**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**

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| SEM MORENO SANCHEZ<br><br>Petitioner,<br><br>v.<br><br>JOE M. SMITH, in his official capacity as Warden of Joe Corley Processing Center; BRET BRADFORD, in his official capacity as Houston Field Office Director, Immigration and Customs Enforcement's Enforcement and Removal Operations; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as U.S. Attorney General.<br><br>Respondents. | Case No. 4:25-cv-05384 |

**PETITIONER'S SUPPLEMENTAL AUTHORITY IN SUPPORT OF THE PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Sem Moreno Sanchez, submitted his Petition for Writ of Habeas Corpus on November 11, 2025. Doc 1. Respondents filed a Response and Motion for Summary Judgment on November 20, 2025. Doc. 9. Parties attended a hearing on November 21, 2025, which addressed the underlying petition and the issue of jurisdiction over this claim.

Petitioners through undersign counsel has attached several cases similar to his where courts have taken jurisdiction. *See generally Noori v. Larose, et al.,* No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal Oct. 1, 2025); *see also Salazar v. Casey, et al.,* No. 25-CV-2784 JLS (VET), 2025 WL 3063629 at *2; 3 (S.D. Cal. Nov. 3, 2025); *Munos Materano v. Arteta, et al.,* No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *9; 10 (S.D.N.Y. Sept. 12, 2025). This Court retains jurisdiction over the present habeas petition pursuant to 28 U.S.C. § 2241 and the protections guaranteed by the Suspension Clause of the U.S. Constitution.

Under 28 U.S.C. § 2241, federal district courts have the authority and jurisdiction to hear applications for habeas corpus by any person who claims to be held "in custody in violation of the Constitution or laws or treaties of the United States." The "essence of habeas corpus is an attack by a person in custody upon the legality of that custody," and thus to be within the "core of habeas corpus," a petitioner must seek "either immediate release from that confinement or the shortening of its duration." *Preiser v. Rodriguez*, 411 U.S. 475, 484, 489 (1973).

While Respondents frame Mr. Moreno Sanchez's Petition for Writ of Habeas Corpus as a challenge to their discretion to issue parole, the Petition for Writ of Habeas Corpus is more accurately described as a challenge of the improper revocation of parole and his subsequent unlawful detention.

The Suspension Clause of the U.S. Constitution allows for this Court to exercise jurisdiction over Mr. Moreno Sanchez's claims. The Supreme Court in *Boumediene v. Bush* provided three factors for district courts to consider when evaluating the reach and applicability of the Suspension Clause. 553 U.S. 723, 766 (2008). Those factors are: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3)

the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Id.* For the first factor, courts compare the process that a detainee has actually been afforded with the "procedures and adversarial mechanisms that would eliminate the need for habeas corpus review." *Id* at 767. As for the second factor, that the apprehension and detention took place within the United States weighs in favor of finding rights under the Suspension Clause. *Id* at 768. Concerning the third factor, if government objectives will be compromised if habeas corpus courts had jurisdiction to hear the detainees' claims, that may weigh against application of the Suspension Clause, but that is not the case here. *See id* at 769-771.

In *Department of Homeland Security v. Thuraissigiam*, the Supreme Court provided an analysis of the Suspension Clause in the immigration context. 591 U.S. 103, 114 (2020). Thuraissigiam, a noncitizen, was apprehended within 25 yards of the border and detained for expedited removal. *Id.* He claimed a fear of returning to his home country, Sri Lanka but also affirmed that he did not fear persecution based on a protected ground. *Id.* Accordingly, the asylum officer determined that Thuraissigiam lacked a credible fear of persecution and ordered him removed, which was affirmed by a supervising officer and an Immigration Judge. *Id.* Thuraissigiam then filed a habeas petition, arguing that he was deprived of a "meaningful opportunity to establish his claims" and requesting a writ of habeas corpus directing the government to provide him with "a new opportunity to apply for asylum and other applicable forms of relief." *Id* at 114-115. The Supreme Court found that the Suspension Clause was inapplicable in that case because Thuraissigiam was not seeking release from custody. *Id.* at 117–118. Instead, he sought to have his removal order vacated and to obtain another opportunity to apply for asylum, which the Court characterized as a request for "the opportunity to remain

lawfully in the United States," which it "falls outside the scope of the writ [of habeas] as it was understood when the Constitution was adopted." *Id.* at 119.

Petitioner's case is readily distinguishable from *Thuraissigiam*. Petitioner does not seek "the opportunity to remain lawfully in the United States," but merely seeks release from custody, which is the traditional purpose of the habeas writ. Petitioner also was lawfully paroled into the U.S. as opposed to being apprehended just inside the border and placed in Expedited Removal Proceedings, has lived here for over a year, has connections to the United States.

Under the *Boumediene* factors, and the distinction between a migrant who is "at the threshold of initial entry" from one who is more established in this country, the Suspension Clause applies to Petitioner. For the first factor, although Petitioner is not a citizen, he has a much stronger status than the petitioners in *Boumediene* and *Thuraissigiam*. Petitioner was not apprehended only 25 yards from the border and immediately ordered removed but instead he was paroled into the United States and has remained here for over a year. He was apprehended at the New York - Varick Immigration Court and has not yet been ordered removed. During his time in the U.S., Petitioner has developed significant ties to the community, including a U.S. Citizen fiancée and several friends who are either U.S. Citizens or Lawful Permanent Residents.

With respect to the second *Boumediene* factor, Mr. Moreno Sanchez was apprehended and detained within the United States. *See Boumediene,* 553 U.S. at 768 (finding that the apprehension and detention took place within the United States weighs in favor of finding rights under the Suspension Clause).

Concerning the third factor, Respondents' Response does not express any arguments as to any practical obstacles that prevent Mr. Moreno Sanchez from seeking the writ of habeas corpus. There is no evidence that Petitioner is dangerous or a flight risk. Notably, Respondents made the

decision to parole Petitioner when he arrived, without having ties to the community, and in the time since his entry into the country, Petitioner's ties to the United States have only increased. Petitioner also has complied with the law during his presence in the United States, as evidenced by his lack of criminal record and the fact that he was detained at the New York - Varrick Immigration Court, where he was trying to formalize his status.

For these reasons and those in the Petition for Writ of Habeas Corpus, Petitioner respectfully request that the Court take jurisdiction over this case and deny the Respondents' Motion for Summary Judgment.

Respectfully submitted,

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Dated: December 1, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2025, I filed the foregoing document electronically through the CM/ECF system, which caused the parties and their counsel to be served by electronic means.

Respectfully submitted,

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Dated: December 1, 2025

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**FOR THE SOUTHERN DISTRICT OF TEXAS**

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| SEM MORENO SANCHEZ<br><br>Petitioner,<br><br>v.<br><br>JOE M. SMITH, in his official capacity as Warden of Joe Corley Processing Center; BRET BRADFORD, in his official capacity as Houston Field Office Director, Immigration and Customs Enforcement's Enforcement and Removal Operations; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and PAMELA BONDI, in her official capacity as U.S. Attorney General.<br><br>Respondents. | Case No. 4:25-cv-05384 |

# EXHIBIT A

2025 WL 2800149
Only the Westlaw citation is currently available.
United States District Court, S.D. California.

Sayed Naser NOORI, Petitioner,
v.
Christopher LAROSE, et al., Respondents.

Case No.: 25-cv-1824-GPC-MSB
|
Signed October 1, 2025

**Attorneys and Law Firms**

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U.S. Attorney CV, Erin Dimbleby, Kelly Ann Reis, DOJ-United States Attorney's Office, San Diego, CA, for Respondents.

**ORDER GRANTING PETITION FOR WRIT OF HABEAS CORPUS**

Gonzalo P. Curiel, United States District Judge

***1** Petitioner Sayed Naser Noori ("Petitioner") is a native and citizen of Afghanistan. ECF No. 1 ¶ 40. Petitioner submits he was one of the thousands of United States government allies left behind after the Taliban took control of Kabul, Afghanistan in August 2021, and, because of his support of the United States, was forced into hiding and threatened with death. *Id.* ¶ 1. In fear for his life, he fled Afghanistan and sought asylum in the United States. *Id.* On July 6, 2024, after learning of Petitioner's lack of criminal history, researching government records and reviewing Noori's documents from Afghanistan, the Customs and Border Protection ("CBP") officer paroled him into the United States pending 240 removal proceedings. ECF No. 9, Ex. 1; ECF No. 10, Ex. 1. On June 12, 2025, after orally moving to dismiss the 240 proceedings, but before the motion was granted, the government arrested Noori, detained him at the Otay Mesa Detention Center under the custody of the U.S. Department of Homeland Security ("DHS") and placed him in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). ECF No. 1 ¶¶ 49-50.

On July 17, 2025, Petitioner filed a petition for writ of habeas corpus, naming the Warden of the Otay Mesa Detention Center, Immigration and Customs Enforcement and Removal Operations ("ICE")'s Field Office Director for the San Diego Field Office, and several other individual agency officials as respondents ("Respondents"). ECF No. 1. A hearing on the petition was held on September 25, 2025. ECF No. 13. In a three-page truncated order, the Court GRANTED in part the petition and found that DHS violated Petitioner's due process rights and ordered his immediate release. ECF No. 14. This Order provides a fuller legal analysis and legal basis for the September 26, 2025 Order.

## I. BACKGROUND

### A. Factual Background

After the Taliban took control of Afghanistan in August 2021, Petitioner and his family went into hiding, but in September 2021, the Taliban discovered their location and executed Petitioner's brother and detained his father for questioning. ECF No. 1 ¶ 1. Facing this danger, he fled Afghanistan and sought asylum in the United States. *Id.* On July 5, 2024, he presented himself at the U.S. Port of Entry in San Ysidro, California and applied for admission with a CBPOne application. *Id.* ¶ 42. Petitioner did not possess a valid entry document at arrival. ECF. No. 9 at 8.[1] On July 6, 2024, after noting Petitioner's lack of criminal history, checking government records, and reviewing Noori's documents from Afghanistan, the CBP officer determined Petitioner appeared to be inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), served Petitioner with a I-862 Notice to Appear ("NTA"), and paroled him into the United States pending 240 proceedings, under the class of admission "DT." *Id.*, Ex. 1; ECF No. 10, Ex. 1. As represented in the NTA, Respondents commanded he appear for a hearing on September 7, 2027. *Id.*, Ex. 2.

