**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF MINNESOTA**

Bernardo Gabriel Borbor Mera,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Sirce Owen, Acting Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement,

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:25-cv-04298-KMM-EMB

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

## INTRODUCTION

Petitioner Bernardo Gabriel Borbor Mera (hereinafter "Petitioner" or "Borbor Mera") is detained in Immigration and Customs Enforcement ("ICE") custody in violation of due process and the APA.

Pursuant to all Counts of Petitioner's Petition for Habeas Corpus, Petitioner requests a Temporary Restraining Order to (i) enjoin Respondents from moving Petitioner outside of the geographic boundaries of the District of Minnesota, (ii) order Respondents to release Petitioner from custody forthwith; and (iii) enjoin Respondents from re-detaining Petitioner during the pendency of this Court's consideration of this Petition for a Writ of Habeas Corpus.

Petitioner's detention is unconstitutional, violates the Immigration & Naturalization, and is a product of Respondents' utter disregard for their regulatory mandate. Petitioner is very likely to prevail on the merits of his case. His parole was not terminated in accordance with the law. He is still within his parole period. His continued detention despite his parole is an irreparable harm. The government has no interest in failing to comply with the law in terminating Petitioner's parole and unlawfully detaining Petitioner. The Court should grant this motion.

## FACTS

Petitioner, a citizen of Ecuador, was paroled into the United States on January 1, 2025, at the Port of Entry after having made an appointment with the CBP One

application prior to appearing at the Port of Entry. *See* Exh. A; Exh. B; Exh. C. USCBP served Petitioner with a Notice to Appear and issued Petitioner a Form I-94 valid through December 31, 2025. *See* Exh. A; Exh. C.

On April 11, 2025, Respondents sent a mass form email stating that parole was terminated within 7 days. Petitioner was a recipient of such an email. *See* Exh. D. No reason was provided for the purported termination of his parole. *See id.* Instead, Petitioner and the other CBP One parolees were told to depart the United States "immediately," without regard to the fact that the vast majority had pending asylum cases in immigration court and they were still within the authorized period indicated on the parole document. *See id.*

Petitioner filed a timely asylum application and attended his first immigration court hearing on October 7, 2025, where Respondents moved to dismiss his removal proceedings and unlawfully took Petitioner into custody without a warrant, notice, or opportunity to be heard on the issue of his detention. There is no indication that Respondents made an individualized assessment of Petitioner's parole at the time of taking him into custody; rather, they relied on the mass email termination. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a. Respondents continue to hold Petitioner in ICE custody at the Freeborn County Jail in Albert Lea, Minnesota.

## ARGUMENT

### I. The Court Has Jurisdiction Over Petitioner's Claims.

Respondents might contend that 8 U.S.C. § 1252(b)(9) precludes review of Petitioner's claims. However, § 1252(b)(9) comes under the authority of § 1252(b), which lists "[r]equirements for review of orders of removal." § 1252(b)(9) channels review of "final orders of removal" to federal courts of appeals. Nothing in this record indicates that any order of removal has been issued for Petitioner. Rather, his removal proceedings remain pending before the immigration court. Without an order of removal, § 1252(b)(9) alone does not bar this Court from reviewing Petitioner's TRO regarding the legality of the parole termination and Petitioner's detention.

Respondents might aver that § 1252(g) also bars relief. Petitioner, however, is challenging his unlawful detention. He is not challenging any decision to commence proceedings, adjudicate cases, or execute removal orders. After all, the initiation of proceedings is governed under 8 U.S.C. § 1229, regardless of whether the mandatory detention provisions at 8 U.S.C. § 1225, or the discretionary detention framework at 8 U.S.C. § 1226, applies. Proceedings are commenced with the filing of an NTA that complies with the requirements at § 1229(a). *Cf.* 8 U.S.C. § 1225(b)(2)(A); 1229(a); 1229a.

