UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

F.M.S.,[1]	:	**No. 1:25-cv-02061**
Petitioner,	:	
	:	
v.	:	**(Schwab, M.J.)**
	:	
CRAIG LOWE, Warden of Pike County Correctional Facility, et al.,	:	
Respondents.[2]	:	**Filed Electronically**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

This is a habeas action filed on October 31, 2025, by Petitioner, F.M.S., an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Pike County Correctional Facility in Lords Valley, Pennsylvania. Doc. 1, Petition for a Writ of Habeas Corpus, at 3,

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[1] Pursuant to this Court's Order dated November 18, 2025, the Petitioner is permitted to proceed using his initials only. Doc. 12, Order.

[2] Although Petitioner named several other government officials, the only proper respondent in this case is Craig Lowe, the Warden of Pike County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prison is being held, not the Attorney General or some other remote supervisory official."). Petitioner requests release from confinement. *See* Doc. 1, Verified Petition for Writ of Habeas Corpus, at 42, ¶ c. As such, all other Respondents should be dismissed.

¶ 5. Specifically, F.M.S. requests the Court grant a writ of habeas corpus requiring Respondent(s) to "release from custody on his own recognizance or under reasonable conditions of supervision." *Id.* at 42, ¶ c.

On October 31, 2025, this Court entered an order directing Respondent to respond to the Petition within twenty days of the Order, or on or before November 21, 2025. Doc. 4, Order to Show Cause. This Response is filed in accordance with that Order.

FACTS

F.M.S. is a native and citizen of Venezuela. Exhibit 1, DHS Record of Deportable/Inadmissible, at 1-2; Exhibit 2, Notice to Appear, at 1. On June 30, 2023,[3] F.M.S. arrived in the United States and applied for admission at Paso del Norte Port of Entry in El Paso, Texas. Exhibit 1 at 3; Exhibit 2 at 1.

On September 19, 2023, ICE served F.M.S. with a Notice to Appear. Exhibit 2 at 2. The Notice to Appear acknowledged that an asylum officer had determined that F.M.S. had demonstrated a credible fear of

[3] Respondent's Exhibit 1 indicates that F.M.S. arrived on April 14, 2023. Exhibit 1 at 1. However, the Notice to Appear indicates June 30, 2023, *see* Exhibit 2 at 1, which is similar to Petitioner's recollection. Doc. 1 at 10, ¶ 36.

persecution or torture upon return to Venezuela. *Id.* at 1. Specifically, the Notice to Appear charged F.M.S. as removable pursuant to Section 212(a)(7)(A)(i)(l) of the Immigration and Nationality Act (INA), in that they[4] were an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required. *Id.* at 1. The Notice to Appear was served on F.M.S. on September 19, 2023, via mail. *Id.* at 3. On or about October 9, 2023, ICE released F.M.S. via a grant of humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5). Doc. 1 at 11, ¶ 38.

Approximately one year later, on October 24, 2024, the Honorable Jonathan Reingold, United States Immigration Judge, issued a removal order in absentia for F.M.S. after they did not appear for a merits hearing. Exhibit 3, Removal Order in Absentia.

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[4] In order to meet the substance and spirit of this Court's Order, see Doc. 12, this response will use "they" or "them" pronouns referring to the Petitioner.

On March 14, 2025, ICE Enforcement and Removal Operations (ERO) officers responded to a call for assistance from the FBI Task Force in regard to F.M.S. Exhibit 1 at 2. That day, an FBI Task Force investigating Tren de Aragua (TDA) gang members executed a search warrant for a location in the Bronx, NY. *Id.* FBI Agents observed F.M.S. during execution of the search warrant and notified ICE ERO.[5]

That same day, ICE ERO officers identified F.M.S., and officers served F.M.S. with a warrant for their arrest. Exhibit 4, Warrant for Arrest. Likewise, ICE ERO served F.M.S. with a Warrant of Removal. Exhibit 5, Warrant of Removal. The Petitioner has been in ICE detention since March 14, 2025. Doc. 1 at 13, ¶ 44.

