UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEM MORENO SANCHEZ,	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL NO. 4:25-cv-5384
	§	
JOE M. SMITH, *et. al.*,	§	
	§	
Respondents.	§	
	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] hereby responds to Petitioner Sem Moreno Sanchez's habeas petition, moves for summary judgment, and requests that the Court deny the petition.

SUMMARY OF ARGUMENT

Mr. Sanchez is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Joe Corley Processing Center. Dkt. 1. Petitioner brought this habeas corpus petition against the Government seeking release from immigration detention.

In his petition, Mr. Sanchez brings an Administrative Procedure Act ("APA") claim for the revocation of his parole. However, the decision to grant, deny, or revoke parole is committed to the discretion of the Secretary of Homeland Security. Because the decision to

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

revoke Petitioner's parole is discretionary, this Court is stripped of jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to hear his challenge, and the APA does not provide a basis to overcome that jurisdictional bar.

As for the basis of Petitioner's detention, he is subject to mandatory detention under 8 U.S.C. § 1225 because, upon the revocation of his parole, he reverted to his prior status: an arriving alien who has not been admitted. For this reason and all the reasons discussed below, the petition for a writ of habeas corpus should be denied and summary judgment entered in favor of the government.

BACKGROUND

Petitioner, Mr. Sanchez, is a native and citizen of Venezuela. Dkt. 1 at p. 2. On March 5, 2024, Petitioner applied for admission into the United States from Venezuela via the San Ysidro, California, Port of Entry. Exhibit 1, Declaration of John Linscott, Assistant Field Office Director ICE/ERO ("Linscott Declaration"), ¶ 10. That same day, Petitioner was paroled into the country under 8 U.S.C. § 1182(d)(5), and he was issued a Notice to Appear (NTA). Linscott Declaration ¶10; Dkt. 1-5, NTA. On May 28, 2025, Mr. Moreno Sanchez appeared in immigration court. Linscott Declaration at ¶ 12. The government moved to dismiss proceedings. The immigration judge denied the government's motion to dismiss proceedings; took pleadings; and sustained the charge of removability. *Id.* On this same day, the government terminated Petitioner's parole under 8 U.S.C. § 1182(d)(5) and took him into custody. *Id.* at ¶ 13.

Petitioner was then transferred to the Joe Corley Detention Center in Conroe, Texas. On June 10, 2025, an immigration judge denied his bond request because Petitioner is subject

to mandatory detention. *See* Linscott Declaration at ¶ 15; Ex. 2, IJ Order. Since the denial of bond, Petitioner has had numerous hearings in immigration court regarding his removal proceedings, which remain pending. *See* Linscott Declaration at ¶¶16-22.

APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarly a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court has stated in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

THE BASIS OF PETITIONER'S DETENTION

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. As the Court is aware, there is a high volume of habeas matters across the country raising the issue of whether a detained alien is subject to mandatory detention under § 1225(b)(2) or discretionary detention under § 1226. This is not one of those cases. Because Petitioner, once his parole has ended, reverts to his status upon the granting of parole, he is deemed an "arriving alien" subject to mandatory detention under § 1225(b)(1).

As noted above, Petitioner was previously paroled into the country. An arriving alien, subject to detention under section 1225, may be "paroled into the United States" under 8 U.S.C. § 1182(d)(5)(A). This grant of parole by DHS allows the individual to enter the country. "[B]ut such parole of such alien shall not be regarded as an admission." *Id.* § 1182(d)(5(A). If the government revokes that parole, the individual must "forthwith return or be returned to the custody from which he was paroled," i.e., must return to section 1225 custody. *Id.*; *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) ("[W]hen the purpose of the parole has 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 C.F.R. § 212.5(e)(1) (upon termination of parole, the alien "shall be restored to the status that he or she had at the time of parole."). "Put another way, parole creates something of legal fiction; although a paroled alien is physically allowed to enter the country, the legal status of the alien is the same as if he or she were still being held at the border waiting for his or her application for admission to be granted or denied." *Duarte v. Mayorkas*, 27 F.4th 1044, 1058 (5th Cir. 2022). Here, when Petitioner was paroled into the country, he was an arriving alien subject to mandatory detention under § 1225. Thus, since his parole has ended, he is returned to § 1225 mandatory detention.

The government acknowledges that detainment under § 1225(b)(1) typically involves placing the alien involved in expedited removal proceedings. But, as discussed below, the government attempted to do that, but the request was denied by an immigration judge. Thus, Petitioner is not in expedited removal proceedings. To the extent that Petitioner argues that

the fact that he is not in expedited removal proceedings removes him from the ambit of § 1225(b)(1), then the government argues, in the alternative, that he is subject to mandatory detention under § 1225(b)(2)'s "catchall provision." *See Jennings v. Rodriguez*, 583 U.S. at 287 (noting that § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)"). This Court has already held that aliens present in the United States without admission, like Petitioner, are subject to § 1225(b)(2). As a result, under either § 1225(b)(1) or (b)(2), Petitioner is subject to mandatory detention. *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *1 (S.D. Tex. Nov. 13, 2025).

ARGUMENT

I. THE COURT IS STRIPPED OF JURISDICTION TO REVIEW THE TERMINATION OF PETITIONER'S PAROLE UNDER THE APA.

Plaintiff's attempt to reobtain parole documents via this lawsuit fails because the granting of humanitarian parole is solely within the discretion of the Secretary of Homeland Security. Thus, the Court lacks jurisdiction to consider Count I of the petition.