8 U.S.C. § 1229 is titled "initiation of proceedings" for a reason. It governs that process. This matter is a challenge to the termination of Petitioner's parole and

Respondents' decision to detain, not commence, initiate, or execute the removal process. Termination of parole also is not within the realm of a § 1229a proceeding. Petitioner is not challenging any action taken under 8 U.S.C. § 1229.

The Supreme Court has previously characterized § 1252(g) as a narrow provision, determining that it applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings." *Id.* (emphasis added).

Moreover, even if this suit did somehow relate to the discreet events outlined at 8 U.S.C. § 1252(g), the Eighth Circuit has explicitly observed that "an exception to § 1252(g) for a habeas claim raising a pure question of law." *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (citing *Jama v. I.N.S.*, 329 F.3d 630, 633 (8th Cir. 2003), *aff'd sub nom. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335 (2005)). This is a pure question of law in the habeas context. 8 U.S.C. § 1252(g) does not apply because resolving the legal authority of parole termination and detention is the question before the Court.

Finally, § 1252, titled "Judicial Review of Orders of Removal," contains a provision detailing "[m]atters not subject to judicial review." *See* 8 U.S.C. § 1252(a)(2). This provision contains four subsections outlining categories of claims that are not subject to judicial review. *See* 8 U.S.C. § 1252(a)(2)(A)-(D). None of these subsections precluding judicial review apply to this matter. Thus, no part of § 1252 deprives the Court of jurisdiction.

Petitioner's claim does not arise under 8 U.S.C. § 1252(a)(2)(A) because Petitioner does not challenge the implementation of 8 U.S.C. § 1225(b)(1). Petitioner's case thus is distinguishable from *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). *Thuraissigiam* dealt with an as-applied challenge to an expedited removal order and negative credible fear determination not with a request for release. *See id.* Here, "Petitioner does not seek 'the opportunity to remain lawfully in the United States,' but merely seeks release from custody—the traditional purpose of the habeas writ." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1142 (D. Or. 2025).

Petitioner's claim does not arise under 8 U.S.C. § 1252(a)(2)(B) or 5 U.S.C. § 701(a)(2) because Petitioner does not challenge a denial of discretionary relief. While the grant of parole in the first place is discretionary, it "has a mandatory requirement—parole may be terminated or revoked *only* when in the Secretary's opinion the parole's purposes have been met." *Y-Z-L-H*, 792 F. Supp. 3d at 1138

(emphasis added). There are mandatory procedures for terminating parole, and Respondents have failed to comply with the requirements imposed by statute and regulation. *Id.* Respondents' termination of Petitioner's parole was therefore not lawfully authorized. *Id.* at 1139. The extent of statutory authority is not a matter of discretion and can be challenged. *Id.* at 1140 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). The Court retains jurisdiction to review Petitioner's claim.[1]

## II. A Temporary Restraining Order Is Appropriate.

"[T]he standard for analyzing a motion for a temporary restraining order is the same as a motion for a preliminary injunction." *Tumey v. Mycroft AI, Inc.*, 27 F.4th 657, 665 (8th Cir. 2022). The relevant factors are: 1) the likelihood of irreparable harm; 2) the likelihood of success on the merits; 3) relevant hardships, and 4) public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 112 (8th Cir. 1981). The Eighth Circuit has held that the first two factors are particularly important as they comprise what is known as the "traditional test" employed to evaluate the necessity of a Temporary Restraining Order ("TRO"). *Id.* at 12. Petitioner maintains that the weighing of these factors militates towards the Court granting this motion.

### 1) Likelihood of Irreparable Harm

[1] Petitioner adopts the reasoning set forth in *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1142-43 (D. Or. 2025), that even if the Court did not have jurisdiction pursuant to the above statutes, the Suspension Clause would provide jurisdiction for review.

At the outset, "the equitable balancing test a court must conduct using the *Dataphase* factors requires an initial determination that threatened irreparable harm exists." *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 420 (8th Cir. 1987). It most certainly does in this case.

As Minnesota federal district courts have recognized "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018); *see also Farella v. Anglin*, 734 F. Supp. 3d 863, 885 (W.D. Ark. 2024). Indeed, "[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). Respondents are keeping Petitioner detained since October 7, 2025.

