

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-04298-KMM-EMB

Bernardo Gabriel Borbor Mera,

Petitioner,

v.

**COMBINED RESPONSE IN
OPPOSITION TO MOTION FOR
TRO AND HABEAS PETITION**

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, Executive Office
for Immigration Review, David
Easterwood, Acting Director, St. Paul
Field Office Immigration and Customs
Enforcement, Ryan Shea, Sheriff of
Freeborn County.

Respondents.

INTRODUCTION

Pursuant to the Court's Orders, *see* ECF Nos. 5, 10, Federal Respondents¹ respectfully submit this consolidated response to the Verified Petition for Writ of Habeas

¹ Federal Respondents are Kristi Noem, Secretary of the United States Department of Homeland Security ("DHS"); Pamela Bondi, U.S. Attorney General; Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement, David Easterwood, Acting Director of Enforcement and Removal Operations, Saint Paul Field Office, the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and Executive Office of Immigration Review ("EOIR"). This response is filed on behalf of Federal Respondents, but is not on behalf of non-federal respondent Shea.

Corpus, *see* ECF No. 1 (“Petition”), Emergency Motion for Temporary Restraining Order, *see* ECF No. 6 (“TRO Motion”), and associated memorandum. *See* ECF. No. 8 (“Memo”). Though framed as a challenge to Petitioner’s detention, that challenge is premised on a predicate challenge to the discretionary termination of Petitioner’s parole. The Petition should be dismissed Congress has deprived federal district courts of jurisdiction to review that discretionary decision, much less here in a habeas action the scope of which is limited to challenges to the fact or duration of confinement.

On the merits, the Petition and TRO Motion should also be denied. In accordance with the relevant statute, upon DHS’s discretionary termination of Petitioner’s parole, his status reverted to that of an applicant for admission subject to inspection under 8 U.S.C. § 1225. *See* 8 U.S.C. § 1182(d)(5)(A) (“the alien shall . . . 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.”). Detention under 8 U.S.C. § 1225(a) is mandatory, as Petitioner is an applicant who is “present in the United States who has not been admitted,” 8 U.S.C. § 1225(a)(1), and “shall be detained for [his] removal proceeding.” § 1225(b)(2)(A). As Petitioner is currently validly detained under § 1225(b)(2)(A) for (non-expedited) removal proceedings, the Petition and TRO Motion should be denied.

BACKGROUND

Respondents draw the following background from the Petition, the Declaration of Deportation Officer James L. Van Der Vaart (“VDV Decl.”) and their accompanying exhibits.²

I. Factual Background

Petitioner is a citizen of Ecuador, *see* Petition ¶ 19, who was first encountered by United States Border Patrol (“CBP”) at the Brownsville, Texas Port of Entry on January 1, 2025. VDV Dec. ¶ 4. Petitioner alleges that he made an appointment for inspection through the CPB one application. Petition ¶ 40. That day, CBP issued Petitioner an alien registration number and served him with a Warrant of Arrest and Notice to Appear, charging him as an immigrant not in possession of a valid unexpired visa, reentry permit, border crossing card, or other valid entry document under INA Section 212(a)(7)(A)(i)(I). VDV Decl. ¶ 4, *see* Dkt. No. 2-1 at 4. The same day, exercising the discretion of the Secretary³ of Homeland Security under INA Section 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), DHS also paroled Petitioner into the United States with a future court date. *See* VDV Decl. ¶ 4, Petition § 41. This discretionary parole did not constitute admission into the United States. 8 U.S.C. § 1182(d)(5)(A). Nothing in the record evidences individualized findings with respect to such issues as flight risk, dangerousness to the community, or any particular humanitarian need or basis for the parole.

² Exhibits to the VDV Declaration are hereafter referred to as “VDV Decl. Ex. ___.”

³ That discretion has been delegated to the Secretary’s designees under 8 C.F.R. § 212.5(a).

On January 20, 2025, President Trump issued an executive order directing Executive Branch officials to take “all appropriate action, consistent with law, to rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States,” including by “ensuring that the parole authority under [Section 1182(d)(5)] is exercised on only a case-by-case basis.” Exec. Order No. 14,159, § 16(a), 90 Fed. Reg. 8443, 8446 (Jan. 29, 2025). That same day, the Acting Secretary of Homeland Security ordered a review of all parole policies.