Under 8 U.S.C. § 1252(a)(2)(B), Congress precluded judicial review "regardless of whether the judgment, decision or action is made in removal proceedings," for two categories:

> (i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or
> (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security…

"This subchapter" in 8 U.S.C. § 1252(a)(2)(B)(ii) refers to U.S. Code Title 8, Chapter 12, Subchapter II, which comprises the statutes at 8 U.S.C. §§ 1151-1381. *See Kucana v. Holder*, 558

U.S. 233, 239 n.3 (2010). Section 1252(a)(2)(B)(ii)'s jurisdictional bar applies to any decision or action made discretionary by statute. *Id.* at 246-49.

This jurisdictional bar includes review of the decision to revoke parole. Under section 212(d)(5)(A) of the INA,

> [t]he Attorney General ***may***...in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien.

8 U.S.C. §1182(d)(5)(A)(emphasis added); s*ee also Delgado-Sobalvarro v. AG of the United States*, 625 F.3d 782, 785 (3d Cir. 2010). The text of the statute thus makes clear that the granting of humanitarian parole is within the sole discretion of the Attorney General. The Attorney General's parole authority pursuant to 8. U.S.C. § 1182(d)(5)(A), which was initially delegated to the former Immigration and Naturalization Service (INS), is now delegated solely to the Secretary of Homeland Security following the dissolution of INS and the creation of DHS by virtue of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

Thus, as applied here, the Court is stripped of jurisdiction to determine the decision to revoke parole. *See Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015)("[T]he granting of parole is clearly a discretionary decision under [8 U.S.C. §1182(d)(5)(A)]"); *see also Gisbert v. United States Attorney Gen.,* 988 F.2d 1437, 1443 (5th Cir. 1993)(8 U.S.C. §1182(d)(5)(A) "does not require the Attorney General to parole any alien, nor does it mandate parole on any particular finding or findings or place any substantive restriction on the authority to deny parole."); *see Kambo v. Poppell*, Civil Action No. SA-07-800-XR, 2007 U.S. Dist. LEXIS 778757, at *22 (W.D. Tex. Oct. 18, 2007); *see also Loa-Herrera v. Trominski*,

231 F.3d 984, 991 (5th Cir. 2000)(referencing 8 U.S.C. § 1226 but concluding that "the Attorney General's discretionary judgment regarding the application of parole-including the manner in which the discretionary judgment is exercised…is not subject to review")(internal citations omitted); *see also Palacios v. Dep't of Homeland Sec.*, 434 F. Supp. 3d 500, 507 (S.D. Tex. 2020)(finding no constitutional claim "because parole is subject to agency discretion").

Petitioner cannot overcome the lack of jurisdiction by invoking the APA. The APA is a default statute that does not supplant more specific statutory provisions. The APA does not apply when, as here, other "statutes preclude judicial review." 5 U.S.C. § 701(a)(1). As discussed above, the INA strips jurisdiction to review the discretionary parole decision. *See Vimal S. P. v. Garland*, No. 4:24-CV-04002, 2025 WL 2774400, at *4 (S.D. Tex. Sept. 26, 2025) (holding that court does not jurisdiction to review APA claims that are otherwise covered by § 1252). Thus, Petitioner's APA claim must be denied.

II. PETITIONER IS NOT CURRENTLY SUBJECT TO EXPEDITED REMOVAL AND HIS CLAIMS CHALLENGING EXPEDITED REMOVAL PROCEEDINGS THEREFORE FAIL.

Because Petitioner is not in expedited removal proceedings, his claims challenging the legality of expedited removal must be denied. Throughout his petition, Petitioner asserts that expedited removal proceedings violate the law. *See, e.g.*, Dkt. 1 at ¶ 45 (Count Two, Due Process) ("In expedited removal, individuals receive no meaningful opportunity to challenge key issues such as admissibility, parole, or continuous physical presence"). But Petitioner is in standard removal proceedings. The Notice to Appear issued to Petitioner placed him in standard removal proceedings. Dkt. 1-5 (placing petitioner in removal proceedings "under section 240" of the INA). Petitioner acknowledges this "Mr. Moreno remains in INA § 240,

8 U.S.C. §1229a removal proceedings." Dkt. 1 at ¶ 5. To be clear, the government sought to dismiss the removal proceedings so that Petitioner could be placed into expedited removal, but that request was denied by the Immigration Court. *See* Dkt. 1-7 (May 2025 IJ Order). Accordingly, Petitioner's claims regarding expedited removal are unfounded and must be denied.

III. PETITIONER'S REMAINING DUE PROCESS CLAIMS ALSO FAIL.

The Petition fails to identify a Due Process violation. Procedural due process protects an individual's right to be heard prior to deprivation of life, liberty or property. *See Matthews v. Eldridge*, 424 U.S. 319, 332-333 (1976). In the instant case, Petitioner's Due Process claims are based on his being in expedited removal proceedings. As explained above, that is factually inaccurate. He is in standard removal, where he is afforded numerous procedural protections in immigration court. Thus, there is no showing that his procedural due process rights have been violated. Further, the threshold question in assessing substantive due process is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience. *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998). The Petition does not suggest that any immigration officer involved in Petitioner's case acted in a manner that could be characterized as egregious or that would shock the conscience. Thus, the substantive due process claim set forth in the petition fails and should be denied.

CONCLUSION

For the foregoing reasons, the Government respectfully request that the Court deny Petitioner's request for habeas relief and grant the instant motion.

Dated: November 20, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the forgoing document has 2245 words in Garamond 13-point font, excluding the caption, tables, signature block, this certificate, and certificate of service.

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CERTIFICATE OF SERVICE

I certify that on November 20, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

s/ Jimmy A. Rodriguez
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