On May 23, 2025, Judge Reingold issued an order granting F.M.S.'s motion to reopen her underlying immigration proceedings. Exhibit 6, Order dated May 23, 2025. Thereafter, the Petitioner filed a petition for asylum and withholding of removal pursuant to 8 U.S.C. § 1231(b)(3) and the Convention Against Torture. *See* Exhibit 7, Removal Order.

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[5] There is no current allegation that F.M.S. is a member of TDA, and the undersigned has had no discussions with law enforcement regarding that investigation or its knowledge of F.M.S.

On November 5, 2025, the Petitioner was granted withholding of removal to Venezuela under 8 U.S.C. § 1231(b)(3) and the Convention Against Torture. *Id.* at 1. His application for asylum was denied. *Id.* The Honorable Leo Finston, United States Immigration Judge, designated the country of removal as Venezuela. *Id.* at 3. Both F.M.S. and DHS waived appeal; therefore, the removal order became administratively final. *Id.* at 4. *See also* 8 C.F.R. § 1003.39 ("Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first.").

Given Judge Finston's decision granting withholding of removal to Venezuela, ICE served the F.M.S. with a Notice of Third Country Removal on November 12, 2025. *See* Exhibit 8, Third Country Removal Notice. ICE advised F.M.S. that it intended to remove him to Mexico. *Id.* at 1.

On November 16, 2025, F.M.S. filed a motion to reopen the underlying immigration proceedings. Exhibit 9, Motion to Reopen. In the motion, F.M.S. indicated that they feared persecution if removed to Mexico. *Id.* at 1. In a concurrent filing, F.M.S. requested that the

immigration court issue a stay of removal. *Id.* While F.M.S.'s motion to reopen remains pending, Judge Finston granted the Petitioner's motion to stay removal until determination of the reopen motion on November 19, 2025. Exhibit 10, Order dated November 19, 2025.

ARGUMENT

Petitioner's claim fails on the merits. The Secretary of Homeland Security has the discretion to revoke humanitarian parole. In revoking F.M.S.'s parole, ICE ERO followed the pertinent statute and federal regulations and did not violate the Petitioner's due process rights. Lastly, this Court lacks jurisdiction to review the Secretary's discretionary decision under the Administrative Procedure Act.

I. The Respondent followed the Immigration and Nationality Act and federal regulations in revoking F.M.S.'s parole.[6]

Petitioner claims that in revoking F.M.S.'s humanitarian parole, the Respondent failed to follow the Immigration and Nationality Act (INA) and federal regulations by not providing written notice of the decision. This is incorrect, as ICE ERO met the requirements of the INA

[6] Please accept Respondent's I as a response to Petitioner's Legal Argument I, Doc. 1 at 16-18, and Count 1 of the Prayer of Relief. *Id.* at 38-39.

and federal regulations by serving the Petitioner with documentation indicating that his parole had been revoked on the date he was taken into custody.

Petitioner acknowledges that the revocation of humanitarian parole is within the discretion of the Secretary of Homeland Security, *see* Doc. 1 at 17, ¶¶ 57-58 (citing 8 U.S.C. § 1182(d)(5)(A)), and 8 C.F.R. § 212.5 governs revocation of that parole. *Id.* at 17, ¶ 59. 8 C.F.R. 212.5(e)(2)(i) states as follows:

> **On notice.** In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit 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 that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody.

Here, the Secretary of the Department of Homeland Security may revoke humanitarian parole at her discretion. 8 U.S.C. § 1182(d)(5)(A).

Moreover, ICE met the requirements of the federal regulation's notice requirement. As noted above, on March 14, 2025, ICE ERO served F.M.S. with a warrant for their arrest, Exhibit 4; a warrant of removal, Exhibit 5; and a copy of their removal order decided in absentia. Exhibit 3. The arrest warrant, warrant of removal, and absentia removal order served as notice of F.M.S.'s revocation of parole. *See* 8 C.F.R. § 212.5(e)(2)(i). Accordingly, this Court should deny and dismiss F.M.S.'s Petition.