On April 11, 2025, DHS exercised discretion to terminate Petitioner’s parole, providing him with written electronic notice that his parole was terminated seven days from the notice date, on April 18, 2025. *See* Dkt. No. 2-4 (“Pursuant to 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e), DHS is now exercising its discretion to terminate your parole.”). Petitioner admits that he “was a recipient of . . . [that] email.” Petition ¶ 43. The Notice advised Petitioner to voluntarily depart the United States. *See* Dkt. No. 2-4.

Petitioner did not voluntarily depart, instead he remained in the United States after his parole was terminated, and on June 25, 2025, over two months later, filed an asylum application with the Immigration Court. *See* Petition ¶ 46.

On October 7, 2025, ICE officers arrested Petitioner as he was leaving Immigration Court in Fort Snelling and served him with an Expedited Removal Order. *See* VDV Decl. ¶ 8. At the time, he expressed fear of return to his country of origin. *Id.* Petitioner was taken into ICE custody at that time. *See* Petition ¶ 49.

On October 10, 2025, ICE offers served a new Notice to Appear on Petitioner and filed the Notice of Appear with the Executive Office of Immigration Review, reinitiating removal proceedings. *See id.* ¶ 9; Dkt. No. 2-8 at 4.

On October 20, 2025, ICE served an I-261 on Petitioner listing additional grounds of inadmissibility under INA § 212(a)(6)(A)(i), however soon thereafter on November 14, 2025, it issued a new Form I-261 in lieu of the October 20th one, clarifying that the charges against Petitioner fall under INA 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is 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 under the regulations issued by the Attorney General under section 211(a) of the Act. *See* VDV Decl. ¶ 11, VDV Decl. Ex. A (November 14, 2025 I-261). These are the same charges as those in the original Notice to Appeal that had been issued when Petitioner was first encountered on January 1, 2025. *See* Dkt. No. 2-1.

Presently, Petitioner remains in ICE custody for removal proceedings at EOIR. VDV Decl. ¶ 5. Petitioner is currently detained under § 1225(b)(2), under which detention is mandatory. *See* 8 U.S.C. § 1225(b)(2)(A). His next hearing in those proceedings is scheduled for January 9, 2025. VDV Decl. ¶ 12.

On November 11, 2025, Petitioner filed the Petition in this case, and on November 13, 2025, he filed a TRO Motion and supporting memorandum. *See* Dkt. Nos. 1, 6, and 8.

Petitioner brings a host of different counts⁴ against various agencies and government officials, *see generally* Petition, but in substance he argues that he is currently detained “in violation of law” Petition ¶ 1, because, in his view, his “parole was not terminated in accordance with the law” and therefore parole “remains valid” *Id.* ¶ 2. He seeks as remedies immediate release from detention, declaratory relief, and orders restraining Respondents from attempting to move him outside of Minnesota, requiring them to provide notice of intended movement, notice requirement, and other relief. Petition at 38-40 (listing relief requested).

II. Statutory Background

A. Discretionary Parole Procedures

Congress has provided that the Secretary of Homeland Security may, in her discretion, grant and revoke parole to nearly any noncitizen⁵ applying for admission. Specifically, with exceptions not relevant here, the Secretary may:

in h[er] discretion parole into the United States temporarily under such conditions as [s]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.

⁴ *See, e.g.*, Petition ¶¶ 118-127 (Substantive Due Process); *id.* ¶¶ 128-143 (Procedural Due Process); *id.* ¶¶ 144-152 (INA); *id.* ¶¶ 153-191 (Administrative Procedure Act).

⁵ The statutory term “alien” means any person not a citizen or national of the United States. 8 USC § 1101(a)(3). Federal Respondents use the term “noncitizen” as the equivalent of the statutory term “alien.” *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

8 U.S.C. 1182(d)(5)(A); *see* 8 C.F.R. 212.5.

Thus, as a general matter, a noncitizen who arrives in the United States and cannot demonstrate admissibility generally is either promptly removed or detained pending removal proceedings (or proceedings regarding asylum or withholding of removal). *See* 8 U.S.C. 1225(b)(1)(A), (B), and (2)(A). The INA provides, however, that in limited circumstances the Secretary may parole such a noncitizen, releasing him from detention and allowing him to temporarily enter the United States. *See* 8 U.S.C. 1182(d)(5)(A). Such parole authority is purely discretionary: the Secretary “may, . . . *in h[er] discretion* parole” an “alien applying for admission,” and may terminate that parole “when the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served.” *Ibid.* (emphases added).