Petitioner has remained "detained at the [Freeborn] County Jail, which is 'not meaningfully different from a penal institution for criminal detention.'" *Ararso U.M. v. Barr*, No. 19-CV-3046 (PAM/DTS), 2020 WL 1452480, at *4 (D. Minn. Mar. 10, 2020), *report and recommendation adopted,* No. 19CV3046 (PAM/DTS), 2020 WL 1445810 (D. Minn. Mar. 25, 2020) (citing *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 860 (D. Minn. 2019)). This is despite a total absence of criminal history or adverse contact with law enforcement. Respondents' action has deprived Petitioner of his liberty. These violations compound each day he remains in custody. He has suffered and will continue to suffer actual prejudice. *See Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (prejudice exists where an alternate result may well

have occurred absent the violation). Immediate relief is warranted to halt ongoing harm and restore his rights. Petitioner's continued unjustified detention constitutes irreparable and immediate harm and justifies the issuance of a TRO while his habeas proceedings are pending.

Petitioner will be further harmed if Respondents are not enjoined from transferring him to a detention facility in another state. Petitioner is aware of other detained aliens similarly fighting both removal and detention who have been transferred around the country, causing loss of access to their counsel and support networks, and significantly delaying any proceedings and due process they are owed. *See Khalil v. Joyce*, 777 F. Supp. 3d 369 (D.N.J.), *motion to certify appeal granted,* 777 F. Supp. 3d 411 (D.N.J. 2025); *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025).

In-person meetings between immigrants and their attorneys are necessary for all aspects of representation in immigration proceedings including: (1) conducting an assessment of clients' legal claims and eligibility for relief; (2) interviewing clients to obtain a lengthy personal declaration that often details traumatic facts about physical, sexual, and other violence; (3) counseling clients as to their legal options and developments in their case; (4) obtaining signatures on applications and release forms when seeking client records from outside agencies; and (5) preparing clients to testify in court, including to face cross-examination by an experienced ICE attorney. A transfer further impedes these vital attorney-client exchanges by limiting

the means by which Petitioner and his attorneys can communicate confidentially. Moving Petitioner out of this District, therefore, inhibits these crucial attorney-client communications. Given the time sensitive nature of continued unlawful detention, this too is irreparable harm.

The entirety of the circumstances establishes the required irreparable ordering the irreparable harm if Petitioner is not released. Petitioner has and will continue to suffer irreparable harm if he remains detained. Thus, this Court should issue a TRO to prevent irreparable harm to Petitioner arising from deprivations of due process in violation of Petitioner's Fifth Amendment rights and violation of the Act.

Plaintiff avers that he has demonstrated the requisite irreparable harm.

**2) Likelihood of Success on the Merits**

"While no single factor is determinative, the probability of success factor is the most significant" in determining whether to grant a TRO or preliminary injunction. *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013). Analyzing the likelihood of a party's success on the merits is not an inquiry aimed at pinning down the mathematical probability that a plaintiff will prevail on the merits. Rather, the court seeks to ascertain whether the "balance of equities so favors the movant that justice requires the Court to intervene to preserve the status quo until the merits are determined." *Dataphase Systems, Inc.*, 640 F.2d at 113.

Courts have already issued rulings favorable to Petitioner. *See, e.g.*, *Salazar v. Casey*, No. 25-CV-2784 JLS (VET), 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Francois v. Wamsely*, No. C25-2122-RSM-GJL, 2025 WL 3063251 (W.D. Wash. Nov. 3, 2025); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025); *Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); *Navarro Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629 (S.D. Cal. Sept. 26, 2025); *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826 (S.D.N.Y. Sept. 12, 2025); *Mendez Los Santos v. LaRose et al.*, No. 25-cv-2216 TWR (MSB), ECF No. 14 (S.D. Cal. Sept. 4, 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025); *Y-Z-L-H*, 792 F. Supp. 3d 1123. *See also Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1157–59 (D. Minn. 2025) (granting a writ of habeas corpus on due process grounds due to a lack of individualized legal justification for changing the petitioner's status). The quantum of recent decisions itself demonstrates the likelihood of success.