II. The Petitioner received notice of the revocation of his parole, and he is not entitled to a hearing.[7]

Contrary to the Petitioner's assertions, they received notice of the revocation of his parole, and they are not entitled to a hearing on that revocation. Neither the statute, nor the regulations provide any other procedural protections. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i).

As noted above, the Secretary of Homeland Security is entitled to grant or revoke humanitarian parole in her discretion, and the regulations provide that the Petitioner is entitled to written notice. Here,

[7] Respondent's II is in response to Petitioner's Legal Argument II, Doc. 1 at 18-28, and Cause of Action III, *id.* at 40.

the Petitioner received written notice on the date they were taken into custody. *See* Exhibits 4-5.

Furthermore, the statute and regulations do not provide any additional procedural protections, including a hearing. The Petitioner is not entitled to a hearing for the revocation of his parole, especially when he had already been ordered removed. *See Ofosu v. McElroy*, 98 F.3d 694, 700 (2d Cir. 1996) ("His parole is a matter of the Attorney General's discretion (and of the opinion of those she appoints) and may be ended without hearings or special forms."); *Wong Hing Fun v. Esperdy*, 335 F.2d 656, 657 (2d Cir. 1964) ("There is no basis for appellants' contention that due process requires a hearing on revocation of parole, even though Congress did not provide one.").

The Respondent's position is further cemented by the fact that additional protections for revocation of parole exist in other areas of federal immigration regulations. In the context of a revocation of parole of a criminal detainee, the noncitizen is provided with both notice and an interview detailing the reasons for the revocation of parole. *See* 8 C.F.R. § 241.4(l)(1) ("Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an

initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."). The failure to include such additional protections indicates that due process does not require a hearing for revocation of the Petitioner's humanitarian parole.

III. The Petitioner's detention has not been unreasonably long.[8]

The Petitioner's detention has not been unreasonably long. F.M.S. is properly detained pursuant to 8 U.S.C. § 1225,[9] as a noncitizen applicant for admission to the United States. As of the date of this response, the Petitioner has been detained for approximately eight and a half (8 ½) months. Petitioner's detention does not offend due process.

Within the District Court for the Middle District of Pennsylvania, courts have typically found that a detention of eight and half months does

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[8] Respondent's III is in response to Petitioner's Legal Argument III and IV as well as Cause of Action IV.

[9] *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 (3d Cir. 2020), is related to criminal detention under 8 U.S.C. § 1226. Petitioner's detention is pursuant to 8 U.S.C. § 1225(b). Exhibit 2 at 1. *See also* 8 U.S.C. § 1225(b)(2)(A) ("in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.").

not exceed constitutional limits. See *Appiah v. Lowe*, No. 3:24-cv-2222, 2025 WL 510974 (M.D. Pa. (Feb. 14, 2025) (Mariani, J.) (finding petitioner's 18 months of detention did not require individualized bond hearing); *White v. Lowe*, No. 1:23-CV-1045, 2023 WL 6305790 (M.D. Pa. September 27, 2023) (Conner, J.) (finding that petitioner's continued detention for approximately 15 months did not require an individualized bond hearing), *abrogated by White v. Warden Pike County Correctional Facility*, No. 23-2872, 2024 WL 4164269 (3d Cir. Sept. 12, 2024) (finding White's detainment, which had reached 25 months at the time of his appeal, violated due process); *McDougall v. Warden, Pike County Correctional Facility*, No. 3:23-cv-00759, 2023 WL 6161038 (M.D. Pa. September 21, 2023) (Mariani, J.) (finding petitioner's detention for a little over 13 months did not weigh in favor of relief); *Flores-Lopez v. Lowe*, No. 1:21-CV-1839, 2021 WL 6134453, at *2 (M.D. Pa. December 29, 2021) (Conner, J.) (denying habeas corpus relief where petitioner had been detained for approximately 19 months after his first bond hearing); *Gabriel v. Barr*, No. 1-20-CV-1054, 2021 WL 268996 (M.D. Pa. January 27, 2021) (Jones III, J.) (finding that petitioner was not entitled to an individualized bond hearing after 18 months in custody); *Crooks v. Lowe,*