Applicable regulations confirm that “The Secretary or h[er] designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act” to grant parole. 8 C.F.R. § 212.5(a). Parole may be automatically terminated in certain circumstances, such as upon departure or “if not departed, at the expiration at the time for which parole was authorized” *Id.* at § 212.5(e)(1). In cases where termination of parole is not automatic, parole may also be terminated upon written notice to the non-citizen. *Id.* at § 212.5(e)(2)(i). This termination occurs “upon accomplishment of the purpose for which parole was authorized *or when in the opinion of one of the officials* listed in [8 C.F.R. § 212.5(a)] of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, . . . upon written notice to the alien” *Id.* (emphasis added) (also noting the noncitizen “shall be restored to the

status that he or she had at the time of parole.”). Moreover, even if a removal order cannot be executed within a reasonable time, the Secretary and her officials may still exercise discretion to continue custody if, in their opinion, public interest requires it. *Id.*

B. Inspection and Detention under 8 U.S.C. § 1225

Under the plain text of Section 1182(d)(5)(A), parole “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.” 8 U.S.C. 8 U.S.C. 1182(d)(5)(A). Thus, Section 1225, which governs inspection, the initial step in deciding who can enter the country and who can stay after entering, applies after parole is terminates. That statute states that all noncitizens “who are applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). Congress specifically chose to deem *any* noncitizen “present in the United States who has not been admitted *or* who arrives in the United States” as an “applicant for admission” for purposes of 8 U.S.C. ch. 12. *Id.* § 1225(a)(1) (emphasis added). Petitioner satisfies that definition and is therefore an “applicant for admission.”

Section 1225 sets out the inspection procedures applicable to applicants for admission. They “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Subsection (b)(1) applies to those “arriving in the United States” and “certain other” noncitizens “initially determined to be inadmissible because of fraud, misrepresentation,

or lack of valid documentation.” Noncitizens falling under this first provision are generally subject to expedited removal proceedings “without further hearing or review.” *See* 8 U.S.C. § 1225(b)(1)(A)(i). But where the applicant “indicates an intention to apply for asylum . . . or a fear of persecution,” then immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If he or she does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Subsection (b)(2) is broader, serving as a catchall provision for applicants who are not covered by § 1225(b)(1). Petitioner falls into this second category: he is an applicant for admission and is not presently in expedited proceedings. Subject to exceptions not applicable here, “if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding.” *Id.* § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“[F]or [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’” (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole “any alien applying for admission” on a “case-by-case basis for urgent humanitarian reasons or

significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

ARGUMENT

Here, the Petition and TRO Motion should be denied for several reasons. First, though the instant petition is necessarily framed as a challenge to Petitioner’s present detention, here that challenge would require a predicate determination that DHS’s discretionary termination of Petitioner’s parole is invalid. *See* Petition ¶ 2 (“parole was not terminated in accordance with the law [a]s such, Petitioner’s parole remains valid, and he is unlawfully detained.”). But Congress has removed jurisdiction review discretionary decisions such as the decision to revoke parole. Moreover, even had it not done so, in this Circuit, the scope of a habeas action is limited to challenges to the fact or duration of confinement, which parole revocation decisions do not fall under, notwithstanding Petitioner’s attempts to shoehorn APA claims into this habeas case.

Second, even on the merits, the Petition and TRO Motion should be denied. As the First Circuit recently found, contrary to Petitioner’s assertions, *see* Petition ¶ 158, the statute permits discretionary termination of parole without an individualized case-by-case assessment. *See Doe v. Noem*, 152 F.4th 272, 286 (1st Cir. 2025) (“the statutory text thus reflects a deliberate choice on the part of Congress to require the Secretary to implement a case-by-case approach to granting parole, but not to end such grants.”). Upon termination of parole, Petitioner’s status reverted, *see* 8 U.S.C. § 1182(d)(5)(A), and his detention under

8 U.S.C. § 1225(a) is currently mandatory during his ongoing removal proceedings. *See* § 1225(b)(2)(A). Thus, the Petition and TRO Motion should be denied.

I. Jurisdiction

As a threshold matter, Section 1252(a)(2)(B)(ii) precludes judicial review of the decision to terminate Petitioner’s parole. The INA clearly bars judicial review of such discretionary decisions:

“Notwithstanding any other provision of law * * * no court shall have jurisdiction to review * * * any other decision or action * * * the authority for which is specified under this subchapter to be in the discretion of * * * the Secretary of Homeland Security.”