Multiple court have recognized that Respondents have indisputably violated the plain language of the law in virtually identical circumstances. The Court is likely to find that Petitioner's parole was not terminated in accordance with the law and Petitioner is detained in violation of due process, the Immigration and Nationality Act, the regulations, and the Administrative Procedure Act. Respondents already

determined that Petitioner is neither a flight risk nor a danger to the community when they paroled him into the United States. There has been no change in his circumstances since then. However, he remains detained. All the *Mathews v. Eldridge* due process factors weigh in his favor.

**a. Respondents' termination of Petitioner's parole violates statute and regulation.**

Respondents' termination of Petitioner's parole violates statute and regulation. If the Department exercises the option of paroling the noncitizen into the United States under 8 U.S.C. § 1182(d)(5), the Department has limited authority to terminate parole granted under § 1182(d)(5). The plain language of 8 U.S.C. § 1182(d)(5) establishes that Respondents may grant or terminate parole under this section *only upon* conducting an individual, case-by-case basis review. *Jean v. Nelson*, 472 U.S. 846, 857 (1985). 8 U.S.C. § 1182(d)(5)(A) directs that parole may be granted "only on a case-by-case basis" and may be terminated "when the purposes of such parole shall . . . have been served." 8 U.S.C. § 1182(d)(5)(A). "Common sense suggests . . . that parole given only on a case-by-case basis is to be terminated only on such a basis." *Doe v. Noem*, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025). It is indisputable that no individualized review took place here.

In terminating Petitioner's parole, Respondents failed to follow their own regulations. It is well established that "an agency's failure to follow its own binding

regulations is a reversible abuse of discretion." *Carter v. Sullivan*, 909 F.2d 1201, 1202 (8th Cir. 1990). Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

A review of the applicable regulations makes Respondents' failure here eminently clear. Respondents' regulation, 8 C.F.R. § 212.5(e)(2)(i), controls the termination of parole granted under 8 U.S.C. § 1182(d)(5). The regulation requires written notice to the noncitizen of the termination of parole. 8 C.F.R. § 212.5(e)(2)(i). The regulation states that termination prior to the expiration of time for which the parole was authorized is only possible "upon accomplishment of the purpose for which parole was authorized or when . . . neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." *Id.* Respondents have issued guidance on what it means for the presence of an asylum seeker like Petitioner to not be in the "public benefit." As explained by U.S. District Judge James E. Boasberg,

> In 2009, DHS issued the "Parole Directive," which further fleshes out when, precisely, it is in the "public benefit" for an asylum-seeker to be paroled. *See* ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009). According to the Directive, if an asylum-seeker establishes her identity and that she presents neither a flight risk nor a danger to the public, her detention "is <u>not</u> in the public interest," and thus ICE "<u>should</u>, absent additional factors ... parole the alien." *Id.*, ¶ 6.2 (emphases added).

*Mons v. McAleenan*, 2019 WL 4225322, at *2 (D.D.C. Sept. 5, 2019).

Here, Respondents made no individualized, case-by-case assessment in terminating Petitioner's parole as required by 8 C.F.R. § 212.5(e)(2)(i). Respondents sent Petitioner a mass boilerplate email stating that Petitioner's parole would be terminated in seven days and providing no further rationale or explanation. The email simply states that "DHS is now exercising its discretion to terminate your parole," *see* Exh. D, but fails to articulate any assessment, as required by the statue and regulation, regarding the accomplishment of the purpose for Borbor Mera's parole or why neither humanitarian reasons nor public benefit warrants Borbor Mera's continued presence in the United States. Quite the opposite, the purpose of the parole is ongoing because Petitioner is still seeking asylum, and Respondents' own guidance confirms that Petitioner's detention is not in the public interest because Petitioner has established his identity, has presented that he is neither a flight risk nor a danger to the public, and is still actively seeking asylum. *See Mons*, 2019 WL 4225322, at *2 (citing ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009)). This mass boilerplate email did not even contain Petitioner's name anywhere on it. A generic notification of this kind is insufficient to fulfill the written notice requirement. Moreover, "written notice is a *necessary* but not a *sufficient* condition for compliance with this regulation." *Y-Z-L-H*, 792 F. Supp. 3d at 1145 (emphasis in

