UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERTO ANTONIO CABRERA MARTINEZ,

Petitioner,

v. 25-CV-01110-LJV

TAMMY MARICH, Field Office Director of Buffalo Field Office of Immigration and Customs Enforcement, et al.,

Respondents.

RESPONDENTS' SUPPLEMENTAL MEMORANDUM OF LAW

This Court held oral argument on November 24, 2025, at which time Respondents were ordered to provide supplemental briefing on three issues: (1) whether the grant of a work authorization to Martinez should amount to a tacit government acknowledgement that he was entitled to liberty; (2) whether the delay in arresting him after the expiration of his parole granted him an interest in liberty or some form of legal status; and, (3) discussion of Martinez's process and identification upon arrest to confirm that he was indeed an alien without parole and unlawfully present in the United States. These issues are addressed below, preceded by a brief overview of the authority for Martinez's detention given his assertion that it is "muddled." ECF No. 12 at pg. 1.

ARGUMENT

I. MARTINEZ IS AN ARRIVING ALIEN WHO WAS INSPECTED AND PAROLED AND THUS NOT SUBJECT TO *HURTADO*

Martinez arrived in the United States to seek parole through the Nicaraguan Humanitarian Parole ("NHP") program. Pet., ECF No. 1 at ¶ 2; ECF No. 11 at pg. 1. Immigration parole only exists pursuant to 8 U.S.C. § 1182(d)(5)(A) and is only available to

applicants for admission. 8 U.S.C. § 1182(d)(5)(A) ("The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit **any alien applying for admission** to the United States, **but such parole of such alien shall not be regarded as an admission of the alien** and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.") (boldface added).

Although Martinez is an arriving alien, he is also an applicant for admission:

> Individuals who "arrive" at the border seeking entry into the country are deemed to be "applicants for admission" to the country. 8 U.S.C. § 1225(a)(1); *see also* 8 C.F.R. § 1.2 (defining arrival alien as an "applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry ..."). "An arriving alien remains an arriving alien even if paroled ... and even after any such parole is terminated or revoked." *Id.*

Saadulloev v. Garland, No. 3:23-CV-00106, 2024 WL 1076106, at *2 (W.D. Pa. Mar. 12, 2024). Although all arriving aliens are applicants for admission, not all applicants for admission are arriving aliens. *See* 8 C.F.R. § 1.2 ("Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry . . . An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.").

The Board of Immigration Appeals ("BIA") discussed applicants for admission who were *already present in the country* without admission or *inspection and parole* in *Matter of Yajure*

Hurtado, 29 I. & N. Dec. 216, 220 (BIA 2025). But Martinez was never present in the United States without inspection and parole, and thus, as previously stated, the *Hurtado* case has nothing to do with this case.[1] Martinez is inarguably an arriving alien and applicant for admission who has never been inside the United States except through parole, and thus he is detained pursuant to 8 U.S.C. § 1225(b)(2) as an applicant for admission (a subset of which—arriving alien—he also meets the definition of.

II. THE GRANT OF MARTINEZ'S WORK AUTHORIZATION WAS BASED UPON HIS ASYLUM APPLICATION AND NOT HIS PAROLE STATUS, AND THUS OFFERS NO SUPPORT TO HIS ARGUMENTS

At oral argument, the Court inquired as to whether the government's grant of work authorization may have led Martinez to believe he would not be removed despite his expired parole, or may have offered him some expectation that his expired parole was acceptable. However, upon further review of papers, and as indicated previously (ECF No. 10), Martinez's work authorization was actually based on his asylum application, not his parole status. Thus, the grant of work authorization can have no bearing on his expectations of remaining free on an expired parole. Indeed, as this Court is aware, aliens in removal proceedings often seek asylum and would technically be entitled to a work authorization, even if detained. Work authorization is a privilege granted to asylum seekers, some of which who are detained and some of which who are not. Thus, Martinez can derive no

[1] Although Petitioner's counsel recites the facts of *Q Li*, it appears they are unable to differentiate them from this case. ECF No. 12 at pg. 6. As a helpful pointer, note that *Q Li* was found *inside* the United States *prior to* arrest, and then paroled after the fact. She was not encountered at a Port of Entry, like Martinez, who has never been inside the United States *except* through parole, and, as the statute clearly indicates, does not constitute admission or lawful presence. Thus, *Q Li* likewise has nothing to do with this case.

benefit on his argument that he is entitled to liberty based on an expired parole simply because he was granted work authorization under his asylum application.

III. MARTINEZ'S PRESENCE IN THE UNITED STATES WHILE HIS PAROLE EXPIRED DOES NOT ENTITLE HIM TO ANY LEGAL STATUS OR BENEFIT

Martinez remained in the United States unlawfully once his parole expired. He should not be able to claim a benefit by remaining at liberty in violation of this country's immigration laws.

Specifically, the parole statute itself states that upon parole ending, the paroled alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A). This negates any argument that Martinez should be allowed to rely on his unlawful presence as entitling him to some additional rights to liberty. Likewise, he accrues unlawful presence time as an alien present with an expired parole. 8 U.S.C. § 1182(a)(9)(B)(ii).

Thus, far from gaining status or a right to liberty, Martinez was actually accruing time of unlawful presence which may bar his future admissibility. *See, e.g.,* Ravelo v. Akins, No. 1:16-CV-23047, 2016 WL 6995560, at *1 (S.D. Fla. Nov. 30, 2016), aff'd sub nom. Ravelo v. U.S. Citizenship & Immigr. Servs., 706 F. App'x 649 (11th Cir. 2017) ("Plaintiff Arnaldo Ravelo, a citizen of Cuba, first entered the United States as an indefinite parolee on November 25, 1992. That initial parole expired on November 24, 1993.. Plaintiff nevertheless remained in the United States, and on April 1, 1997, he began to accrue unlawful presence . . . . In 2013, Plaintiff filed his second Application for Adjustment of Status.2 USCIS denied the application because Plaintiff's unlawful presence in the United

States of more than one year and his 2012 departure from the United States triggered a 10-year inadmissibility ban under section 1182(a)(9)(B)(i)(II).") (internal citations omitted).

IV. ICE PROCEDURES TO ASCERTAIN ALIEN'S IDENTITY AND PROVIDE PROCESS DURING ARREST

At oral argument, the Court also inquired as to how ICE ascertains that they have detained an unlawful alien as opposed to, for example, an American citizen. Submitted herewith as Exhibit A is a copy of Martinez's Form I-213, Record of Deportable/Inadmissible Alien, which shows the many safeguards utilized by ICE to confirm they have detained an unlawful alien.

First, the alien is often a source of information confirming his or her identity. For example, Martinez provided a drivers license to ICE. *See* Ex. A at pg. 4. His identity was also confirmed through numerous other reference points, including his date of birth, location of birth, FBI number, FIN number, left and right index fingerprints, checking various governmental records, access to the Law Enforcement Support Center, employer information, immigration history, check of immigration benefit records, and of course the use of an alien number. *See, generally,* Ex. A.

If an individual was wrongfully arrested, and was not an unlawful alien, the alien (or citizen or whomever) could make this fact known to ICE by giving accurate information which ICE could then verify. Likewise, detainees are allowed to contact a consulate and make phone calls, such that any wrongfully detained person would have recourse to rectify their situation. Accordingly, there is almost no chance that an individual is wrongfully detained in immigration custody beyond the initial arrest and detention needed to confirm their lawful presence in the country.

Respectfully submitted,

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