***2** On August 7, 2024, Respondents issued work authorization to Petitioner pursuant to 8 C.F.R. § 274a.12(c)(11), which was valid through July 4, 2026. ECF No. 1 ¶ 47. Petitioner regularly complied with and appeared for ICE check-ins and, on March 13, 2025, applied for asylum before the San Diego Immigration Court. *Id.* ¶¶ 45-46.

Around April 11, 2025, Petitioner received a message through a mass, generic notification system, indicating Respondents were revoking his parole. *Id.* ¶ 48. On June 12, 2025, a Form I-200, Warrant for Arrest was issued for the arrest of Petitioner. ECF No. 9 at 9. Later that same day, Petitioner appeared for his immigration court hearing. ECF No. 1 ¶ 49.

At the hearing, Respondents orally moved to dismiss the case, asserting Petitioner's NTA had been improvidently issued. *Id.* Government counsel, upon inquiry, refused to inform the court how the NTA was improvident but stated that Petitioner was to be detained and placed in expedited removal. *Id.* The court did not grant the motion to dismiss that day and, instead, set a new hearing for September 15, 2025. ECF No. 10 at 5, Ex. 2.

As Petitioner left the courtroom, he was detained by ICE agents. ECF No. 1 ¶ 50. Petitioner states that when his counsel asked for a warrant, ICE agents refused to produce one. *Id.* That day, Petitioner was placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1) and issued an Order of Expedited Removal. ECF No. 9 at 9. Petitioner was not provided individualized notice or reasoning for the Government's actions.

On June 26, 2026, the immigration court granted the motion to dismiss that had been requested by Respondents on June 12, 2025. *Id.* at Ex. 3. On July 11, 2025, Petitioner was interviewed by a U.S. Citizenship and Immigration Services asylum officer. *Id.* at 9. After the officer's positive determination, Petitioner was issued a new Notice to Appear on July 12, 2025, commencing new 240 proceedings. *Id.* Petitioner remains detained in ICE custody. *Id.*

**B. Procedural Background**

On July 17, 2025, Petitioner filed his petition for writ of habeas corpus. ECF No. 1. On August 29, 2025, Respondents filed a return in opposition to the habeas petition. ECF No. 9. Petitioner filed a reply on September 4, 2025. ECF No. 10.

Petitioner presents two claims under the Fifth Amendment Due Process clause. Specifically, "Petitioner was not advised by DHS that they sought to terminate his proceedings in order to place him in expedited removal, depriving him of the bundle of rights associated with his pending asylum application." ECF No. 1 ¶ 67 (First Cause of Action). Additionally, Petitioner argues that the January 2025 Designation, Office of the Secretary, Dept of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("2025 Designation")—which expanded the application of expedited removal—does not unmistakably apply to individuals, like Petitioner, who entered the United States prior to its effective date. *Id.* ¶¶ 79-80 (Third Cause of Action).

Second, Petitioner has alleged three causes of action, asserting that Respondents violated the Administrative Procedure Act ("APA"). The APA causes of action allege that Respondents have (1) unlawfully detained Petitioner categorically without individualized consideration of the facts, (2) violated 8 C.F.R. § 239.2(a) by dismissing proceedings without an enumerated ground, and (3) violated 8 U.S.C. § 1225(b) because "expedited removal statute does not apply and may not be applied to individuals who were 'paroled' into the United States." *Id.* ¶¶ 72, 88, 91 (Second, Fourth, and Fifth Causes of Action).

***3** Petitioner asserts jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). *Id.* ¶ 6. Relief is sought under the habeas corpus statute, 29 U.S.C. § 2241, et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2). *Id.* ¶ 7.

The Petitioner asks the Court to (1) grant the instant petition for a writ of habeas corpus, (2) declare the Petitioner's detention violates the Due Process Clause, (3) declare application of the January 2025 Designation to Petitioner illegal, (4) issue an order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval, and (5) award Petitioner attorney's fees and costs under the Equal Access to Justice Act and on any other basis justified under law.

On September 26, 2025, in a three-page order granting the petition in part, the Court declared the Petitioner's detention violates the Due Process Clause. In summary, the Court found:

1. Petitioner could not have been legally subjected to and detained under expedited removal proceedings on June 12, 2025 because his original 240 proceedings had not yet been dismissed and were still pending at the time of his detainment.

2. The Government revoked Petitioner's parole without notifying him, providing him reasoning for the revocation, or giving him an opportunity to be heard, denying Petitioner of his due process rights.

3. Petitioner's parole was revoked without an individualized determination or provided reasoning, which violated the APA.

4. Petitioner's parole was categorized as DT, a type of humanitarian parole, and as established by 8 C.F.R. § 212.5(e)(2)(i), revocation of that parole requires written notice of termination, which Petitioner was not provided.

Herein, the Court addresses the jurisdictional issues raised by Respondent and provides the legal basis and analysis supporting its findings and conclusions.

## II. STATUTORY FRAMEWORK

### A. Standard & Expedited Removal Proceedings

An arriving noncitizen seeking admission into the United States at a U.S. Port of Entry is "processed either through expedited removal proceedings or through regular removal proceedings." *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 507 (9th Cir. 2019). The regular removal procedure is also known as "section 240 proceedings." 240 proceedings involve an evidentiary hearing before an immigration judge and the ability for the individual to apply for asylum if he would be persecuted upon return to his home country. 8 U.S.C. § 1229a(a)(1), (b)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Noncitizens seeking asylum are guaranteed due process under the 5th Amendment throughout this process. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

The DHS Secretary has discretion to release a noncitizen on parole during this process. In one procedure, an arriving asylum seeker may be paroled "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). A separate procedure puts the immigrant in conditional parole. *Id.* § 1226(a). In either case, to release a noncitizen from custody requires a case-by-case determination, where the noncitizen must "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons" and that the noncitizen is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

***4** Here, the parole status conferred upon Petitioner was identified as "DT," which the parties acknowledged at the oral argument hearing described a "humanitarian" parole. The "humanitarian" parole process is described in Section 1182 as follows:

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

The second, more streamlined process is expedited removal, governed by 8 U.S.C. § 1225. Under these proceedings, noncitizens can be ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). Because of the truncated procedure, expedited removal is limited to noncitizens meeting several requirements. First, a noncitizen is potentially eligible for expedited removal if he (1) sought to procure immigration status or citizenship via fraud or false representations or (2) "at the time of application for admission," failed to satisfy certain documentation requirements. *See* 8 U.S.C. § 1225(b)(1)(A)(i); 8 U.S.C. §§ 1182(a)(6)(C), 1182(a)(7). Second, expedited removal is further cabined to noncitizens who 1) are categorized as "arriving in the United States," or 2) have "not been admitted or paroled into the United States" and cannot affirmatively show they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* § 1225(b)(1)(A)(i)–(iii). Within that second requirement, the Attorney General can designate the population of noncitizens subject to expedited removal. *Id.* § 1225(b)(1)(A)(iii)(I).

Once detained under expedited removal, if the noncitizen indicates an intention to apply for asylum and the asylum officer finds the fear to return to be credible, the applicant's

claim will be fully considered in a standard removal hearing. *Thuraissigiam*, 591 U.S. 103, 110 (2020).

**B. 2025 Designation for Expedited Removal**

The Attorney General has delegated the office's expedited removal designation power to the DHS Secretary. Before January 2025, DHS had only designated noncitizens as eligible for expedited removal if they were identified as "arriving," had arrived by sea within the last two years, or had been apprehended within 14 days of entry and 100 miles of the border. *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924, 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877, 48879 (Aug. 11, 2004). In January 2025, DHS published the 2025 Designation, authorizing expedited removal to be exercised to the "full scope of its statutory authority." Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025). DHS has stated that this full scope applies to noncitizens "who are encountered anywhere in the United States more than 100 air miles from a U.S. international land border, and who have been continuously present in the United States for at least 14 days but for less than two years." *Id.*

***5** In its implementation of the 2025 Designation, "the Government began targeting for expedited removal people already in section 240 removal proceedings, many of whom are pursuing asylum and other collateral relief" and executing "courthouse arrests." *Make the Rd. New York v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908, at *5 (D.D.C. Aug. 29, 2025). The DHS' typical procedure for these courthouse arrests consist of "moving orally (without any advance notice) to dismiss the individual's pending section 240 proceedings, then arresting the individual at the courthouse immediately upon the dismissal of their section 240 proceedings, and then, finally, placing the individual in expedited removal proceedings through which they can be deported far more quickly, and with far less process, than they would have been in the section 240 proceedings." *Id.*

## III. DISCUSSION

**A. Jurisdiction**

Petitioner invokes this Court's jurisdiction under the habeas provision, 28 U.S.C. § 2241, the Suspension Clause, and federal question, 28 U.S.C. § 1331. Respondents maintain that this Court lacks jurisdiction over Petitioner's claims, stating that (1) Petitioner's claims are moot, (2) the petition brings improper habeas claims, and (3) the claims and relief are barred under 8 U.S.C. § 1252(a)(2)(A), § 1252(b)(9), § 1252(e), and § 1252(g).

**1. Mootness**

"Mootness is a threshold jurisdictional issue." *S. Pac. Transp. Co. v. Pub. Util. Comm'n of State of Or.*, 9 F.3d 807, 810 (9th Cir. 1993). The doctrine of mootness ensures a federal court presides only over those actions that present "a case or controversy under Article III, § 2 of the Constitution." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). An action is moot when a litigant no longer has "a personal stake in the outcome of the suit throughout 'all stages of federal judicial proceedings.' " *Abdala v. I.N.S.*, 488 F.3d 1061, 1063 (9th Cir. 2007) (quoting *United States v. Verdin*, 243 F.3d 1174, 1177 (9th Cir. 2001)). If an event occurs "that prevents the court from granting effective relief, the claim is moot and must be dismissed." *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

Here, Respondent argues that "Petitioner's causes of action arise from his placement in expedited removal proceedings," and because he is now in new 240 proceedings rather than expedited removal proceedings, the petition is moot. ECF No. 9 at 11. However, as Petitioner clarifies in his reply, the petition asks the Court to "determine if his detention was lawful and, if not, that he be released." ECF No. 10 at 7. The issue is "not whether Mr. Noori can file his asylum claim." *Id.* As Petitioner is still detained and contests the lawfulness of the expedited removal proceedings that led to his detainment, the petition's causes of action are not moot.

**2. Habeas Corpus Claim**

Under 28 U.S.C. § 2241, a writ of habeas corpus may be granted to any petitioner who demonstrates that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see Rasul v. Bush*, 542 U.S. 466, 473 (2004). As explained by the Supreme Court, "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and...the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir.