8 U.S.C. 1252(a)(2)(B)(ii). Specifically, it bars judicial review when “the authority for” an action falls under Secretary’s discretion, focusing on whether particular statutory provisions grant discretion over particular decisions—not the manner in which the Secretary exercises that authority to make those discretionary decisions. Here, Section 1182(d)(5)(A) plainly granted the Secretary authority to revoke parole and specifies that parole-revocation authority may be exercised based solely on her own “opinion.” 8 U.S.C. 1182(d)(5)(A). This is about as discretionary a grant of authority as the statute books contain. Even if a particular Secretary were to exercise her discretion improperly in a particular case, Congress conclusively “specified” that the “authority” to revoke parole is within the Secretary’s “discretion.” 8 U.S.C. 1252(a)(2)(B)(ii). No more is needed to trigger Section 1252(a)(2)(B)(ii)’s jurisdictional bar.

It is therefore unsurprising that many courts have found discretionary parole revocations unreviewable. *See, e.g., Samirah v. O’Connell*, 335 F.3d 545, 549 (7th Cir.

2003) (authority to “grant or revoke” parole under Section 1182(d)(5)(A) is a matter of agency discretion barred from review by Section 1252(a)(2)(B)(ii)), *cert. denied*, 541 U.S. 1085 (2004); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir.) (*per curiam*) (similar), *cert. denied*, 561 U.S. 1007 (2010). This Court, too, should find that it lacks jurisdiction to review the discretionary parole revocation decision at issue here, which in turn, is the lone basis for Petitioner’s contention that he is unlawfully detained. *See* Petition ¶ 2, *id.* ¶ 138 (“Because Respondents detained Petitioner by revoking his parole in violation of the Due Process Clause . . . his detention is unlawful.”).

II. Proper Parties & Proper Scope of Habeas Review

Petitioner named the United States Attorney General, the Secretary of the Department of Homeland Security (DHS), DHS itself, Todd Lyons, Acting Director of ICE, ICE, and the Executive Office of Immigration Review (EOIR) as respondents for his habeas petition. Pet. ¶¶ 24-29. As to DHS, ICE, and EOIR, it was a mistake for Petitioner to include them because agencies are not people. “The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is *the person* who has custody over the petitioner.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (emphasis added) (citations, alterations, and internal quotation marks omitted). In other words, habeas petitions must be brought against “‘the person’ with the ability to produce the prisoner’s body before the habeas court.” *Id.* For that reason, DHS, ICE, and EOIR are not proper parties to this case.

It was also a mistake for Petitioner to name Attorney General Bondi, Secretary Noem, and Mr. Lyons as respondents. His basis for doing so is allegations that these

individuals head, oversee, and supervise EOIR, DHS, and ICE or are involved in the implementation and enforcement of statutes. Pet. ¶¶ 24, 25, 28. However, supervisory authority does not matter; “the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld*, 542 U.S. at 435. These individuals are also not proper parties to this case.

The reason Petitioner named such obviously improper respondents is clear from the face of the petition: he is trying to shoehorn broader claims, APA challenges the manner and means through which policy decisions on parole were made, into a habeas action. Petitioner does not even try to hide it. Counts IV-VII of the petition raise APA claims directly. *See* Petition at 33-38; *see also* ECF 8 at 15-16 (asking the Court to find the agency’s actions were arbitrary and capricious). Included in Petitioner’s requested relief is an order to declare Respondents’ actions “arbitrary and capricious,” and “set aside Respondents’ policy of detaining parolees without individualized determination.” Petition at 39. This requested relief goes well beyond Petitioner’s detention; an APA lawsuit is entirely different and subject to different procedures.⁶

This is not an APA case, and Petitioner’s attempt to tie an otherwise stand-alone APA claim to his detention stretches too far. Petitioner paid only a \$5.00 filing fee, styled his initial pleading as a “petition,” and did not go through the mechanisms for serving a

⁶ Narrow habeas relief would be an adequate remedy for Petitioner’s claims in this case. Whether a person is entitled to release from unlawful custody “fall[s] within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (per curiam). And APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Id.* at 674 (Kavanaugh, J., concurring).

summons and civil complaint pursuant to Federal Rule of Civil Procedure 4. The Court ordered Respondents to show the true cause and duration of Petitioner's detention, not prepare an administrative record of a final agency action upon which the parties could present cross-motions for summary judgment. ECF 10. It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their confinement, not the conditions of that confinement or the agency policies governing it. *Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court cannot take up Petitioner's sweeping challenge to how federal agencies interpret and apply § 1225 to parolees, how they implement policy changes the parole program, or whether and to what extent deference is due to those policy decisions under the APA.

