner or begin the expedited removal process. In fact, when Petitioner's temporary parole expired in October 2023, DHS did not begin the expedited removal process then either.

It wasn't until June 12, 2025, after the administration issued its Enforcement Discretion Memo directing DHS to evaluate expedited removal for those for whom it "has not been applied," and more than a year after Petitioner's temporary parole expired, that DHS cancelled his asylum application and summoned him for a credible fear interview. *See* ECF No. 6-8. By this point, Mr. Murillo Castillo had been living in the United States for almost 3 years with his wife and children. Nonetheless, ICE purports to have arrested Petitioner based on a legally deficient October 2022 order of expedited removal under 8 U.S.C. § 1225(b)(1)(A)(iii), treated him as if he "*is arriving*" under 8 U.S.C. §1225. And yet, DHS issued a warrant for his arrest pursuant to § 1226. *See* ECF No. 6-3. Warrant of Arrest ("To: Any immigration officer authorized pursuant to section 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations").

While the Government contends that Petitioner is subject to an expedited removal, Petitioner challenges Respondent's application of the expedited removal process against him under 8 U.S.C. § 1225(b)(1) because there was and is no legally sufficient expedited removal order.

Petitioner maintains that Respondents arrested and detained him in violation of the Immigration and Nationality Act, its regulations, and his due process rights under the U.S. Constitution, because the expedited removal order was not properly issued. Further, at the time of his arrest in August 2025, Petitioner had been continuously living in the United States for almost three years and had been issued a conditional parole. *See Ezequiel Salgado Bustos v. Raycraft, No. 2:25-cv-13202 (E.D. Mich. Oct. 29, 2025)*(finding release proper because although noncitizen was paroled in under 8 U.S.C. § 1182(d)(5)(A), there was no order of expedited removal under 8 U.S.C.

§1225(b)(1)(A)(iii), and therefore the government did not have the lawful authority to initiate § 1225(b)(1)'s expedited removal process against him after having been paroled and living continuously in the country for over two years).

II. Even Assuming, *Arguendo*, That The Notice And Order Of Expedited Removal Was Properly Issued, Petitioner, Who Was Issued A Temporary Parole, Is Not Subject To The Expedited Removal Process.

A noncitizen who *is* arriving in the United States or a port of entry may be placed into expedited removal proceedings if the Department of Homeland Security determines that they are inadmissible under §§ 212(a)(6)(C), fraud or misrepresentation, or 212(a)(7), lack of valid entry document and the noncitizen *is* either *arriving* in the United States, has not been admitted or paroled into the United States, and cannot show that they have been continuously present in the United States for two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Implicit in the statute is the present tense of arriving. Since expedited removal was created nearly three decades ago, federal immigration authorities have focused its use in limited circumstances on noncitizens at the port of entry *seeking* admission, those apprehended near the border shortly after entering the country, or who arrive in the United States by sea.

Here, Respondents attempt to argue an "entry fiction" doctrine, that although Petitioner had been present in the United States, with the knowledge and consent of the DHS, he should nonetheless be treated as an "arriving alien" within the meaning of § 1225(b)(1). Respondents would have this Court treat Petitioner, who was paroled and has been living in the country for over 3 years, as a noncitizen who *is actually physically present* at the border and has *was* not paroled into the United States.

However, this position departs from how expedited removal has traditionally been applied.

Expedited removal was intended to allow immigration officers to "summarily return at ports of entry persons who do not have valid travel documents or who attempt entry through fraud or misrepresentation." *See American-Arab Anti-Discrim. Committee v. Ashcroft*, 272 F. Supp.2d 650 (E.D. Mich. 2003); *Expedited Removal Study, Evaluation of the General Accounting Office's Second Report on Expedited Removal, Center for Human Rights and International Justice, University of California, Hastings College of Law* (Oct. 2000); *see also Li v. Eddy,* 259 F.3d 1132 (9th Cir. 2001), *later vacated as moot,* 324 F.3d 1109 (2003)([if] the INS were to use these provisions [expedited removal proceedings] or to remove individuals not seeking admission at the border, then it's actions would bear no relationship to the statutory authority in section 1225(b)." *Id.* at 1135-36.