2023) (habeas actions limited to challenges of the legality or duration of confinement).

A prisoner bears the burden of demonstrating that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." *See Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009).

Here, Respondent argues that the petition should be denied because "Petitioner is not challenging the lawfulness of his custody...[but instead] challenging the decision to dismiss his prior 240 proceedings, his placement into expedited removal, and the type of review over his asylum claims within expedited removal." ECF No. 9 at 11. Essentially, Respondent characterizes Petitioner's claims as seeking judicial review under the APA, which does not govern habeas proceedings. *Id.* at 12; *see also Flores-Miramontes v. INS*, 212 F.3d 1133, 1140 (9th Cir. 2000).

***6** However, this petition is challenging the lawfulness of Petitioner's detention and requesting his release under 28 U.S.C. § 2241. *See* ECF No. 10 at 7. The Petitioner, here, is utilizing the APA in his petition to challenge the lawfulness of his detention. Those underlying arguments do not subsume the core of the habeas petition, simply upon mention of the APA. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 151-52 (W.D.N.Y. 2025). Thus, the Petitioner's habeas claims do arise under § 2241 and are properly brought.

### 3. Immigration and Nationality Act ("INA") Jurisdictional Bars

The government argues that this Court lacks subject-matter jurisdiction over Petitioner's claims because the claims "stem from DHS's decision to arrest and detain Petitioner pending removal proceedings." ECF No. 9 at 12. Respondents maintain that jurisdiction would, thus, be barred under 8 U.S.C. §§ 1252(a)(2)(A), 1252(b)(9), 1252(e), and 1252(g). *Id.*

#### a. Section 1252(g) – Decisions by Attorney General

8 U.S.C. § 1252(g) states that, with limited exceptions, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence* proceedings, *adjudicate* cases, or *execute* removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). In that light, § 1252(g) is a narrow statutory provision that concentrates on those three discrete actions. *Reno*, 525 U.S. at 482.

Respondents argue that the § 1252(g) bar applies because Petitioner's claims arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases." 8 U.S.C. § 1252(g). However, Petitioner does not challenge the decision to commence proceedings. Instead, Petitioner challenges the legality of the revocation of humanitarian parole in violation of the law and dismissal of ongoing removal proceedings without due process. ECF No. 10 at 9. Even assuming that the revocation of parole constitutes a decision or action to adjudicate cases, they are not protected under § 1252(g). That is because agency action is not "specified ... to be in the discretion" of the official where the action "was not performed in accordance with the mandatory ... procedures." *Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008); *see also Nadarajah v. Gonzales*, 443 F.3d 1069, 1081–82 (9th Cir. 2006) ("[A]lthough the ultimate decision on whether to grant asylum is committed to the Attorney General's discretion, relief under withholding of removal is mandatory if the petitioner establishes that his 'life or freedom would be threatened' in the country to which he would be removed on account of one of the five protected grounds.").

In this case, revocation of parole did not follow mandatory procedures. Petitioner asserted at oral argument, without objection, that his parole was classified as "DT," a type of humanitarian parole. ECF No. 10, Ex. 1. This humanitarian status is further indicated by his work authorization, ECF No. 1 ¶ 47, which was provided pursuant to 8 C.F.R. § 274a.12(c)(11) and specifically limits authorization to applicant noncitizens who are "paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit," 8 C.F.R. § 274a.12(c)(11). As a result, Petitioner is subject to the statutory and regulatory limitations for revocation of his humanitarian parole. These limitations were not adhered to.

***7** Under regulation, humanitarian parole can only be terminated " 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, 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." 8 C.F.R. § 212.5(e). Here, no explanation was provided for terminating humanitarian parole. There is no suggestion that the purpose for which parole was granted had been accomplished. Because these procedures are mandatory and were not followed, the decision to revoke the humanitarian parole and to dismiss the 240 removal proceedings was not a lawful exercise of discretion.

Further, a decision to detain Petitioner does not fall within the three discrete actions identified in § 1252(g) and, thus, would not deprive the Court's jurisdiction. *See, e.g., Aditya W. H. v. Trump*, 782 F. Supp. 3d 691, 704 (D. Minn. 2025) (finding a claim against detention did not fall under Section 1252(g)); *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 224-26 (D. Vt. 2025) (same); *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 901 (D. Minn. 2020) ("Although the court may not review discretionary decisions made by immigration authorities, it may review immigration-related detentions to determine if they comport with the demands of the Constitution.").

**b. Section 1252(b)(9) – Zipper Clause**

Section 1252(b)(9) states that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) is seen as a general jurisdictional limitation that channels judicial review of immigration actions and decisions and acts as a zipper clause. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). "However, what it 'zips' are requests for review of various kinds of agency action which are heard by means of petitions for 'judicial review'...[i]t does not affect petitions for habeas corpus." *Flores-Miramontes v. I.N.S.*, 212 F.3d 1133 (9th Cir. 2000).

Respondents argue that Petitioner's detention "arises from DHS's decision to commence such proceedings against him," which would divest this Court of jurisdiction. ECF No. 9 at 15. However, § 1252(b)(9) cannot be stretched to preclude jurisdiction for this petition because "[i]nterpreting 'arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable." *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (finding cramming judicial review of detention questions into the review of final removal orders would be absurd). Adopting Respondent's application of § 1252(b)(9) would permit an excessive detention to take place by the time a final order of removal was eventually entered. *Id.* As such, § 1252(b)(9) does not present a jurisdictional bar to the instant petition.

**c. Section 1252(a)(2)(A) & (e) -Expedited Removal**

Respondent also argues 8 U.S.C. § 1252(a)(2)(A) and § 1252(e) strip this Court of jurisdiction over this petition. These provisions specifically fall within the purview of the expedited removal process.

8 U.S.C. § 1252(a)(2)(A) provides that, except as provided in § 1252(e) and notwithstanding habeas petitions under 28 U.S.C. § 2241, "no court shall have jurisdiction to review" (1) "any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an [expedited removal] order"; (2) "a decision by the Attorney General to invoke" the expedited removal statute; (3) "the application of [§ 1225(b)(1)] to individual aliens, including the [credible fear] determination made under [§] 1225(b)(1)(B); and (4) the "procedures and policies adopted by the Attorney General to implement the provisions of [§ 1225(b)(1)]." 8 U.S.C. § 1252(a)(2)(A)(i), (ii), (iii) & (iv).

***8** Judicial review of expedited removal orders is strictly limited to those grounds enumerated in 8 U.S.C. § 1252(e)(2). *See* 8 U.S.C. § 1252(a)(2)(A). Under the provision, an individual in expedited removal proceedings may file a habeas petition in a federal district court to challenge only three DHS determinations: (1) whether the individual is a noncitizen, (2) whether the individual was ordered removed via expedited removal, and (3) whether the individual is a lawful permanent resident or has another status warranting exemption from expedited removal. 8 U.S.C. §§ 1252(e)(2)(A)-(C). Judicial review of whether a petitioner was ordered removed is "limited to whether such an order in fact was issued and whether it relates to the petitioner." 8 U.S.C. § 1252(e)(5). "There shall be no review of whether the [noncitizen] is actually inadmissible or entitled to any relief from removal." *Id.*

Based on these provisions, Respondents argue that each of Petitioner's claims fall outside the limited habeas corpus authority provided under § 1252(e)(2). However, Petitioner does not challenge the discretionary decision to place

him in expedited proceedings or the implementation of proceedings thereafter. *See id*; *Barrientos v. Baltazar*, No. 5:24-CV-00005, 2024 WL 5455686, at *4 (S.D. Tex. Dec. 18, 2024), *report and recommendation adopted*, No. 5:24-CV-00005, 2025 WL 744703 (S.D. Tex. Mar. 7, 2025) (finding that petitioner was not challenging his expedited removal order but a twenty-year bar allowing his detention). Rather than questioning the exercise of discretion in selecting the expedited removal process, Petitioner is challenging the way Respondents revoked his humanitarian parole, dismissed the removal proceedings and detained him, all in violation of the Constitution and the laws of this country. The crux of Petitioner's argument is that the government did not have lawful authority to take these steps in order to illegally initiate an expedited removal proceedings and detain him as he was exiting the courtroom. *See Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *6-7 (W.D.N.Y. July 16, 2025) (finding jurisdiction where petitioner challenged the initiation of expedited removal proceedings despite a pending appeal on the dismissal of 240 proceedings).

Given the nature and substance of the Petitioner's attack, neither § 1252(a)(2)(A) or § 1252(e) deny the Court of its jurisdiction to entertain the petition.

**d. Section 1252 Generally**

The Respondent's jurisdictional arguments on Section 1252 also fail when considered in the broader context of the statutory provisions. Specifically, as Petitioner points out, the jurisdiction-stripping provisions of 8 U.S.C. § 1252 apply over *final* orders of removal. *See* 8 U.S.C. § 1252(b)(9); *Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007) ("[T]he entire section is focused on orders of removal."); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006) ("By its terms, the jurisdiction-stripping provision does not apply to federal habeas corpus petitions that do not involve final orders of removal."). Where a petitioner "does not challenge any final order of removal, but challenges his *detention* prior to the issuance of any such order" the jurisdiction-stripping provisions do not apply. *Flores-Torres v. Mukasey*, 548 F.3d 708, 711 (9th Cir. 2008). Thus, given Petitioner is challenging his detention prior to the issuance of any final order, this Court retains jurisdiction.

**4. Suspension Clause**

To avoid the INA jurisdiction stripping bar, Petitioner offers the Suspension Clause as an alternative basis to entertain his petition. ECF No. 1 ¶ 6. Under the Suspension Clause, "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I ¶ 9, cl. 2. In determining the reach of the Suspension Clause, the Court is required to consider "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008).

***9** For the first factor, although Petitioner is not a citizen, he was paroled into the United States upon a finding that he was not a flight risk or a danger to the community. He has remained here for more than a year and in that time has received a work authorization and has developed ties to the community. If Section 1252 were to deprive the Court of jurisdiction to review Petitioner's detention, Petitioner would have no ability to challenge his detention and has no right to challenge Respondents' decision to terminate his parole. Additionally, Petitioner was apprehended and detained within the United States. Finally, Respondents have not presented any credible arguments that any practical obstacles prevent Petitioner from entitlement to the writ of habeas. There is no evidence that Petitioner is a danger to the community or a flight risk—in fact, Respondents decided to parole Petitioner when he arrived without ties to the community after determining that he did not have any criminal history and then approved a work authorization. It also appears that Petitioner has complied with the law during his time in the United States. Thus, even if Section 1252 precluded the Court from reviewing Respondents' decision to terminate Petitioner's parole and detain him, the Court would have jurisdiction to review this decision under the Suspension Clause. *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *10 (D. Or. July 9, 2025).