Petitioner is not the first petitioner to include civil claims into a habeas action. But this Court consistently rejects such tactics. Recently, a report and recommendation in a different habeas case decried the practice as "Frankenstein pleading" that "unduly broadens the narrow scope of habeas corpus and combines proceedings with incompatible procedural rules." *Patel v. Noem*, No. 25-cv-3167 (ECT/DJF) (D. Minn. Sept. 12, 2025); *see also Canada v. Olmsted County Cmty. of Corrs*, 2022 WL 607482, at *8 (D. Minn. Mar. 2022) (citing District of Minnesota authority). Petitioner is free to file a new civil action to pursue broader APA claims, but they are not properly before the Court in a petition for a writ of habeas corpus. Petitioner's APA claims are properly excluded from the case, and there is

no reason to keep General Bondi, Secretary Noem, Mr. Lyons, DHS, ICE, or EOIR as parties.⁷

III. The Parole Termination Was Legally Valid, Thus Detention, Too, Is Valid.

At bottom and Petition (and the TRO Motion's changes of success on the merits), rest upon Petitioner's assertion that the "plain language of 8 U.S.C. § 1182(d)(5) establishes that respondents may grant or terminate parole . . . *only upon* conducting an individual case-by-case basis review." Petition ¶ 58 (emphasis in original). Petitioner even cites *Doe v. Noem*, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) as supporting that reading based on "common sense." *See id.* ¶ 59; *see also* Petition ¶ 105 (string citing decisions outside this district purportedly finding that "mass termination of parole and detention" violates substantive and procedural due process and the APA).

However, in *Doe v. Noem*, 152 F.4th 272 (1st Cir. 2025), the First Circuit recently considered and rejected the same arguments raised by Petitioner here. The court of appeals in *Doe* reversed the district court's stay of DHS's action "insofar as it revoked, without case-by-case review, the previously granted parole and work authorization" issued to parolees under a categorical program applicable to immigrants from four countries. *Id.* at 282. The Court of Appeals "read the statute differently," concluding that the language "reflects a deliberate choice on the part of Congress to require the Secretary to implement a case-by-case approach to granting parole, but not to end such grants." *Id.* at 285-86 (The

⁷ This Court recently declined to address APA claims in a habeas petition as it would be "premature" to set aside the agency's practice and declare that it violated the APA. Order, *Belsai D.S. v. Bondi, et al.*, No. 25-cv-3682 (KMM-EMB) at 13 n.5 (D. Minn. Oct. 1, 2025) (ECF 14).

statutory text, therefore, favors an interpretation that the "case-by-case" requirement only limits the Secretary's discretion to grant parole. Concerning the Secretary's discretion to conclude that the purposes of parole had been met, and thus to terminate parole, the *Doe* court specifically observed that "it takes *no individualized determination in any way* to ascertain those persons for whom it can no longer be said that parole furthers the country's interest." *Id.* (emphasis added); *see id.* at 287 (finding both the "text and legislative history favor the Government's position").

Federal Respondents submit that, like the *Doe* Court, this Court should reject Petitioner's invitation graft an additional individualized determination requirement the Secretary's parole termination decision and effectively overturn that decision on this basis.

Contrary to Petitioner's assertions, 8 C.F.R. § 212.5(e)(2)(i), belies rather than supports his position. Petitioner notes that the regulation requires written notice, Petition ¶ 64, which is exactly what was received here. *See* Dkt. No. 2-4. He argues that there was no individualized case-by-case determination, citing § 212.5(e)(2)(i), but the provision does not require one, rather it contemplates termination "upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed . . . , neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice" Nothing in that provision requires the "rationale or explanation" Petitioner advocates for be included, Petition ¶ 66, nor provides any support for his proposition that a "generic notification . . . is insufficient" *Id.* ¶ 68.

