UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TAMIR MONOROV, Petitioner, v. KRISTI NOEM, *et. al;* Respondents.	Case No.25-cv-16732 (JKS)

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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INTRODUCTION

The issue in this case is whether the Government may subject Petitioner—who sought entry to the United States on February 1, 2022, and was paroled into the country without being issued an expedited removal order in compliance with the governing regulations—to expedited removal more than three years after his entry. Petitioner contends that it cannot.

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).

If an immigration officer determines that a non-citizen is "arriving" in the United States or 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 non-citizens 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 Customs and Border Protection officer failed to obtain supervisory review and concurrence to issue an expedited removal order. *See* ECF No. 1-4, 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 on the Order. *See* Id. There is no signature of an immigration officer, no name or signature of a supervisor, as required by regulations. Moreover, the Notice and Order also left a blank Certificate of Service.

Without reaching the merits of whether the Petitioner was lawfully subjected to an Expedited Removal Process, which included a credible fear interview three years after being 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 an Expedited Removal Process when Petitioner initially entered the United States in February 2022. To support this, Petitioner states that DHS issued a legally deficient Notice and Order of Expedited Removal, which is not compliant with 8 C.F.R. § 235.3(b)(2).

DHS issued Petitioner a temporary parole under 8 U.S.C. § 1182(d)(5)(A) and released him into the United States. DHS issued a Form G-56 letter on February 14, 2022, requiring Petitioner to report to ICE at 26 Federal Plaza in New York. *See* Exh. A, Form G-56. While Petitioner attempted to comply, he was told by DHS that he could not physically report due to COVID-19 restrictions and that he would be called in to report at a later time. *See* Exh. B, Petitioner's Declaration. On December 5, 2022, Petitioner affirmatively filed a Form I-589, Application for Asylum with U.S. Citizenship and Immigration Services ("USCIS"). USCIS did not reject the application and issue a credible fear interview. Instead, it received the application and provided a receipt notice. *See* ECF No. 1-8, Application for Asylum and Withholding of Removal Receipt Notice. In fact, when Petitioner's temporary parole expired on January 30, 2023, DHS did not dismiss his affirmatively filed asylum and require him to undergo a credible fear interview.

It wasn't until October 8, 2025, over two years after the expiration of Petitioner's temporary parole, that DHS decided to cancel his asylum application and call Petitioner in for a credible fear interview. *See* ECF No. 1-7. Petitioner's immigration attorney attempted to cancel the credible fear interview altogether based on the issuance of parole and the fact that Petitioner had been living in the United States for almost four years. *See* ECF No. 1-8. Nonetheless, ICE purports to have arrested Petitioner based on a legally deficient 2022 order of expedited removal under 8 U.S.C. § 1225(b)(1)(A)(iii), and yet, issued a warrant for his arrest pursuant to section 1226. *See* Exh. C, 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 October 2025, Petitioner had been continuously living in the United States for over three years, and had been living in the U.S. for almost three years since the expiration of his 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 expedite 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 non-citizen 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 non-citizen 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 the use of expedited removal in limited circumstances to non-citizens who are at the port of entry and seeking admission, or who have been apprehended near the border shortly after they entered the country or 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 close to four years, as a noncitizen who *is actually physically present* at the border and has not been 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.

Respondents, while not explicitly acknowledging policy departures in their response, fail to mention the various memoranda issued in relation to expedited removal. 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"). 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.

This Memo directs DHS to consider placing additional noncitizens who are already in the United States into expedited removal in light of the January 2025 expansion. The Enforcement Discretion Memo directs DHS to affirmatively evaluate if 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.

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).

In this case, Petitioner was not issued a Notice to Appear pursuant to § 1229(a), but he affirmatively filed his asylum application, which was received by USCIS and was being processed. *See* ECF No. 1-8. Petitioner was still undergoing the affirmative asylum process in this country, and the government issued him work authorization and assigned him a social security number. *See* Exh D. Petitioner was doing everything that the government had required him to do. Yet, DHS's move to dismiss his asylum proceedings, just as in the court dismissal campaign, was done to detain him and place him into fast-track removal under §1225(b)(1). Petitioner requests that this Court find his arrest and current detention unlawful.

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. *See* ECF No. 1-8, p. 4. 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, they are under an obligation 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 discuss limited circumstances where USCIS can dismiss an application, DHS did not follow those regulations 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.

Lastly, the fact that the Petitioner was paroled into this country does not automatically subject him to expedited removal. Congress limited the expansion of expedited removal to noncitizens who have not been admitted or paroled and who cannot establish two years' continuous physical presence in the United States. *See* § 1225(b)(1)(A)(iii)(I). Petitioner here was paroled, and has been living in this country for close to three years.

The regulations likewise recognize that noncitizens must be given an opportunity to demonstrate that expedited removal does not apply to them. Under 8 C.F.R. § 235.3(b)(6), a noncitizen "will be given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following

inspection at a port-of-entry."

Petitioner's immigration attorney attempted to provide such documentation explaining why expedited removal was inappropriate in this case. See ECF No. 1-8. Petitioner was paroled into the United States, had resided here for more than two years, had committed no crimes, and was simply awaiting his USCIS interview. Yet, all of that information was ignored.

As in *CHIRLA*, DHS here is attempting to weaponize expedited removal in a way that departs from its historical use against recent border crossers and instead targets noncitizens who were lawfully paroled into the United States, built lives here, and reasonably relied on the government's prior decisions to release them on parole and place them into regular removal or benefits processes. The court in *CHIRLA* recognized that this novel deployment of expedited removal raises acute due-process and statutory concerns; those concerns apply with equal, if not greater, force to Petitioner, whom DHS is attempting to subject to expedited removal about four years after being present in the county with parole, despite his clear eligibility to show both two years' continuous presence and prior parole. *See Coalition for Humane Immigrant Rights (CHIRLA) v. Noem*, 2025 WL 2192986 (D.D.C. Aug. 1, 2025), administratively stayed in part, No. 25-5289 (D.C. Cir. Aug. 18, 2025).

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 request 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 this Court rescind the expedited removal order and reopen his asylum application with USCIS.

Dated: November 20, 2025

Respectfully Submitted:

/s/ Veronica Cardenas

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