original). Individualized assessment is required. This mass boilerplate email purporting to terminate parole is a violation of 8 C.F.R. § 212.5(e)(2)(i) and of the *Accardi* doctrine. This ends the inquiry. Respondents' termination is inconsistent with the applicable regulation, and Respondents are not abiding the regulation through their current action.

**b. Respondents' termination of Petitioner's parole is arbitrary and capricious.**

Under the Administrative Procedures Act ("APA"), Respondents must act in a manner that is not arbitrary or capricious. *See* 5 U.S.C. § 706(2)(A). An agency must articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752 (2019). Under the APA, immigration parolees are entitled to determinations related to their parole revocations that are not arbitrary, capricious or an abuse of discretion. *Y-Z-L-H*, 792 F. Supp. 3d at 1143–47.

Respondents' mass boilerplate email terminating parole failed to articulate the facts that formed a basis for their decision to terminate Petitioner's parole status. The email is completely void of any rational connection between the facts found and the decision made. The agency here has failed to articulate a "satisfactory explanation" for its action and thus acted in violation of the APA. Indeed, "upon Petitioner's entry into the United States, Respondents determined that Petitioner

was suitable for parole. Respondents have not provided a reasoned explanation or any changed circumstances that would justify their current departure from their prior decision." *Y-Z-L-H*, 792 F. Supp. 3d at 1146. Respondents have inexplicably changed their position without adequate explanation. Nothing has changed since Respondents decided to parole Petitioner in the first place. Petitioner was in the process of seeking asylum and attending his court proceedings. Respondents' termination of Petitioner's parole is arbitrary and capricious and must be set aside.

**c. Respondents' detention of Petitioner is arbitrary and capricious and an abuse of discretion.**

Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A). To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752 (2019) (citation omitted). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Respondents' detention of Petitioner is arbitrary and capricious and an abuse of discretion. When Respondents paroled Petitioner into the United States, they considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. By detaining Petitioner categorically, Respondents have abused their discretion because there have been no changes to his facts or circumstances since the agency made its initial determination to parole him into the United States that support detention. Petitioner has no criminal history anywhere in the world and was arrested while appearing at his immigration court hearing. Respondents have provided no satisfactory explanation for their decision to detain Borbor Mera. There is no rational connection between the facts and the choice made to detain Borbor Mera because nothing has happened since Borbor Mera's release on parole that would support a change in Respondents' initial determination that Borbor Mera poses neither a danger nor a flight risk. The decision to detain stems from the unlawful termination of Borbor Mera's parole. Respondents therefore abused their discretion in detaining Petitioner, and their action is arbitrary and capricious.

**d. Respondents are violating Petitioner's due process rights.**

Respondent is also likely to succeed on his due process claims. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts weigh three factors in determining whether due process requires additional procedural protections: (1) the

private interest affected by the government's action; (2) the risk of erroneous deprivation under the procedures used, and the probable value of additional safeguards; and (3) the government's interest and any burdens additional safeguards would impose.

*a. Private Interest*

Here, the first *Mathews* factor, private interest, weighs in Petitioner's favor. Petitioner has a fundamental liberty interest in remaining free from physical restraint—an interest long recognized as deserving the highest constitutional protection. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925); *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982); *see also Günaydın v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025) ("[B]eing free from physical detention is 'the most elemental of liberty interests.'" (citation omitted)). Additionally, "[w]hen assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration." *Id.* (first citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021); and then citing *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020)). Petitioner is detained at the Freeborn County Jail, a jail that houses pre-trial criminal arrestees and incarcerated prisoners serving sentences in addition to immigration detainees. He is "experiencing all the deprivations of incarceration." *Id.*