Petitioner's reasoning that parole *revocations* must be made on a case-by-case, individualized basis contradicts the plain text of the statute and creates a perverse one-way ratchet. Secretary Mayorkas granted parole categorically in some cases, and nothing in the record reflects any individualized determination here. Yet Petitioner faults only Secretary Noem's decision to *restore* the traditional case-by-case process by undoing the prior grant of parole. The INA, however, prescribes the exact opposite: the Secretary may *grant* parole "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit," but the Secretary may *terminate* parole whenever, in her "opinion," "the purposes of such parole * * * have been served," without any similar case-by-case limitation. 8 U.S.C. 1182(d)(5)(A). In any event, agencies routinely make case-by-case determinations by applying uniform criteria to all individuals. "[E]ven if a statutory scheme requires individualized determinations, the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority." *American Hospital Association v. NLRB*, 499 U.S. 606, 612 (1991). That is what the Secretary did here.

Even if this Court were to consider Petitioner's APA claim, which the Court should not for the reasons stated above, the Secretary's parole termination is also unreviewable under the APA. The APA does not authorize judicial review when "agency action is committed to agency discretion by law" or when "statutes preclude judicial review." 5 U.S.C. 701(a)(1) and (2). As discussed above, Section 1252(a)(2)(B)(ii) is a statute that precludes judicial review. And Section 1182(d)(5)(A) commits parole termination to agency discretion by law by authorizing the Secretary to terminate an alien's parole "when

the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served.” 8 U.S.C. 1182(d)(5)(A) (emphasis added). That language provides no judicially manageable standards for a court to apply in reviewing a parole termination. *See Lincoln v. Vigil*, 508 U.S. 182, 191-194 (1993); *Webster v. Doe*, 486 U.S. 592, 600 (1988).

Nor does the INA impose any “case-by-case” requirement on parole terminations. The INA explicitly requires case-by-case determinations for *granting* parole, providing that the Secretary may, with certain exceptions, “in h[er] discretion parole into the United States temporarily under such conditions as [s]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.” 8 U.S.C. 1182(d)(5)(A) (emphasis added). But Section 1182(d)(5)(A) contains no parallel language with respect to *terminating* parole, instead providing only that “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.” *Ibid.*

Congress’s inclusion of a case-by-case limitation as to grants of parole, but not terminations, is strong evidence that parole terminations need not be so individualized. *See Doe v. Noem*, 152 F.4th at 286 (noting this reflects a “deliberate choice on the part of Congress”). “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (brackets and citation omitted). For good reason: many conceivable grounds for terminating parole may apply to more than one parolee or may be

common to an entire group of parolees. For instance, a change in geopolitical conditions might eliminate the “urgent humanitarian reasons” that justified parole for all nationals of certain countries, 8 U.S.C. 1182(d)(5)(A); or the Secretary may determine that all aliens paroled solely because of a shortage of detention capacity should be re-detained once a new detention facility becomes available, *cf. Biden v. Texas*, 597 U.S. at 815-816 (Kavanaugh, J., concurring) (discussing parole in such a circumstance).

As termination of Petitioner’s parole remains valid, his arguments as to the impropriety of his detention during removal proceedings fall away. When parole was terminated, by the plain operation of the parole statute, Petitioner’s status reverted to that of an applicant for admission subject to inspection under 8 U.S.C. § 1225. *See* 8 U.S.C. § 1182(d)(5)(A) (“the alien shall . . . 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.”); *see* 8 C.F.R. § 212.5(e)(2)(i) (noting following termination that a noncitizen’s status “shall be restored to the status that he or she had at the time of parole”).

As discussed above, detention under 8 U.S.C. § 1225(a) is mandatory, as Petitioner is an applicant who is “present in the United States who has not been admitted,” 8 U.S.C. § 1225(a)(1), and therefore “shall be detained for [his] removal proceeding.” § 1225(b)(2)(A). Petitioner’s challenges to his detention all rest on his erroneous assertion that his parole was not revoked. *See, e.g.,* ¶¶ 138 (asserting that revoking parole improperly rendered detention unlawful); *id.* ¶ 2 (similar). Thus, Petitioner remains validly detained under § 1225(b)(2)(A) during his removal proceedings. The Petition and TRO Motion

should be denied on this basis, too, and accordingly, Petitioner has not likelihood of success on the merits.

