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The Honorable Lawrence J. Vilardo
United States District Judge
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Re: Cabrera Martinez v. Marich, et al.
25-CV-01110-LJV

Dear Judge Vilardo:

At argument yesterday, the Court inquired about cases in which parole expired and a court had held that due process required an alien to receive further process before being taken into custody. Petitioner's counsel referred to this Court's decision in *Mata Velasquez*, but this Court rightly pointed out that parole had been *revoked* in that case, not *expired*. Petitioner's counsel then pivoted to refer to the *Rojas* matter before Judge Liman in the Southern District of New York. That case, though, also dealt with *revocation* of parole, not *expiration* of parole. Indeed, Judge Liman specifically noted: "Respondents do not contest that Petitioner remained on parole at the time of his arrest and detention and to date maintains that status. In practice, Petitioner was at liberty beginning in January 2023, subject only to the risk of a final adjudication of removal or formal revocation of parole—that is, until ICE arrested him outside his home without notice and without having revoked his parole." *Rojas v. Almodovar*, No. 25-CV-7189 (LJL), 2025 WL 3034183, at *3 (S.D.N.Y. Oct. 30, 2025). Thus, *Rojas* is essentially *Mata Velasquez* from another district.

Tellingly, and counter to Petitioner's reliance on *Rojas*, Judge Liman seems to have suggested that a different outcome may have resulted had Rojas's parole expired instead. *See Rojas,* 2025 WL 3034183, at *8, fn. 6 ("The Government does not mention or argue that Petitioner's parole was terminated either 'automatically ... at the time of expiration of the time for which parole was granted,' or by the service of a 'Charging document.'") (quoting 8 C.F.R. § 212.5(e)(2)(i)–(ii)) (alterations in original). Section 212.5(e) of the Code of Federal Regulations is entitled "Termination of parole." Section 212.5(e)(1) specifically states that termination of parole is automatic "at the expiration of the time for which parole was authorized" and that "the alien shall be processed in accordance with paragraph (e)(2) of this section *except that no written notice shall be required.*" 8 C.F.R. § 212.5(e)(1)(ii). Section (e)(2) then states that "further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter." As this Court knows, section 235 of the Immigration and Nationality Act ("INA") is found at 8 U.S.C. § 1225 and section 240 of the INA is found at

8 U.S.C. § 1229a. Thus, Petitioner's argument that following parole an alien is referred to "1226 proceedings" is belied by the regulation's clear language.[1]

Petitioner's counsel also stated numerous times that no cases exist in which a court found that an alien's parole had expired, and that no further due process was required prior to the government taking such alien into custody. This is incorrect. The Second Circuit has said as much:

> Congress has provided by statute that an alien denied entry who is awaiting exclusion proceedings may be temporarily paroled into the United States, at the discretion of the Attorney General (acting through the INS); however, "such parole of such alien shall not be regarded as an admission of the alien" into the United States. 8 U.S.C. § 1182(d)(5)(A); see also 8 C.F.R. § 212.5; Bertrand v. Sava, 684 F.2d 204, 212 (2d Cir.1982). When, "in the opinion of the Attorney General," parole is no longer warranted, "the alien shall forthwith return ... to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A). The INS may demand at any time that the alien return to custody. See id. **There is simply no basis for Ofosu's insistence that the INS leap procedural hurdles to terminate parole or compel Ofosu's appearance. Parole can be terminated automatically "without written notice ... at the expiration of the time for which parole was authorized."** 8 C.F.R. § 212.5(d)(1)(ii). Alternatively, when (inter alia) "in the opinion of the district director ... neither emergency nor public interest warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien[,] and he or she shall be restored to the status which he or she had at the time of parole." Id. § 212.5(d)(2)(i).

Ofosu v. McElroy, 98 F.3d 694, 700 (2d Cir. 1996) (boldface added). More recently, in *Chanaguano Caiza v. Scott,* the court explicitly found that upon the expiration of parole by its original terms, no further due process is required prior to an alien's arrest:

> Mr. Chanaguano Caiza has not been denied due process. He argues, inter alia, that the Respondents violated his procedural due process rights because they did not determine that the purpose of his parole pursuant to § 1182(d)(5)(A) had been served. Reply to Opp'n to O.S.C. at 15. This argument fails. While it is true that the relevant implementing regulations require the government to make an individualized determination that the

[1] Indeed, any reference to "proceedings under section 1226" does not even make sense as a term. Section 1226 is a *detention* statute. It does not relate to proceedings. Section 1229a is the section of the statute that deals with immigration removal proceedings. *See* 8 U.S.C. § 1229a(a)(3) ("Unless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.").

purpose of the parole has been served, that requirement is not applicable where, as here, expiration of term of the parole was given at the outset.

No. 1:25-CV-00500-JAW, 2025 WL 3013081, at *7 (D. Me. Oct. 28, 2025); *see Julce v. Smith,* No. CV 18-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018)

Lastly, although I mentioned that work authorization may have been issued pursuant to Petitioner's original parole, it appears from my review of the papers that Petitioner has already admitted that his work authorization was related to his application for asylum. *See* Petition, ECF No. 1 at ¶ 4 ("Just recently, on October 1, 2025, Petitioner Received Employment Authorization Document (EAD) *valid under pending asylum application.*") (emphasis added). Obviously, a grant of work authorization on a pending asylum claim does not evince the same indication on behalf of the government that Petitioner may remain at liberty as a grant of work authorization on an expired parole would have. Indeed, many aliens with pending asylum applications are detained, yet are still entitled to apply for work authorizations. *See* 8 C.F.R. 203.7(a)(1) (". . . an applicant for asylum who is not an aggravated felon shall be eligible pursuant to §§ 274a. 12(c)(8) and 274a.13(a) of this chapter to request employment authorization."). The two statuses are not mutually exclusive.

Respectfully submitted,

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BY: /s/ ADAM A. KHALIL
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