**B. Petitioner's Arrest and Detention**

Petitioner claims his detention following the Respondent's oral motion to dismiss his 240 removal proceedings violates the Fifth Amendment Due Process Clause and the Administrative Procedure Act. ECF No. ¶¶ 39, 50, 72. Respondent argues that Petitioner's parole was properly revoked, and Petitioner is lawfully subject to mandatory detention. ECF No. 9 at 18-21.

### 1. Fifth Amendment Due Process

#### a. Entitlement to Due Process Rights

The Fifth Amendment guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Though noncitizens do not enjoy constitutional protections outside our borders, once a noncitizen "enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Under this wide umbrella, "[i]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993).

Here, Petitioner has "passed through our gates" and "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Because Petitioner has developed an interest in remaining during his time here, "the procedures used to remove [him] must adequately protect" that interest. *Make the Rd. New York v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908, at *10 (D.D.C. Aug. 29, 2025).

The Respondents, however, rely heavily on *Thuraissigiam* and contend that the Petitioner is only allowed the due process rights statutorily afforded by Congress. ECF No. 9 at 20. Thus, in their view, Petitioner's detention does not violate the Fifth Amendment's Due Process Clause because the statutory authority of 8 U.S.C. § 1225(b)(1)(B)(ii), which they assert Petitioner has been detained under, "does not afford him a right to a determination by this Court as to whether his release is warranted nor a right to a bond hearing before an immigration judge." *Id.*

However, this is a misreading of *Thuraissigiam*. As Respondents acknowledge in their return, *Thuraissigiam* "addressed the due process rights of inadmissible *arriving* noncitizens." *Id.* at 21 (emphasis added). In that case, the respondent was a noncitizen detained close to the border and shortly after unlawful entry, and keeping those characteristics in mind, the Supreme Court held that those "in *respondent*'s position ha[ve] only those rights regarding admission that Congress has provided by statute." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (emphasis added). This holding only reinforced the precedent that noncitizens "on the threshold of initial entry stand[ ] on a different footing" than those who have "passed through our gates." *Mezei*, 345 U.S. 212.

***10** In this case, Petitioner is not an "arriving" noncitizen but one that has present in our country for over a year. This substantial amount of time indicates he is afforded the Fifth Amendment's guaranteed due process before removal. *See Yamataya v. Fisher*, 189 U.S. 86, 87 (1903) (finding a noncitizen was entitled to due process before removal despite having spend only four days in the US).

#### b. Government's Adherence to Due Process

Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the Government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). Here, Petitioner alleges that he was detained while his removal proceedings were pending without any opportunity to be heard prior to being arrested and detained. ECF No. 1 ¶ 50. Also, Petitioner asserts he was subject to the implementation of DHS' 2025 Designation, which violated due process. ECF No. 1 at 15, 21-22. Specifically, he claims that he "was not advised by DHS that they sought to terminate his proceedings in order to place him in expedited removal, depriving him of the bundle of rights associated with his pending asylum application" and retroactively and unlawfully subjected to expedited removal under the 2025 Designation. *Id.* at 19, 22.

First, Petitioner has a private interest in remaining free, which developed over the year he resided in the United States. *See Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). This liberty interest applies to Petitioner, even in his parole status. For example, *Morrissey*—though analyzing the criminal parole context—found that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others...[thus it] must be seen within the protection of the [Fifth] Amendment." 408 U.S. at 482.

In the deportation context, detention has minimum due process protections. Generally, detention is seen "as a constitutionally valid aspect of the deportation process," *Demore v. Kim*, 538 U.S. 510, 523 (2003), and the government holds the discretion to detain an immigrant pending removal, 8 U.S.C. § 1226(c). However, that discretion is not unbounded. Detention pending removal proceedings has "two regulatory goals"—ensuring future appearances and preventing danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This logically also extends to the granting of parole and its revocation. *Marczak v. Greene*, 971 F.2d 510, 515 (10th Cir. 1992) ("[I]n each case a district director must determine whether a particular person is likely to flee, and whether that person's continued detention would be in the public interest."); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025) ("[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."). These primary goals provide guidance for the floor of due process afforded to noncitizens for detention and parole.

***11** Further, Petitioner has a Fifth Amendment right to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Here, Petitioner was initially provided due process for his removal proceedings following his arrival on July 5, 2024. ECF No. 1 ¶ 42. He was able to apply for admission and was given parole after an interview with a CBP officer who determined he was not a flight risk or a danger to the community. *See* ECF. No. 9, Ex. 1. He was given work authorization and was informed of the procedure he would need to abide to for his removal proceedings and to apply for asylum. *Id.*, Ex. 2; ECF. No. 1 ¶ 46-47. The proceedings have created a protectable expectation of his due process rights in his removal proceedings and the fair procedures this country guarantees. Thus, Petitioner was entitled to due process in his parole revocation. Particularly, he was entitled to both notification of revocation and the reasoning for revocation, if not also an opportunity to be heard and contest the determination.

Second, the procedures used present a substantial risk of erroneous deprivation of those interests and are not outweighed by the Government's interest. In *Make the Rd. New York v. Noem*, which considers the application of the 2025 Designation and courthouse arrests, the court determined that "[b]efore removing someone through expedited removal, the Government must make several threshold determinations: whether the individual has been continually present in the United States for two years; whether they have previously been admitted or paroled; whether they are inadmissible on one of the grounds that make them eligible for expedited removal; whether they have a credible fear of persecution; and whether they are a citizen, lawful permanent resident, refugee, or asylee." No. 25-CV-190 (JMC), 2025 WL 2494908, at *14 (D.D.C. Aug. 29, 2025). Each of these determinations present a substantial risk of error and harm to Petitioner's interests in remaining and liberty. This is especially true in regard to the credible fear interview —where individuals might not be appropriately referred for the interview or not afforded an effective opportunity to be heard—and the continual presence determination. *Id.* at *15-17.

Respondents have failed to demonstrate a significant interest in Petitioner's detention. Respondents did not provide Petitioner individualized notice and reasoning prior to his arrest and detention on June 12, 2025 and have presented no legitimate reason for why those decisions were made. Any governmental interest of efficient administration of immigration laws by using courthouse arrests does not outweigh these first two factors. *See id.* at *19. Petitioner does not have a criminal record and has regularly complied with and appeared for ICE check-ins and court hearings. There is no indication that he is a flight risk or presents a danger to the community, which strike at the core, guiding goals for parole, and Respondents have not supplied any additional information to the contrary. "At its foundation, due process prohibits detaining an individual without justification." *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025). Denying Petitioner notice and reasoning on the termination of his 240 removal proceedings, his placement into expedited removal proceedings, and revocation of his parole took away a meaningful opportunity to contest and violated due process. *See Pinchi*, 2025 WL 2084921, at *4; *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13-14 (D. Or. July 9, 2025).

Finally, "[t]he Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 267 (1994). The Supreme Court has limited retroactivity under the Due Process Clause under its

"prohibition against arbitrary and irrational legislation." *United States v. Carlton*, 512 U.S. 26, 30 (1994) (quoting *Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 733 (1984)). Abiding to this principle, "administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

***12** The 2025 Designation's language does not clearly require that it be applied to individuals who entered the United States prior to its effective date. Therefore, executing the Designation over Petitioner who entered the country before the Designation's effective date violated the Due Process Clause.

For those reasons, the Court finds that Petitioner's due process rights have been violated.

### 2. Administrative Procedure Act

Under the APA, an agency action may be set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A). 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 Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged agency action to be upheld, the agency "must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

Petitioner argues Respondents violated APA when they "categorically revoked Petitioner's parole and transferr[ed] him to Otay Mesa Detention Center without consideration of his individualized facts," initiated expedited removal proceedings without lawful authority, and subjected him to expedited removal despite that fact that the proceedings "may not be applied to individuals who were 'paroled' into the United States." ECF No. 1 at 20, 22, 24.

Respondents, in turn, argue that the APA does not provide relief because this Court is unable to review agency actions that are not final. ECF No. 9 at 22. Further, Respondent purports the lawfulness of their actions as being in accordance with 8 U.S.C. §§ 1226(b), § 1225(b)(1). They maintain that 8 U.S.C. § 1226(b) allows them to revoke parole at any time and that "discretionary decisions under Section 1226 are not subject to judicial review." ECF No. 9 at 19. They also point to § 1225(b), stating that the provision mandates detention throughout the completion of removal proceedings. *Id.*

#### a. Legal standards Under the APA

"Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704; *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 61–62 (2004). Reviewable agency action includes "the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Agency action is deemed final if it (1) "impose[s] an obligation, den[ies] a right or fix[es] some legal relationship as a consummation of the administrative process," *Chicago & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103, 113 (1948), and (2) is an action "by which 'rights or obligations have been determined,' or from which 'legal consequences will flow,' " *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (quoting *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)).

#### b. Failure to Abide by APA

***13** In general, "[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Revocation of humanitarian parole has additional limitations under law. Humanitarian parole is granted under the Parole Statute "on a case-by-case basis for urgent humanitarian reasons or significant public benefit," and that statute states 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." 8 U.S.C. § 1182(d)(5)(A). Following this, a noncitizen should not be returned to custody unless the purposes of the parole have been served. *Y-Z-L-H v. Bostock*,

No. 3:25-CV-965-SI, 2025 WL 1898025, at *12 (D. Or. July 9, 2025). Under regulation, humanitarian parole can only be terminated " 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, 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." 8 C.F.R. § 212.5(e). In sum, to meet statutory and regulatory requirements, revocation should only occur when (1) the parole's purpose is served or (2) when humanitarian reasons and public benefit are no longer warranted, *and* the noncitizen is provided written notice. *Bostock*, 2025 WL 1898025, at *12-13.

However, though he was provided a generic notification about the revocation of his parole, ECF No. 1 ¶ 48, neither of the other two conditions were met. First, Petitioner was paroled into the United States based on his intent to seek asylum—the purpose of his parole. He applied for asylum and was still in the middle of those proceedings when Respondents issued and executed the revocation. Therefore, the purpose of Petitioner's parole had not been served at the time of termination, and Respondents do not argue otherwise. Thus, Respondents have not complied with the Parole Statute and do not meet the first pathway offered by 8 C.F.R. § 212.5(e).