Recently, the Government has departed from this longstanding practice. On January 21, 2025, DHS issued a Federal Register Notice, to be published in the Federal Register on January 24, 2025, that authorizes the application of expedited removal to certain non-citizens arrested anywhere in the country who cannot show "to the satisfaction of an immigration officer" that they have been continuously present in the United States for longer than two years. *U.S. Dep't of Homeland Sec., Designating Aliens for Expedited Removal* (Jan. 21, 2025), https://public-inspection.federalregister.gov/2025-01720.pdf ("Rule"). *See* Ex. C. The effective date of the Rule was January 21, 2025.

On January 23, 2025, Acting DHS Secretary Benjamine Huffman issued a memo entitled "Guidance Regarding How to Exercise Enforcement Discretion," (Enforcement Discretion Memo). *See* DHS, Memorandum on Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025), https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf. *See* Ex. D.

This Memo directs DHS to consider expedited removal for additional noncitizens already in the United States in light of the January 2025 expansion. The Enforcement Discretion Memo directs

DHS to affirmatively evaluate whether individuals' parole should be terminated. Officers are directed to consider applying expedited removal to people whose parole DHS terminates and to people whose § 240 removal proceedings DHS moves to terminate, as well as to any other person who is "amenable to expedited removal but to whom expedited removal has not been applied." *Id.* at 2.

In February, Immigration and Customs Enforcement (ICE) issued a directive (ICE ER Directive) ordering officers to consider for expedited removal all noncitizens previously released by Customs and Border Protection (CBP) who have not affirmatively applied for asylum, including paroled "arriving [noncitizens]." *See* Feb. 18, 2025, ICE Email Directive on Expedited Removal and Nondetained Docket, https:// immpolicytracking.org/policies/ice-directs-ero-officers-to-consider-expedited-removal-for-large-categoriesof-noncitizens/#/tab-policy-overview. *See* Ex. E.

In May 2025, ICE began moving to dismiss pending 1229(a) proceedings in immigration courts in an attempt to place more noncitizens in expedited removal proceedings. When immigration judges granted those motions to dismiss, ICE issued noncitizens expedited removal orders and in some cases, conducted Credible Fear Interviews. In several cases, federal judges found that the purpose of dismissing court proceedings was to facilitate the "transfer of immigration proceedings for non-citizens like Oliver [who had been paroled into the country] from typical removal proceedings governed by § 1229(a), into expedited removal pursuant to §1225(b)(1)." *See Oliver Eloy Mata Velasquez v. Kurzdorfer*, *et al*., No. 1:25-cv-00493-LJV (W.D.N.Y.)("The narrow —but weighty— question before this Court is this: what process is Mata Velasquez due before DHS can do an about-face, terminate his parole, and keep him in custody pending his deportation?"). *See also Y-Z-L-H v. Bostock,* No. 3:25-cv-00965-SI, 2025 WL 1898025 (D. Or. July 9, 2025)(Holding that DHS unlawfully terminated parole in violation of 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. §212.5(e)(2)(i) and his arrest and detention were therefore unlawful).

While Petitioner's court case was not dismissed, it is similar in that the question is "what process is due" before "DHS can do an about-face" and dismiss his affirmative asylum process to place him into an expedited removal process. Mr. Murillo Castillo was paroled into the United States and is not subject to expedited removal and mandatory detention. Neither the Arriving Aliens Provision nor the Designation Provision of Section 1225(b)(1) authorizes expedited removal and the detention of noncitizens, who, like Mr. Murillo Castillo, were paroled into the United States. *See Rodriguez-Acurio v. Almodovar, 2:25-cv-6065 (NJC) (E.D. N.Y. Nov 28, 2025)*(quoting Coalition, 2025 WL 2192986 at *22, 30 (…"the only way to make sense of the statutory scheme Congress created is to see that parolees fall under neither [provision of Section 1225(b)(1)]" and that "[a]ny other result conflicts with other aspects of the statute and regulations, Congress's evident purpose, and the ordinary meaning of the statute's words"); *See also Bustos v. Raycraft*, No. 25-cv-13202, 2025 WL 3022294, at *6 (E.D. Mich. Oct. 29, 2025)(finding that a noncitizen who unlawfully entered the country, was paroled into the United States, and received a negative credible fear designation was not subject to expedited removal and detention despite the expiration of temporary parole); *Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025); *Aviles-Mena v. Kaiser*, No. 25-cv-6783, 2025 WL 2578215, at *4 (N.D. Cal. Sept. 5, 2025).