As a parolee, Borbor Mera has a protected liberty interest in remaining out of custody pursuant to his parole. *See, e.g.*, *Pinchi*, 792 F. Supp. 3d at 1034 ("[Petitioner's] release from ICE custody after her initial apprehension reflected a determination by the government that she was neither a flight risk nor a danger to the community, and [Petitioner] has a strong interest in remaining at liberty unless she no longer meets those criteria."). Even though ICE had initial discretion to detain or release Borbor Mera pending his removal proceedings, once it released him from custody pursuant to parole, this created a protected liberty interest in remaining out of custody. *Id.* at 3. *Thuraissigiam* is distinguishable. *Department of Homeland Security*, 591 U.S. at 107, held that a petitioner stopped at the border does not have due process rights *regarding admission into* the United States; it does not foreclose Petitioner's arguments "regarding parole revocation and release." *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *15 (W.D.N.Y. July 16, 2025) (citing *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023)). Petitioner does not challenge his admissibility determination. He challenges his parole termination and re-detention without a hearing.

Petitioner has a strong liberty interest in remaining out of custody and free from physical restraint pursuant to his parole. The first *Mathews* factor therefore weighs in Petitioner's favor.

*b. Risk of Erroneous Deprivation*

The second *Mathews* factor, risk of erroneous deprivation, also weighs in Petitioner's favor. Borbor Mera's parole was terminated without providing him with a reason for revocation or giving him an opportunity to be heard. *See, e.g.*, *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025) (finding revocation of petitioner's parole arbitrary and capricious because respondents did not state any reasons for the revocation); *Noori*, 2025 WL 2800149, at *3 ("Petitioner's parole was revoked without an individualized determination or provided reasoning, which violated the APA."). Respondents detained Petitioner, without providing a pre-detention hearing or opportunity to be heard, based on this unlawful parole termination.

"Civil immigration detention is permissible only to prevent flight or protect against danger to the community . . . but the government has offered no evidence . . . that [Borbor Mera's] detention would serve either purpose." *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690). Borbor Mera has no criminal history, timely filed his asylum application, and appeared for his court hearing. "Since DHS's initial determination that Petitioner should be paroled because []he posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Salazar v. Casey*, No. 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025). There is no lawful basis for Borbor Mera's

detention because the termination of his parole was unlawful and he has continued to demonstrate since his initial release on parole that he poses neither a flight risk nor a danger to the community. Providing Borbor Mera with a pre-detention hearing would have significant value in helping to ensure that any future detention has a lawful basis. *Pinchi*, 792 F. Supp. 3d at 1035.

A history of Respondents' conduct in this matter illustrates the high risk of erroneous deprivation of a private interest. When Respondents detained Petitioner, they placed him in expedited removal proceedings in violation of a stay from the U.S. District Court for the District of Columbia halting policies permitting DHS to put individuals who entered on parole at a port of entry into expedited removal proceedings. *CHIRLA v. Noem*, No. 25-5289, 2025 WL 2649100 (D.C. Cir. Sept 12, 2025); Exh. F. When Borbor Mera challenged Respondents' violation of the federal court's order and requested that they halt his expedited removal proceedings and release him from custody, Respondents attempted to mask their previous violations by issuing a *new* Notice to Appear. Respondents already violated a federal court order by detaining Borbor Mera and placing him in expedited removal proceedings before backtracking when confronted with their violations. Yet, despite these errors, Borbor Mera remains in ICE custody.

There is a high risk that Respondents' current procedures cause an erroneous deprivation of a private interest. The second *Mathews* factor therefore weighs in Petitioner's favor.

*c. Respondents' Interest and Burdens of Safeguards*

The third *Mathews* factor offers no counterweight to these private interests. There is no specific, legitimate interest justifying Petitioner's continued detention. "[T]he Government's interest in detaining Petitioner without notice, reasoning, and a hearing is 'low.'" *Salazar*, 2025 WL 3063629, at *5 (first citing *Pinchi*, 792 F. Supp. 3d at 1035–36; then citing *Alvarenga Matute*, 2025 WL 2817795, at *6; and then citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)). While "ensuring that persons subject to possible removal do not commit crimes or evade law enforcement during the pendency of their removal proceedings presents a significant governmental interest[,]" *Günaydın*, 784 F.Supp.3d at 1189, here, Respondents already determined that Petitioner is neither a danger nor a flight risk when they paroled him into the United States. There has been no change in his circumstances since then. He has no criminal history and was participating in his immigration proceedings.