Second, humanitarian reasons still warrant the Petitioner's presence in the country. Petitioner had aided United States forces against the Taliban, and since the United States left Afghanistan, Petitioner was forced to go into hiding and was threatened with death. ECF No. 1 ¶¶ 1, 41. Respondents offered no evidence to the contrary and, thus, have failed to show that they complied with the second clause of 8 C.F.R. § 212.5(e) as well.

Even if Petitioner was not granted humanitarian parole, courts have found—and this Court agrees in finding—that revocation of that parole similarly requires an individualized determination. *See, e.g., Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13-14 (D. Or. July 9, 2025) (finding parolee must receive written notice of impending revocation with reasons for revocation); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals."); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *6 (E.D. Cal. Aug. 14, 2025) (finding a case-by-case analysis is needed to revoke parole); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *12 (E.D. Cal. Aug. 21, 2025); *but see Doe v. Noem*, No. 25-1384, 2025 WL 2630395, at *9 (1st Cir. Sept. 12, 2025) (finding an individualized termination of parole is not required).

Thus, here, Respondents' argument that the challenge to DHS' discretion to revoke cannot be reviewed does not stand. Respondents must provide at minimum some reasoning explaining why the Petitioner would now be considered a flight risk or danger to the community. *See Castellon*, 2025 WL 2373425, at *12; *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025). Given Respondents have not attempted to justify the revocation for Petitioner, this Court holds the Respondent has acted arbitrarily and capriciously in violation of the APA.

**c. Initiation of Expedited Removal Proceedings**

***14** The application of expedited removal is limited to noncitizens who meet several requirements. One of those requirements cabins initiation of expedited removal to noncitizens who (1) are categorized as "arriving in the United States," or (2) have "not been admitted or paroled into the United States" and cannot affirmatively show they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)–(iii); *see also Coalition for Human Immigrant Rights v. Noem*, No. 25 Civ. 872 (JMC), 2025 WL 2192986, at *30 (D.D.C. Aug. 1, 2025).

As discussed previously, Petitioner is no longer an "arriving" noncitizen after having resided here for over a year. Also, though he has not been present in this country for a 2-year period, he *has* been paroled into the United States. Therefore, the Court finds that Petitioner could not be subject to § 1225.

Moreover, Petitioner could not have been subjected to expedited removal proceedings on June 12, 2025. His original 240 proceedings were not dismissed until June 26, 2025. ECF No. 9, Ex. 3. Thus, detaining him under § 1225(b) on June 12 had no legal basis. *See, e.g., Javier Tomas Munoz v. Paul Arteta, et. al.*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025).

In sum, Respondents' actions are arbitrary, fail to adhere to the law, and therefore, violate the APA.

## IV. CONCLUSION

Based on the reasoning above, the Court **GRANTS** the petition for writ of habeas corpus. Further, in aid of the Court's jurisdiction, which is hereby retained, the Court **ORDERS** pursuant to the All Writs Act, 28 U.S.C. § 1651, that Respondents shall not cause Petitioner to be re-detained during the pendency of his removal proceedings without prior leave of this Court. Lastly, Petitioner's attorney is directed to submit an attorney fee application and corresponding billing records by October 14, 2025, and Respondents are instructed to file any opposition by October 28, 2025.

**IT SO ORDERED.**

**All Citations**

Slip Copy, 2025 WL 2800149

## Footnotes

1 Throughout the order, the pagination for docketed documents is derived from the numbering generated by the ECF system.

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2025 WL 3063629
Only the Westlaw citation is currently available.
United States District Court, S.D. California.

Adriana Gonzalez SALAZAR, Petitioner,

v.

Jeremy CASEY, Warden at Imperial Regional Detention Center, Imperial, California, et al., Respondents.

Case No.: 25-CV-2784 JLS (VET)

Signed November 3, 2025

**Attorneys and Law Firms**

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**ORDER GRANTING IN PART PETITION FOR WRIT OF HABEAS CORPUS**

(ECF No. 1)

Janis L. Sammartino, United States District Judge

***1** Presently before the Court is Petitioner Adriana Gonzalez Salazar's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ("Pet.," ECF No. 1). Also before the Court is Respondents Jeremy Casey's (Warden at Imperial Regional Detention Center, Imperial, California); Joseph Freden's (Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement); Todd Lyons's (Acting Director, U.S. Immigration and Customs Enforcement); Kristi Noem's (Secretary, U.S. Department of Homeland Security); and Pamela Bondi's (U.S. Attorney General) (collectively, "Respondents") Return to Habeas Petition ("Ret.," ECF No. 5) and Petitioner's Traverse ("Traverse," ECF No. 7). For the reasons set forth below, the Court **GRANTS IN PART** Petitioner's Petition for Writ of Habeas Corpus.

**BACKGROUND**

Petitioner is a nineteen-year-old citizen and national of Venezuela. Pet. ¶ 19. Petitioner holds and has expressed political opinions against the Maduro regime and fled Venezuela when she and her family "received in person death threats against them by members of the 'colectivos.' " *Id.* ¶ 21. On July 16, 2024, Petitioner and members of her family arrived at the San Ysidro Port of Entry and were inspected in an appointment made through the CBPOne Application. [1] *Id.* ¶ 22. Petitioner was deemed inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), [2] placed in removal proceedings under 8 U.S.C. § 1229(a) (240 proceedings), and issued a Notice to Appear (NTA). Ret. at 2. Petitioner and her family members were then released from Department of Homeland Security (DHS) custody on humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A) and issued a Form I-94, which was valid for two years. Pet. ¶ 22; Ret. at 2.

On April 11, 2025, Petitioner's family member received a "mass form email" from DHS stating that the Petitioner and her family's parole would be terminated within seven days. Pet. ¶ 23. This email provided no reason for the termination and instructed them to "depart the U.S. 'immediately.' " *Id.* Petitioner attended her only court hearing on September 29, 2025. *Id.* ¶ 24. On October 16, 2025, responding to a "call-in letter" from ICE directing her to come to the downtown San Diego ICE office, Petitioner was arrested and served with a Form I-200, Warrant for Arrest of Alien to be remanded back into custody. *Id.*; Ret. at 3. Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(2) at the Imperial Regional Detention Facility in Imperial County, California. Ret. at 3.

Petitioner attended her scheduled court hearing, complied with all terms of her parole, and has no criminal history. Pet. ¶ 24. Petitioner alleges that there is no indication that she is a danger to the community or a flight risk. *Id.* ¶ 25. Petitioner challenges the revocation of her parole without first being provided a due process hearing and her continued detention. *Id.* ¶¶ 4–5.

***2** On October 20, 2025, Petitioner filed her Petition for Writ of Habeas Corpus arguing her summary revocation of parole fails to follow the procedural requirements of 8 C.F.R. § 212.5(e)(2)(i), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (APA). *See generally* Pet. Specifically, Petitioner requests the Court (1) assume jurisdiction over this matter; (2) declare that Petitioner's detention violates the Due Process Clause; (3) declare that Petitioner's parole was not lawfully terminated, her parole remains active, and she is unlawfully detained;

(4) grant the instant petition and release Petitioner; (5) alternatively, grant an individualized bond hearing; (6) issue an order prohibiting Respondents from transferring Petitioner from the district without the Court's approval; and (7) award Petitioner attorney's fees and costs under the Equal Access to Justice Act and on any other basis justified under law. *Id.*

## LEGAL STANDARD

A federal prisoner challenging the execution of his or her sentence, rather than the legality of the sentence itself, may file a petition for writ of habeas corpus in the district of his confinement pursuant to 28 U.S.C. § 2241. *See* 28 U.S.C. § 2241(a). The sole judicial body able to review challenges to final orders of deportation, exclusion, or removal is the court of appeals. *See generally* 8 U.S.C. § 1252; *see also Alvarez-Barajas v. Gonzales*, 418 F.3d 1050, 1052 (9th Cir. 2005) (citing REAL ID Act, Pub. L. No. 109-13, 119 Stat. 231, § 106(a)). However, for claims challenging ancillary or collateral issues arising independently from the removal process—for example, a claim of indefinite detention—federal habeas corpus jurisdiction remains in the district court. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Alvarez v. Sessions*, 338 F. Supp. 3d 1042, 1048–49 (N.D. Cal. 2018) (citations omitted).

## DISCUSSION

Respondents first argue that this Court lacks jurisdiction under 8 U.S.C. § 1225(g) and § 1225 (b)(9). Ret. at 3–6. Respondents then argue, if the Court finds jurisdiction, that Petitioner's claims fail on the merits because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. *Id.* at 6–9. Petitioner argues that her summary revocation of parole and continued detention violates Due Process and the APA. Pet. at ¶ 3.

### I. Jurisdiction

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Respondents claim that "Petitioner's claims necessarily arise from the decision or action by the Attorney General to commence proceedings and adjudicate cases." Ret. at 4 (simplified). The Court disagrees.

Section 1252(g) should be read "narrowly" as to apply "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.' " *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (quoting *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482, 487 (1999)). Section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* at *7. Section 1252(g) does not bar due process claims. *Walters v. Reno*, 145 F.3d 1032, 1052–53 (9th Cir. 1998) (finding that the petitioners' objective was not to review the merits of their proceeding, but rather "to enforce their constitutional rights to due process in the context of those proceedings").

Here, Petitioner does not challenge the decision to commence removal proceedings or any act to adjudicate or execute a removal order. Traverse at 1. Rather, Petitioner is challenging the legality of her parole revocation, alleged wrongful arrest, and continued detention. *Id.* at 1–2. Petitioner is enforcing her "constitutional rights to due process in the context of the removal proceedings—*not* the legitimacy of the removal proceedings or any removal order." *Garcia v. Noem*, No. 25-CV-2180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824 GPC (MSB), 2025 WL 2800149, at *7–8 (S.D. Cal. Oct. 1, 2025) (same).

***3** Section 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). Respondents argue that the Court lacks jurisdiction under § 1252(b)(9) because "[t]hese provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings." Ret. at 6 (citing *Jennings*, 583 U.S. 294–95). Again, the Court disagrees.

Section 1252(b)(9) "has built-in limits, specifically, claims that are independent of or collateral to the removal process do not fall within the scope" of § 1252(b)(9). *Gonzalez v. United States Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016) (internal quotation marks omitted)). "[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process." *Id.*; *see also Garcia*, 2025 WL 2549431, at *3–4; *Nielson v. Preap*, 586 U.S. 392, 402 (2019) (quoting *Jennings*, 583 U.S. at 294) (finding § 1252(b)(9) did not strip the court of jurisdiction because the petitioners were "not asking for review of an order of removal; they [were] not challenging the decision to detain them in the first place or to seek removal (as opposed to decision to deny them bond hearings); and they [were] not even challenging any part of the process by which their removability w[ould] be determined").