1:18-CV-0047, 2018 WL 6649945 at *2 (M.D.Pa. Dec. 19, 2018)(denying a bond hearing to a petitioner who had been detained for 18 months). Therefore, the Court should find that Petitioner's detention pursuant to Section 1225(b)(2)(A) is lawful, not unreasonably long, and deny F.M.S.'s request for a bond hearing with alternatives to detention.

IV. Petitioner's Administrative Procedure Act cause of action must be dismissed because the Secretary's decision to revoke bond is discretionary, and the revocation was performed in accordance with the statute and regulations.[10]

At the outset, this Court lacks jurisdiction to review the Secretary of Homeland Security's discretionary decision to revoke the Petitioner's parole under 8 U.S.C. § 1182(d)(5)(A). Under the APA, "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. However, the APA does not apply in two circumstances: if a statute precludes judicial review, 5 U.S.C. § 701(a)(1), or "agency action is committed to agency discretion by law," 5 U.S.C. § 701(a)(2). Here, the statute specifically

[10] Respondent's IV is in response to Petitioner's Count Two.

commits action to the discretion of the Secretary of Homeland Security; therefore, this Court lacks jurisdiction to review the claim.

Notwithstanding that fact, even if this Court had jurisdiction to review under the APA, ICE followed federal regulations in revoking F.M.S.'s parole. *See* 8 C.F.R. § 212.5(e)(2)(i). Upon being taken into custody, ICE ERO provided F.M.S. with a warrant for his arrest, a warrant for removal, and a removal order, satisfying the notice provision. *Id.* As such, the Court should deny and dismiss the APA cause of action.

V. Petitioner's claim for costs pursuant to the Equal Access to Justice Act is premature.

At the outset, whether costs can be obtained pursuant to the Equal Access to Justice Act (EAJA) in immigration habeas petitions is presently before the United States Court of Appeals for the Third Circuit in *Adewumi Abioye v. Warden Moshannon Valley Correctional Center, et al*, Appeal No. 24-3198 (3d Cir.). Moreover, assuming the applicability of EAJA to habeas cases, 28 U.S.C. 2412(d)(1)(B) sets forth the timing and process to consider an award of fees under the statute. That provision states:

> A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which

> shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B). Thus, the statute requires the Court to consider total record of the case after a final judgment and the filing of an application by the prevailing party.

The Third Circuit has recognized as follows concerning the finality and timing for a motion for fees:

> Under the EAJA, a motion for attorneys' fees must be filed "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). In this context, " 'final judgment' means a judgment that is final and not appealable...." 28 U.S.C. § 2412(d)(2)(B). We have held that "the thirty day cut-off for EAJA petitions ***begins*** when the government's right to appeal the order has lapsed." *Taylor v. United States*, 749 F.2d 171, 174 (3d Cir.1984) (per curiam).

Johnson v. Gonzalez, 416 F.3d 205, 208 (3d Cir. 2005) (emphasis added). Therefore, the determination of the merits of any EAJA award requires a motion or application to be filed 30 days after final judgment, and no

adjudication has yet been rendered to fulfill this requirement. As such, any request for costs pursuant to EAJA is premature.

CONCLUSION

Respondent respectfully request the Court deny and dismiss the habeas petition.

Respectfully submitted,

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Dated: November 21, 2025

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARIELIS F.M.S.,	:	**No. 3:25-cv-01896**
Petitioner,	:	
	:	
v.	:	**(Latella, M.J.)**
	:	
WARDEN, in their official	:	
Capacity as Warden of the	:	
Clinton County Correctional	:	
Facility, et al.,	:	
Respondents.	:	**Filed Electronically**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on November 21, 2025, she served a copy of the attached

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

via Electronic Filing:

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/s/ Maureen Yeager
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