IV. The remaining *Dataphase* factors do not support a temporary restraining order.

This Court should deny Petitioner's motion and petition because he has not established sufficient irreparable harm, and the public interest and balance of the equities favor the United States' position. As a threshold matter, the Court need not even reach these factors, given Petitioner's failure to show a likelihood of success on the merits of his claim. *See Devisme v. City of Duluth*, No. 21-CV-1195 (WMW/LIB), 2022 WL 507391, at *4 (D. Minn. Feb. 18, 2022) ("Because Devisme has not demonstrated a likelihood of success on the merits, the Court need not address the remaining *Dataphase* factors."). But even if the Court were to consider the other factors, Petitioner's claim fails.

a. Irreparable Harm

Regardless of the merits his or her claims, a plaintiff must show "that irreparable injury is likely in the absence of an injunction." *Singh v. Carter*, 185 F. Supp. 3d 11, 20 (D.D.C. 2016). To be considered "irreparable," a plaintiff must show that absent granting the preliminary relief, the injury will be "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.'" *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). The significance of the alleged harm is also relevant to a court's determination of whether to grant injunctive relief. *Weinberger v.*

Romero-Barcelo, 456 U.S. 305, 313 (1982) (“[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law.”); *E.B. v. Dep’t of State*, 422 F. Supp. 3d 81, 88 (D.D.C. 2019) (“While ‘there is some appeal to the proposition that any damage, however slight, which cannot be made whole at a later time, should justify injunctive relief,’ the Court cannot ignore that ‘some concept of magnitude of injury is implicit in the [preliminary injunction] standards.’”) (quoting *Gulf Oil Corp. v. Dep’t of Energy*, 514 F. Supp. 1019, 1026 (D.D.C. 1981)).

Petitioner cites the potential negative consequences of being further from his counsel as a basis for irreparable harm. ECF 8 at 9. Petitioner is not subject to such a proposed move, and other than based on jurisdictional arguments already discussed, ICE does not contest this Court’s jurisdiction to order habeas relief, even if Petitioner is moved. To the extent Petitioner relies on the fact of detention in support of his argument regarding irreparable harm, Respondents note that it is mandatory under the statute for the duration of removal proceedings. *See* 8 U.S.C. § 1225.

b. Public Interest, Balance of the Equities

The two remaining *Dataphase* factors—the public interest and the balance of harms—also weigh against injunctive relief. “For practical purposes, these factors ‘merge’ when a plaintiff seeks injunctive relief against the government.” *Let Them Play MN v. Walz*, 517 F. Supp. 3d 870, 888 (D. Minn. 2021).

Under the balance of harms factor, “[t]he goal is to assess the harm the movant would suffer absent an injunction, as well as the harm other interested parties and the public would experience if the injunction issued.” *Katch, LLC v. Sweetser*, 143 F. Supp. 3d 854,

875 (D. Minn. 2015) (citing *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, 928 (8th Cir. 1994)). When balancing the harms, courts will also consider whether a proposed injunction would alter the status quo, finding that such proposals weigh against injunctive relief. *See, e.g., Katch, LLC*, 143 F. Supp. 3d at 875; *Amigo Gift Ass'n v. Exec. Props., Ltd.*, 588 F. Supp. 654, 660 (W.D. Mo. 1984) (“[B]ecause Amigo is not seeking the mere preservation of the status quo but rather is asking the Court to drastically alter the status quo pending a resolution of the merits, the Court finds that the balance of the equities tips decidedly in favor of Executive Properties.”).

Importantly, the Court must take into consideration the public consequences of injunctive relief against the government. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008) (cautioning that the Court “should pay particular regard for the public consequences” of injunctive relief). The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States’ enforcement of its immigration laws is high”); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in enforcing immigration laws is enormous.”).

Here, judicial intervention would only disrupt the status quo. *See, e.g., Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. Wash. Nov. 2, 2017) (“[T]he purpose of a preliminary injunction is to preserve the status quo pending a

determination on the merits.”). Respondents respectfully ask that the Court allow the established process, one mandated by statute, to continue without disruption.

The Court should deny the TRO Motion and dismiss the Petition.

CONCLUSION

For the foregoing reasons, Federal Respondents request the Court dismiss the Petition for lack of jurisdiction or deny it on the merits, as Petitioner is validly detained under detention under 8 U.S.C. § 1225(b)(2)(A). It should also dismiss the improperly named Federal Respondents to this case, and deny his motion for a temporary restraining order.⁸

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⁸ No evidentiary hearing is necessary in this matter because the record, including the submissions filed with this response provide a sufficient record upon which the Court can adjudicate the Petition.