Here, as discussed above, Petitioner is not challenging the Department of Homeland Security's decision to commence removal proceedings or to adjudicate removability. *See* Traverse at 3. Petitioner is instead challenging the "the Respondents' wrongful arrest and detention of [Petitioner] given her status and due process rights as a parolee." *Id.* Therefore, § 1252(b)(9) also does not strip the Court of jurisdiction.

## II. Merits

### *A. Due Process*

Petitioner argues that the summary revocation of her parole without justification or consideration of her individualized circumstances violates the Due Process Clause. Pet. ¶ 43. The Court agrees.

The Fifth Amendment guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001). "[I]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Due Process Clause generally "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). "Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (citations omitted). Although the initial decision to detain or release an individual may be within the government's discretion, "the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[ ] to live up to the ... conditions [of release].' " *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi*, 2025 WL 2084921, at *3 (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022)).

***4** Respondents contend that as an "applicant for admission" under 8 U.S.C. § 1225 Petitioner is subject to mandatory detention and therefore her alleged statutory and constitutional violations fail.[3] Ret. at 6. The Court disagrees. Petitioner has been granted humanitarian parole subject to a Form I-94, granting her parole for two years. Pet. ¶ 22. Petitioner is not a newly arrived noncitizen seeking admission at the border, as Petitioner has been in the United States since July 2024. *Id.* Upon arrival, she was determined to not be a danger to the community or a flight risk and has attended her court hearings. Pet. ¶¶ 24–25. She lives with her aunt, brother, and cousin who all fled Venezuela together, and had a mental health intake appointment scheduled for October 21, 2025, to start therapy, which she was unable to attend due to her detention. *Id.* ¶ 26. Petitioner also has a hearing scheduled in the San Diego probate court to have her aunt be appointed her legal guardian, a predicate order to the Form I-360 Special immigrant Juvenile visa. *Id.* ¶ 27. Petitioner is not merely an "applicant for admission" at the border with minimal due process rights; Petitioner has a protected liberty interest in remaining out of custody. *See, e.g., Pinchi*, 2025 WL 2084921, at *4 ("[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."); *Noori*, 2025 WL 2800149, at *10 ("Petitioner is not an 'arriving' noncitizen but one that has [been] present in our country for over a year. This substantial amount of time indicates he is afforded the Fifth Amendment's guaranteed due process before removal."); *Matute v. Wofford*, No. 25-

cv-1206-KES-SKO (HC), 2025 WL 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty interest in his release).

As Petitioner has a protected liberty interest, the Due Process Clause requires procedural protections before she can be deprived of that interest. *See Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). To determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews*, 424 U.S. at 335. Courts must consider:

> (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

*Id.*

The Court finds that all three factors support a finding that the Government's revocation of Petitioner's parole without notification, reasoning, or an opportunity to be heard, denied Petitioner of her due process rights. First, as discussed above, Petitioner has a significant liberty interest in remaining out of custody pursuant to her humanitarian parole. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. Petitioner has an interest in remaining with her family, seeking counseling, and attending hearings to seek a visa. *See Morrissey*, 408 U.S. 471 at 482 ("Subject to the conditions of [her] parole, [she] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.").

Second, the risk of an erroneous deprivation of such interest is high as Petitioner's parole was revoked without providing her a reason for revocation or giving her an opportunity to be heard. Pet. ¶ 24. Since DHS's initial determination that Petitioner should be paroled because she posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Petitioner has no criminal record, has not been arrested or otherwise in criminal trouble, has been seeking out therapy for her "severe panic disorder (with agoraphobia), severe major depressive disorder, severe Post-Traumatic Stress Disorder (PTSD), and psychogenic seizures," and is working towards her aunt becoming her legal guardian. Pet ¶¶ 25–27. "Once a noncitizen has been released, the law prohibits federal agents from rearresting [her] merely because [she] is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances —namely, evidence that the noncitizen is in fact dangerous or has become a flight risk...." *Saravia*, 280 F. Supp. 3d at 1760. Respondents, failing to address Petitioner's Due Process argument in their response, do not point to any material circumstances that have changed that would warrant reconsideration of her parole. *See generally* Ret. "Where as here, 'the petitioner has not received any bond or custody hearing,' 'the risk of an erroneous deprivation of liberty is high' because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for her detention." *Pinchi*, 2025 WL 2084921, at *5 (quoting *Singh v. Andrews*, No. 25-cv-801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025)) (cleaned up).

***5** Third, the Government's interest in detaining Petitioner without notice, reasoning, and a hearing is "low." *See Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). Respondents fail to point to any burdens on the Government if it were to have provided proper notice, reasoning, and a pre-deprivation hearing. *See generally* Ret.

Therefore, because Respondents detained Petitioner by revoking her parole in violation of the Due Process Clause, her detention is unlawful. *See, e.g., Alegria Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. 14 (S.D. Cal. Aug. 11, 2025) (granting a TRO based on a procedural due process challenge to a revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to the conditions of her preexisting parole on due process grounds).

***b. Other Grounds for Release***

The Court need not address Petitioner's claim arising under the APA because the Petition can be resolved on due process grounds. However, the Court notes that other courts have

found violations of the APA based on similar grounds. *See, e.g., Navarro Sanchez*, 2025 WL 2770629, at *4 (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.").

Further, the summary revocation of Petitioner's parole failed to follow the statutory requirements defined in 8 C.F.R. § 212.5(e)(2)(i). The Secretary of DHS may "parole [an arriving asylum seeker] into the United States temporarily ... on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C § 1182(d)(5)(A). This parole can only be terminated, beyond the authorized time expiring, "upon accomplishment of the purpose for which parole was authorized or ... [if] neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." 8 C.F.R. § 212.5(e)(2)(i). This parole can only be "terminated upon written notice." *Id.*

Here, Petitioner's cousin was sent a "mass form email" stating that Petitioner's cousin's parole (and that of Petitioner and her family) would be terminated in seven days. Pet. ¶ 23. Other courts in this district have found that a generic notification of this kind is insufficient to fulfill the written notice requirement. *See Mendez Los Santos v. Larose et al.*, No. 25-cv-2216 TWR (MSB), ECF No. 14 (S.D. Cal. Sept. 4, 2025) (finding in a minute order that "[p]etitioner was not provided with written notice that her parole had been terminated, as required by 8 C.F.R. § 212.5(e)(2)(i)" when "[p]etitioner was sent a form letter by [DHS] stating that her parole would be terminated within [seven] days"); *Noori*, 2025 WL 2800149, at *2 (finding petitioner was not provided written notice of parole revocation when "[p]etitioner received a message through a mass, generic notification system, indicating [r]espondents were revoking his parole"). Rather, Respondents were also required to make a finding that "Petitioner's parole had served its purpose, that humanitarian reasons do not warrant Petitioner's presence in the country, or that [s]he is a danger to the public or a flight risk." *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

***6** Therefore, this Petition can also be granted on grounds of violating the APA and failure to provide Petitioner with notice that her parole was revoked as required by 8 C.F.R. § 212.5(e)(2)(i).

*c. Attorney's Fees*

Petitioner has requested costs and attorney's fees in this action pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Pet. at 18. The EAJA provides in part:

> 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 ... 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 ... which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B).

The Court will consider an application requesting reasonable fees and costs under the EAJA that is filed within thirty days of the judgment.

## CONCLUSION

Based on the foregoing, the Court **GRANTS** in part Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1), and **ORDERS** Respondents to immediately release Petitioner from custody subject to the conditions of her preexisting parole and Form I-94. The Court **ORDERS**, prior to any re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for revocation of her parole and a hearing before a neutral decision maker to determine whether detention

is warranted. The Government shall bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight.[4] The Parties are **ORDERED** to file a Joint Status Report by November 14, 2025, confirming that Petitioner has been released. Lastly, Petitioner's attorney is directed to submit an attorney fee application and corresponding billing records within thirty (30) days of this Order, and Respondents are instructed to file any opposition within fourteen (14) days of Petitioner's attorney fee application.

**IT IS SO ORDERED.**

**All Citations**

Slip Copy, 2025 WL 3063629

## Footnotes

1 The Government contends that Petitioner was paroled via the CHNV parole program which was terminated on March 25, 2025. Ret. at 2–3. However, Form I-213 provided by Respondents states, "Subject claimed asylum and was processed under CBP One Processing." Ret. Ex-1 at 3.

2 8 U.S.C. § 1182(a)(7)(A)(i)(I) designates as inadmissible entrants who are not in possession of a valid entry document.

3 Respondent's argument that Petitioner is bound by *Doe v. Noem*, 152 F.4th 727 (1st Cir. 2025) is unfounded because, as Respondent's Exhibit demonstrates, Petitioner is not a member of the CHNV parole program, but rather the CPBOne program. Ret. Ex-1 at 3 ("Subject claimed asylum and was processed under CBP One processing."). Further, if Respondents unlawfully terminated Petitioner's parole, which the Court finds to be so, then the Court need not address whether Petitioner is subject to mandatory detention under § 1225(b), as Respondents cannot detain her without first properly revoking her parole. *See Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *11 (D. Or. July 9, 2025).

4 This relief has been granted in similar matters. *See, e.g., Matute*, 2025 WL 2817795, at *8; *Pinchi*, 2025 WL 2084921, at *5; *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1097 (E.D. Cal. 2025); *Martinez Hernandez v. Andrews*, No. 25-CV-1035 JLT HBK, 2025 WL 2495767, at *14 (E.D. Cal. Aug. 28, 2025).

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2025 WL 2630826
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

Javier Tomas MUNOZ MATERANO, Petitioner,

v.

Paul ARTETA, in his official capacity as Warden of the Orange County Correctional Facility; Ladeon Francis, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd Lyons, in his official capacity as Acting Director of Immigration and Customs Enforcement; Kristi Noem in her official capacity as Secretary of Homeland Security; Pam Bondi, in her official capacity as Attorney General, Respondents.

25 Civ. 6137 (ER)
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Signed September 9, 2025
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Filed September 12, 2025

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Ilan Stein, Jessica F. Rosenbaum, DOJ-United States Attorney's Office, New York, NY, for Respondents.