1. *The Designation Provision of Section 1225(b)(1)(A)(iii) Does Not Apply to Mr. Murillo Castillo*

At the immigration bond hearing, the government did not argue that Mr. Murillo Castillo was subject to mandatory detention under § 1225(b)(1)(iii)(II). Instead, it argued that Petitioner was subject to mandatory detention under *Matter of Yajure-Hurtado,* 29 I. & N. Dec. 216 (B.I.A. 2025) (holding that noncitizens present in the United States without admission are "applicants for admission" under INA § 235(b)(2)(A), subject to mandatory detention, and that IJs lack authority to grant them bond)

Nonetheless, Respondents now argue that Petitioner is subject to mandatory detention under this Section. Respondents do not answer why Petitioner is subject to the mandatory provisions under §1225(b)(1), despite his parole and length of presence in the country. Petitioner argues that it goes against a plain reading of the statute.

Section 1225(b)(1)(iii)(II) authorizes the Secretary of DHS, to designate as eligible for expedited removal any

> [noncitizen]… **who has not been admitted or paroled into the United States**, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the [noncitizen] has been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility….

8 U.S.C. § 1225(b)(1)(A)(iii)(II)(emphasis added).

Petitioner and Respondents agree on two key points. First, that Mr. Murillo Castillo entered the United States on or about October 13, 2022. *See* ECF 6, *11. Second, that Mr. Murillo Castillo was paroled into the United States. *Id.* at *12. There is no evidence to show that Petitioner ever left the United States since his entry in October 2022.

Therefore, the issue before this Court, assuming *arguendo* that the expedited removal is legally sufficient, is whether this Section authorizes expedited removal —and thereby mandatory detention— when he was paroled into the United States, has continuously resided in this country for about three years, affirmatively filed asylum, and was granted work authorization.

In examining the relevant provision of §1225, courts consider "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.,* 519 U.S. 337, 340 (1997). Courts must "interpret the words consistent with their 'ordinary meaning…at the time Congress enacted the statute." *Wis. Cent. Ltd v. U.S.* 585 U.S. 274, 277 (2018)(quoting *Perrin v. U.S.* 444 U.S. 37, 42 (1979)). Various courts have agreed with *Coalition* that the statutory text of the Designation Provision prohibits "the expedited removal of noncitizens who

have been, at any time paroled into the United States. *See Coalition*, 2025 WL 2192986, at *22; *see also Salgado Bustos*, 2025 WL 3022294, at *6 (reaching the same conclusion and holding that "[n]umerous courts have rejected Respondents' interpretation of [Section 1225(b)(1)]"); *Munoz Materano*, 2025 WL 2630826, at *11 (applying Coalition's interpretation of Section 1225(b)(1)); *Aviles-Mena*, 2025 WL 2578215, at *4 (same).

In *Coalition*, the court reasoned that the "meaning of 'parole' is elucidated by its association with admitted." 2025 WL 2192986, at *23; *see* 8 U.S.C. § 1225(b)(1)(A)(iii)(I). Therefore, when the term 'parole' is accompanied by "'admitted,' which refers only to a manner of entry, 'paroled' likely refers to a manner of entry, too." *See Rodriguez-Acurio v. Almodovar*, 2:25-cv-6065 (NJC) (E.D. N.Y. Nov 28, 2025) quoting *Coalition*, 2025 WL 2192986, at *23; *see also* Sanchez v. Mayorkas, 593 U.S. 409, 415 (2021).