Courts have granted TROs and ordered immediate release to similarly situated noncitizens, finding the boilerplate parole termination email and subsequent detention violates due process and the APA. *See, e.g.*, *Francois v. Wamsely*, No.

C25-2122-RSM-GJL, 2025 WL 3063251 (W.D. Wash. Nov. 3, 2025) (granting TRO and ordering immediate release); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (same); *Pinchi*, 792 F. Supp. 3d 1025, 792 F.Supp.3d (same and converting TRO to PI). These courts recognized that the private liberty interests and absence of individualized findings compel relief.

Civil immigration detention must remain "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. Detention divorced from any individualized necessity instead serves only punitive or deterrent purposes, which the Constitution forbids. Detention based solely on a mass boilerplate parole termination email with no individualized assessment is punishment in all but name. By terminating Petitioner's parole with no individualized reasoning and detaining him without any showing of changed circumstances regarding danger or flight risk, Respondents have converted what should be a narrowly tailored regulatory measure into an instrument of punishment which imposes those in immigration civil proceedings to incarceration in a detention facility under conditions indistinguishable from those of criminally convicted inmates. This is precisely the sort of punitive civil detention the Constitution forbids.

The third *Mathews* factor thus also weighs in Petitioner's favor, demonstrating he is likely to succeed on the merits of his habeas corpus petition,

and a TRO should be granted releasing him during the pendency of these proceedings.

In light of Respondents' clear constitutional, statutory, and regulatory violations, Petitioner has shown that he is likely to succeed on the merits of his habeas petition, and a TRO is appropriate.

**3) Relevant Hardships and Public Interest**

"The balance of the equities and the public interest … factors merge [when] the federal government is the party opposing the injunction." *Missouri v. Trump*, 128 F.4th 979, 996–97 (8th Cir. 2025). These factors require the Court to consider "whether the movant's likely harm without a preliminary injunction exceeds the nonmovant's likely harm with a preliminary injunction in place." *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1347 (8th Cir. 2024).

Courts have recognized that the public interest includes upholding constitutional safeguards, ensuring due process, and preventing unnecessary deprivation of liberty. *See, e.g.*, *Mohammed H.*, 786 F.Supp.3d at 1158 (rejecting public-interest argument where detention rested solely on automatic stay without evidence); *Gunaydin*, 784 F. Supp. 3d at 1189–90 (same). The public interest is not served by needlessly incarcerating a young man with no criminal history who was paroled into the United States and was participating in his immigration proceedings.

Granting Petitioner's TRO is fully consistent with the government's ability to

enforce its immigration laws. If the TRO is granted, DHS retains all tools to continue his removal case, to monitor his compliance with his parole, and to seek re-detention if circumstances change. As is here, the government can enforce the law, and the Court can ensure that enforcement proceeds within constitutional bounds by ordering his release pursuant to his valid parole.

The harms to Petitioner have been articulated, *supra* § 1, and they are severe. In contrast, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). The Eighth Circuit has also noted that the federal interest in an action is "minimal" where the plaintiff has illustrated a "strong likelihood of success in showing it exceeds agency authority." *Id.* As that is precisely the case here, all factors favor the issuance of a TRO.

## CONCLUSION

The evidence compels the conclusion that Petitioner, who has demonstrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a TRO. As such, a TRO must be granted, enjoining Respondents from moving Petitioner outside of Minnesota, ordering Respondents to release Petitioner from custody forthwith, and enjoining Respondents from re-detaining Petitioner during the pendency of this Court's consideration of this Petition for a Writ of Habeas Corpus.

Respectfully submitted,

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