**OPINION & ORDER**

Ramos, United States District Judge:

***1** Javier Tomas Munoz Materano ("Munoz Materano") brings this *habeas corpus* proceeding pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his ongoing detention by Immigration and Customs Enforcement ("ICE"). Doc. 1. Munoz Materano, a 23-year-old asylum applicant and citizen from Venezuela, was detained by ICE as he was exiting a scheduled hearing in New York immigration court on May 21, 2025. *Id.* ¶¶ 8, 18, 20. In the instant petition, Munoz Materano argues that his detention violates the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the Administrative Procedure Act ("APA"), and the Immigration and Nationality Act ("INA"). *Id.* at 29 ¶¶ 2, 4. Munoz Materano seeks immediate release from custody, declaratory relief, injunctive relief, and reasonable attorneys' fees. *Id.* at 29 ¶¶ 1–7.

For the reasons set forth below, the petition is GRANTED.

## I. BACKGROUND

### A. Factual Background [1]

Munoz Materano fled Venezuela on July 19, 2023 after his family was targeted by Tren de Aragua [2] who, in part, invaded their home and threatened to kill them at gunpoint. Doc. 1-2 (Munoz Materano Decl.) ¶¶ 2, 3. Munoz Materano entered the U.S. on August 28, 2023, in El Paso, Texas. *Id.* ¶ 2; Doc. 8 ¶ 4. He states that he entered in El Paso after making an appointment through the U.S. Customs and Border Protection's ("CBP") cellphone application called "CBP One," and "following the government's process for this lawful pathway to be paroled into the United States." [3] Doc. 1 ¶ 15. Munoz Materano does not speak or understand much, if any, English. [4]

***2** Upon entry, Munoz Materano was arrested by a CBP Border Patrol Officer and transported to a facility in El Paso for further processing. Doc. 8 ¶ 4. That day, on August 28, CBP served Munoz Materano with a Notice to Appear ("NTA"), stating that he was put "[i]n removal proceedings under section 240 of the [INA]." [5] Doc. 8-1 at 1. The NTA required Munoz Materano to appear for a hearing before an immigration judge on February 10, 2026, in Boston. *Id.* CBP also granted Munoz Materano humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5), releasing him from custody. *Id.*; Doc. 1 ¶ 15; Doc. 8 ¶ 7.

Approximately 16 months later, on January 21, 2025, Munoz Materano filed a request for a change of venue from Boston to New York, which the immigration court in Boston granted on February 12, 2025. *See* Doc. 8 ¶¶ 8, 9. Munoz Materano then moved to New York and applied for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Doc. 1 ¶¶ 15, 40.

On April 25, 2025, Munoz Materano was issued an Employment Authorization Document ("EAD"), valid until August 26, 2025, which allowed him to obtain employment in the U.S. *See* Doc. 1-9. Munoz Materano had stable employment at Ramirez Seafood in Brooklyn, New York.

Doc. 1-2 ¶ 6. He also completed a 40-hour Occupational Safety and Health Administration course, obtained a certificate for an electricity practical training course, *see* Doc. 1-9, and was taking classes to obtain a driver's license. Doc. 1-2 ¶ 6. Munoz Materano was never arrested or incarcerated prior to May 21, 2025. *Id.* ¶ 28.

On May 21, 2025, Munoz Materano went to a scheduled asylum hearing at immigration court, at 290 Broadway in New York City. Doc. 1 ¶ 18. Munoz Materano did not have a lawyer representing him at the hearing. *Id.* After he was sworn in, the Immigration Judge (IJ) paused his case because he had received a message, which Munoz Materano states "may have come from DHS." *Id.* ¶ 19. The IJ asked him to step to the back while he reviewed the information and kept going with other cases. Doc. 1-2 ¶ 9. When the IJ returned to Munoz Materano's case, he asked Munoz Materano if he wanted to continue with his case, and Munoz Materano said yes. *Id.* ¶ 10. Then, the IJ had a discussion with the DHS attorney in English; Munoz Materano states that he does not know what they discussed because he was not provided with a Spanish interpreter. *Id.* Respondents provide that ICE moved to dismiss Munoz Materano's Section 240 proceeding, and the IJ granted the motion. Doc. 7 at 1, 3; Doc. 8 ¶ 10. In the instant petition, Munoz Materano states that he did not understand or consent to the dismissal. Doc. 1 at 1.

Munoz Materano states that, following the IJ's discussion with the DHS attorney, he was handed a paper written in English that he did not understand. Doc. 1-2 ¶ 10. As he left the immigration hearing, he attempted to use his phone to translate the piece of paper with a translation application. *Id.*; Doc. 1 ¶ 20. As Munoz Materano reached for his phone, four people in plain clothes, and with no identification or badges, rushed toward him. Doc. 1 ¶ 20. The four individuals tightly handcuffed him, pulled him into an elevator, then took him to a van outside. Doc. 1-2 ¶¶ 10, 11. Munoz Materano states that, in that moment, he felt like he was being kidnapped and was traumatized. *Id.* ¶ 10.

***3** Munoz Materano remained in the van, tightly handcuffed, for approximately three hours, during which he was not provided any explanation about who had taken him or why. *Id.* ¶ 11. Then, he was taken into 26 Federal Plaza in downtown Manhattan, where he remained in handcuffs for another hour. *Id.* When his handcuffs were removed, Munoz Materano spoke with an officer who stated—erroneously, according to Munoz Materano's counsel—that he had been ordered deported. Doc. 1 ¶ 22. Munoz Materano expressed his fear of returning to Venezuela and requested a credible fear interview.[6] *Id.* Thereafter, Munoz Materano states he was placed in a cell with about fifteen other detainees, where he slept on the floor. *Id.* ¶ 23.

Early the next morning, Munoz Materano states he was handcuffed by his hands and feet and taken to a detention facility in Newark, New Jersey, where he was placed into a crowded and smelly room where there "was no room to sleep." Doc. 1-2 ¶ 14; Doc. 1 ¶ 24. Later that morning, he states he was flown to the Port Isabel Detention Center[7] in Texas, where he remained for six hours before being transferred to a detention center in El Paso, Texas. Doc. 1-2 ¶ 14. Respondents state that he was transferred to the facility in El Paso on May 23. Doc. 8 ¶ 12. Munoz Materano was still wearing the same clothes and underwear he had been arrested in on May 21. Doc. 1-2 ¶ 15. He remained in the El Paso facility for fifteen or sixteen days where, Munoz Materano states, he received no information or update on his case. *Id.*

Munoz Materano was not allowed to shower or to change his underwear and socks for approximately three days after he arrived in El Paso. Doc. 1 ¶ 27. Throughout his detention there, he was only allowed to shower every two to four days and was not given a change of underwear for even longer periods. *Id.* ¶ 27; Doc. 1-2 ¶ 15. About a week into his detention in El Paso, he noticed pain [Redacted], and about a week later, also noticed itchiness and white spots on his legs [Redacted]. Doc. 1 ¶ 28; Doc. 1-2 ¶ 15. Munoz Materano had never suffered from these conditions prior to his detention. Doc. 1 ¶ 28. Munoz Materano's medical records reflect that on June 2, 2025, in El Paso, he had a medical appointment with a muse practitioner. Doc. 9-2 at ECF 77. The notes state that Munoz Materano reported a headache,[8] sore Throat, and pain in [Redacted] which he referred to as "hernia pain." *Id.* The records identify that the severity of the pain was rated at a 7/10, described as "moderate," and characterized as "aching." *Id.* They also state that the onset of Munoz's [Redacted] pain was gradual. *Id.*

***4** From El Paso, Munoz Materano was transferred to the Alexandria Staging Facility ("Alexandria") in Alexandria, Louisiana, where he stayed from approximately June 7 to June 14, 2025. Doc. 1 ¶ 29. Munoz Materano was not provided with a uniform or other clean clothes there, so he continued wearing the jeans he had been arrested in on May 21. *Id.* During this time, Munoz Materano was experiencing pain and swollen masses [Redacted], and he was still noticing the white spots and itchiness on his legs [Redacted]. *Id.* He also

began experiencing pain during urination. *Id.* He requested medical attention on at least three separate occasions while at Alexandria, and while a muse provided him with medicine for pain relief, he states he was not examined, diagnosed, or provided treatment. *Id.* [9]

On June 13, 2025, Munoz Materano was transferred from Alexandria to the Port Isabel Service Processing Center ("Port Isabel") in Los Fresnos, Texas. Doc. 1 ¶ 30; Doc. 8 ¶ 23. There, he was able to change out of the clothes he was arrested in and provided with a clean detention uniform for the first time. Doc. 1 ¶ 30. The next day, June 14, Munoz Materano was also provided with a medical screening for the first time since he had been detained. *Id.*; *see* Doc. 9-2 at ECF 64. The notes from that screening do not mention any pain or other symptoms. *Id.* However, medical records from an appointment that took place two days later, on June 16, state that Munoz Materano requested the appointment due to discomfort while urinating, and that he had been experiencing discomfort for three days. Doc. 9-2 at ECF 57. However, according to the notes, Munoz Materano denied having a burning sensation at that time. *Id.* In the "assessment" section, the nurse identified a "risk for infection," and she accordingly prescribed Acetaminophen. *Id.* at ECF 58.

There are also medical records from Port Isabel from June 17, which state that Munoz Materano requested an appointment due to skin conditions and itchiness. *Id.* at ECF 54. Those notes state that Munoz Materano reported no current pain, however he stated he had "a fungal infection located on [Redacted]," with "red and white dry patches" and a lot of itchiness. *Id.* The notes indicate that the muse discussed with the "sick call provider" that Terbinafine 1% or Clotrimazole 1% should be provided to Munoz Materano. *Id.* at ECF 55.

Medical records from Port Isabel from the following day, June 18, provide that Munoz Materano requested an appointment due to [Redacted] pain. *Id.* at ECF 50. The notes reflect that he rated his pain at a 7/10, described it as "mild," and characterized it as "aching." *Id.* The narrative section states that Munoz Materano complained of "discomfort and pain to [Redacted]," that he thought he "might have a hernia" there, and that he was having a "mild binning sensation upon urinating." *Id.* at ECF 50. In the "assessment" section, the nurse identified a "risk for infection," and he accordingly prescribed Ibuprofen. *Id.* at ECF 51.