2. Mr. Murillo Castillo is not an Arriving Alien Under Section 1225(b)(1)(A)(i)

The words "arriving," "arrival," and "arrive" in § 1225 refer to a process that occurs upon physical entry into the United States, not an interminable status that attaches to a noncitizen for years after they have been allowed to live in the interior. *See Coalition*, 2025 WL 2192986, at *27 (D.D.C. Aug. 1, 2025) (describing "arriving" as a process of coming to the United States, not "an interminable" label); cf. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 120–22 (2020) (treating an "applicant for admission" subject to expedited removal as a noncitizen apprehended just inside the border and still in the threshold process of entry). Therefore, an "arriving alien" is one who is in the process of reaching the United States, not someone who has been paroled in and allowed to reside here for years. *See United States v. Rowland*, 826 F.3d 100, 108 (2d Cir. 2016) ("If the meaning [of a statute] is plain, the inquiry ends there.").

Here, Mr. Murillo Castillo can no longer be classified as a noncitizen "who is arriving in the United States." He was initially detained in October 2022, and paroled into the country. When ICE arrested

him at his check-in at 970 Broad St, Newark, New Jersey, he had already been living in the United States for about three years. Moreover, he was not in the process of "arriving."

III. DHS Unlawfully Dismissed Petitioner's Asylum Application And Ignored Proper Procedure to Unlawfully Detain Him.

Here, Petitioner had a pending Form I-589, Application for Asylum that was properly filed, received, and in process at USCIS. Under 8 C.F.R. § 208.2(a)(1), USCIS, through the Asylum Office, had initial jurisdiction over Petitioner's asylum application. Since USCIS has jurisdiction, it is obligated to adjudicate each complete application by interview under 8 C.F.R. § 208.9(a), either by granting asylum under 8 C.F.R. § 208.14(b), referring the case to the immigration court, or, in limited circumstances, dismissing the case.

While the regulations address limited circumstances in which USCIS may dismiss an application, DHS did not follow them in Petitioner's case. *See* 8 C.F.R. §§ 208.10, 208.14(c)(1),(g).

Asylum regulations contemplate a dismissal for failure to appear at an interview or failure to comply with fingerprint requirements. *See* 8 C.F.R. § 208.10. The regulations make clear that those are the only two reasons to dismiss an asylum application. Notably, dismissal for a credible fear interview is not listed.

8 C.F.R. § 208.14, titled "Approval, Denial, Referral, or Dismissal of Application," also speaks to when DHS can dismiss applications. Specifically, 8 C.F.R. § 208.14(c) states:

"If the asylum officer does not grant asylum to an applicant **after an interview conducted in accordance with § 208.9,** or if, as provided in § 208.10, the applicant is deemed to have waived his or her right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application, as follows." 8 U.S.C. § 208.14(c).

The regulation goes on to list four sections. However, dismissal must occur after an

interview. Petitioner's case was dismissed prior to an interview in accordance with §208.9.

RELEASE IS THE APPROPRIATE REMEDY

Mr. Murillo Castillo remains in ICE custody, apart from his wife and children, since his unlawful re-arrest in August 2025. The Court must determine whether his continued detention violates his Due Process rights. Petitioner asserts that it does.

The Due Process Clause extends to all persons, including noncitizens. *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court must weigh: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the United States' interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id*. at 335.

A. Private interest

Mr. Murillo Castillo has a significant private interest in not being detained. One of the "most elemental of liberty interests" is to be free from detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the very liberty that [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Here, Mr. Murillo Castillo spent about two months in detention when he first presented himself at the border seeking asylum. ECF 6-7. No. After DHS issued him conditional parole, ICE

determined—through its custody assessment—that Petitioner was neither a danger to the community nor a flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Mr. Murillo Castillo complied with the conditions of release, including reporting to ICE, notifying immigration officials of changes in address, and not violating any local, State, or Federal law ordinances. In fact, Petitioner filed for asylum, applied for and received his work authorization, and followed the process for asylum seekers outside immigration court. However, due to recent policy, Petitioner was re-arrested and detained, and the government now takes the position that he is not bond eligible. The fact that Murillo Castillo already received a custody determination, and there were no violations of the bond or material changes, "the petitioner has a protected liberty interest in remaining out of custody." *Hernandez Nieves v. Kaiser*, 2025 WL 2533110, at *4 (N.D. Cal. Sep. 3, 2025). A number of district courts have held that in the immigration context, once detained and released from immigration custody, noncitizens acquire "a protectable liberty interest in remaining out of custody on bond." *See Diaz v. Kaiser,* No. 25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Ortega v. Bonnar,* 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *Rosado v. Figueroa,* No. 25-CV-02157, 2025 WL 2337099 at *12 (D. Ariz. Aug. 11, 2025).

Therefore, this Court should find that *Mathews* first factor favors Petitioner's position.

B. Risk of Erroneous Deprivation

The Court must also consider whether 8 U.S.C. § 1225(b) creates a risk of "erroneous deprivation of individuals' private rights" and the degree to which alternative procedures could ameliorate these risks. *Martinez v. Sec. of Noem,* No. 5:25-CV-01101 JLT SKO, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025). In Petitioner's case, like so many others who are arrested and detained

in the interior, immigration judges decline to exercise jurisdiction, finding that the Board has stripped them of the ability to consider anyone for bond who has not been admitted. Petitioner's hearing did not provide an opportunity to contest the existence, nature, or significance of any supervision violations, or to otherwise make an individualized assessment of the need to re-detain him. Therefore, without relief from this Court, Petitioner will continue to be erroneously deprived of his liberty.

C. Government Interest

Civil detention is different from imprisonment. While the Government has an interest in ensuring that noncitizens are not flight risks or dangers to the community, its detention process cannot be punitive. Petitioner entered the U.S. on November 26, 2022. *See* ECF No. 1-4. He was not placed into expedited removal proceedings nor denied entry. Instead, DHS decided to release the Petitioner with a conditional parole into the country. *See* ECF No. 1-4, p. 2. This decision to release Petitioner 3 years ago, in and of itself, reflects the DHS's determination by the government that he was not a danger to the community or a flight risk. *See Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1176 (N.D. Cal 2017), *aff'd* 905 F.3d 1137 (9th Cir. 2018). Petitioner did not abscond, nor has he committed any crime. In fact, Petitioner was re-arrested when he reported to ICE, as was required.

Since Petitioner has met the *Mathews* test, this Court should find that his detention without any individualized assessment of flight risk or danger deprives Petitioner of his constitutional rights. Petitioner therefore contends that release is the appropriate remedy to this deprivation.

The Supreme Court has also recognized that "Habeas has traditionally been a means to secure release from unlawful detention." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). As a remedy, courts across the country have also ordered the release of individuals stemming from ICE's illegal detention. *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565, at *7 (W.D. Ky. Sep. 19, 2025); Roble v.

Bondi, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025) (ordering petitioner's "release from custody as a remedy for ICE's illegal re-detention").

CONCLUSION

For the foregoing reasons, Petitioner requests that this Court finds that the application of the expedited removal procedures and mandatory detention provisions under 8 U.S.C. § 1225(b)(1) are unlawful, that Petitioner's arrest and detention were unlawful in that Respondents are holding him without following the INA and its regulations and in violation of his due process rights under the U.S. Constitution.

Petitioner requests that this Court find the expedited removal order legally insufficient and order Petitioner's immediate release from ICE custody and reopening of his asylum application with USCIS. Alternatively, should the Court find that the expedited removal order was legally sufficient, Petitioner requests that this Court rescind the expedited removal order and reopen his asylum application with USCIS.

Dated: December 1, 2025

Respectfully Submitted:

/s/ Veronica Cardenas

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Service of Reply and Exhibits on Government Counsel via ECF