Medical records from Port Isabel from June 19 provide that Munoz Materano requested the appointment due to [Redacted] pain and dysuria. *Id.* at ECF 43. They reflect that he again rated his [Redacted] pain at a 7/10, described it as "mild," and characterized it as "aching," and that he reported a burning sensation when urinating. *Id.* The notes indicate that Munoz Materano reported that his discomfort had recently increased, he had developed swelling [Redacted] and noticed a mass on it, and that he also had a rash in the "[Redacted]." *Id.* The physician assistant ("PA") provided a general examination of Munoz Materano, and he noted that his "[Redacted]," and that his [Redacted] and had a "[Redacted] mass." *Id.* at ECF 44. He recommended Clotramizole Cream 1% for Munoz Materano's skin infection, and for the [Redacted], he prescribed Ibuprofen. *Id.* The PA also wrote a referral to radiology for "U/S [10] [Redacted]." *Id.* at ECF 108. However, the radiology referral was subsequently cancelled because Munoz Materano was transferred out of Port Isabel. *Id.* Munoz Materano states that he has never received imaging for the [Redacted] mass or any other tests. [11] Doc. 1 ¶ 30.

***5** On June 22, 2025, Munoz Materano was transported from Port Isabel to the Pine Prairie ICE Facility ("Pine Prairie") in Pine Prairie, Louisiana. Doc. 8 ¶ 24. The morning of the transfer, [12] he was awakened at approximately 1 a.m., made to change out of his uniform and back into the jeans he had worn on the day of his arrest on May 21, handcuffed, and put on a plane. Doc. 1 ¶ 31; Doc. 1-2 ¶ 18. Munoz Materano states that, after more than a month of not being washed, his jeans smelled horrible, and he could feel how dirty they were. Doc. 1-2 ¶ 18. Munoz Materano's medication was taken from him, and he was not given any food for about twelve hours. Doc. 1 ¶ 31. He asked officers on the plane for medical attention multiple times because he was experiencing pain in his [Redacted] and a headache, but the officers refused. *Id.* Munoz Materano remained handcuffed and in dirty clothes on the plane all day as it landed in multiple locations, until it eventually arrived in Louisiana at approximately 7 p.m. *Id.*

Once off the plane, Munoz Materano was taken by bus with other detainees to Pine Prairie. *Id.* ¶ 32. He states that, traveling in extreme heat for over two hours, with no an conditioning, and with no windows open, he nearly fainted from his headache, lack of food, and pain [Redacted]. *Id.*; Doc. 1-2 ¶¶ 20, 21. In Pine Prairie, Munoz Materano was placed in a crowded cell with mine stains on the walls, where he slept on the floor with over 100 other men. Doc. 1 ¶ 32. He states that the detainees begged the officers for cleaning products to clean and mop. Doc. 1-2 ¶ 24. Further, Munoz Materano states, "[t]he area outside where the plates of food

[were] assembled is right next to the garbage so there were cockroaches, mosquitos, worms everywhere." *Id.*

At Pine Prairie, Munoz Materano continued to tell officers about his symptoms including pain [Redacted] and white spots on his skin, which were getting bigger and had spread from his legs [Redacted] to his face. Doc. 1 ¶ 33. Munoz Materano states that, within a few days, his face became extremely red and swollen, and he had a fever, chills, and was experiencing intense pain. *Id.* He states in his declaration: "[I]t was the sickest I had felt while detained. I could barely walk because the pain was so strong. I thought I was going to die there." Doc. 1-2 ¶ 22. Munoz Materano states that, despite his visible symptoms and his repeated requests for medical care, he did not receive any medical attention for three days, after which he was ultimately allowed to see a doctor. Doc. 1 ¶ 33. Medical records from June 24 reflect that, at Pine Prairie, Munoz Materano was seen by a PA, who noted: "22 y/o male referred for [Redacted] pain and itching × 6 weeks. Treated in last facility with ibuprofen and clotrimazole cream with mild improvement. No injury. No discharge or fever. Pain does not radiate, no alleviating factors, worse with touching area." Doc. 9-1 at ECF 76. Munoz Materano provides that the PA did not conduct a physical examination or touch the area, notwithstanding that he described his pain, the cysts, and the visible swelling. Doc. 1 ¶ 33; Doc. 1-2 ¶ 23. This PA prescribed Clotrimazole 1% for the skin infection, as well as Doxycycline and Ibuprofen. Doc. 9-1 at ECF 77.

On June 26, Munoz Materano was transported back to Port Isabel. Doc. 8 ¶ 25. For the transfer, he was made to change back into the same dirty clothes he was wearing when he was arrested. Doc. 1 ¶ 34. At Port Isabel, he informed officers of his symptoms and asked for medical attention but did not receive it. *Id.* In Port Isabel, however, Munoz Materano's duty jeans were washed for the first time. *Id.*

On June 28, Munoz Materano was transferred to the Coastal Bend Detention Center ("Coastal Bend") in Robstown, Texas. *Id.* ¶ 35; Doc. 8 ¶ 26. There, Munoz Materano states that he was not allowed to use the cream he had been prescribed for his skin infection. Doc. 1 ¶ 35. He was, however, provided with painkillers and antibiotics to treat a pain in his throat that had developed in Pine Prairie. *Id.* On July 8, he received a medical assessment; the PA identified epididymitis, dysuria, [Redacted] pain, and hypopigmentation; and noted: "[Redacted] were very tender throughout bilaterally No palpable masses." Doc. 9-1 at ECF 100–101. Under "Assessment," the PA noted, in part: "[Redacted]—suspect still epididymitis. He did not take his Doxy here regularly and never completed a full course. For epididymitis it should be a 10 day course." *Id.* at ECF 101. Under "Plan," she wrote: "I suspect he did not get complete tx of his infection. Given 10 days of Doxy. He feels a nodule and so I also want to get [Redacted] U/S [13] to evaluate further ... For his [Redacted] will get [Redacted] lab. Ordered hepatitis panel, [Redacted]. [Follow up] per results or if not better." *Id.*

*6 On July 11, Munoz Materano was transported back to Alexandria. Doc. 8 ¶ 27. That day, he had a medical intake, at which he reported that his urine had been dark yellow, and that he was experiencing a burning sensation as well as [Redacted]. *See* Doc. 9-2 at ECF 20. Munoz Materano's medical records also contain a "transfer summary" from July 12, at Alexandria. *See* Doc. 9-2 at ECF 18. The summary lists the following under "Past Medical History": "Chronic 'Severe' Headaches (per patient). [Redacted] PAIN/ INFECTION. FUNGAL SKIN INFECTION. [Redacted] mass." *Id.* Under "Past Orders," the records list that a chest X-ray was ordered and performed on June 27. *Id.* Moreover, the summary states that Munoz Materano rated his [Redacted] pain at an 8/10, and that he was awaiting an ultrasound for the [Redacted] mass. *Id.* at ECF 17.

On July 13 or 14, Munoz Materano was transferred to the Orange County Jail ("Orange County") in Goshen, NY. Doc. 1 ¶ 36; Doc. 8 ¶ 28. This transfer is the last transfer mentioned on the record, indicating that from May 21 through July 25, 2025, the date the instant petition was filed, Munoz Materano was transferred at least ten times, to at least eight detention centers in four different states. No reason is provided for the frequent transfers.

Munoz Materano received a medical intake upon his arrival at Orange County, in which he informed a nurse of his skin infection and painful, swollen masses [Redacted]. Doc. 1 ¶ 36. However, he states that the nurse did not examine the area or perform any kind of physical exam. *Id.* Munoz Materano states that, as of the date of his *habeas* petition, he had requested medical attention every day since his arrival in Orange County but had not received any medical attention since the initial intake. *Id.* ¶ 37. He describes intense, throbbing pain [Redacted]. Doc. 1-2 ¶ 28. Munoz Materano adds that he has trouble urinating and his mine is very yellow, and that his pain feels "almost like [he has] been beaten or kicked in that area," and it causes him to feel briefly disoriented. *Id.* Munoz Materano states that he has a loving fiancée, with whom he hopes to have a family someday,

however he is "now afraid of being sterile for the rest of [his] life." *Id.*

Munoz Materano's medical records show that, on July 14, a nurse at Orange County prescribed him Clotrimazole 1% to be administered twice daily for 13 days, Doxycyline to be administered twice daily for five days, and Ibuprofen to be administered twice daily for nine days. Doc. 9-1 at ECF 8, 10, 11. However, between July 14 and 26, Clotrimazole 1% was administered to him only seven total times. *Id.* at ECF 8–9. From July 14 to 18, his Doxycycline was administered seven total times. *Id.* at 10. And from July 14 to 22, his Ibuprofen was administered eleven total times. *Id.* at 11–12. Munoz Materano's counsel states that, several times throughout his detention, they have reached out to ICE to inform them of Munoz Materano's worsening condition and to urge them to provide him with adequate medical care. Doc. 1 ¶ 39 (citing email correspondence from June 25, June 27–29, and July 9, 2025, attached as exhibits E, F, G, respectively). Counsel states that, "[d]espite these frequent requests and [Munoz Materano's] rapidly deteriorating health, ICE has failed to perform testing to properly diagnose [him], has taken his medications away during transfers, and has ignored his pleas for medical attention." *Id.*

In her declaration submitted on August 13, 2025 in support of Munoz Materano's petition, Rosanna Eugenio, the Legal Director of the New York Immigration Coalition, provides additional accounts of Munoz Materano's physical condition. She states, in part:

> Beginning on or about July 27th, [Munoz Materano] reported to me that he was experiencing serious and worsening symptoms. He called multiple times during the evening and the following morning and stated that he was experiencing numbness in his legs and an inability to walk or stand from excruciating pain [Redacted]. He was finally given medical care on July 28th and was taken to medical in a wheelchair, assisted by fellow detainees, because he was unable to walk on his own.
>
> *7 [...]
>
> [Munoz Materano] continues to feel pain [Redacted] daily as well as other symptoms like pain in or around his kidneys, stomach pain and cramping from his multiple medications, and numbness and cold sensation in his legs. He is unable to sleep because his pain is a consistent 8 out of 10. After his most recent severe medical episode, [Munoz Materano] told me that he thought he was going die there; the second time he has expressed that his medical distress reached this unbearable level.

Doc. 16-1 ¶¶ 12–13.

**B. Procedural History**

*1. Immigration Proceedings*

As previously discussed, Munoz Materano entered the U.S. on August 28, 2023, and at that time, DHS placed him in removal proceedings under 8 U.S.C. § 1229a[14]—that is, Section 240 removal proceedings—and released him on parole. Doc. 7 at 1; Doc. 8 ¶¶ 4–7. On the day of Munoz Materano's hearing in New York immigration court on May 21, 2025, his case was progressing through Section 240 removal proceedings, with his application for asylum, withholding of removal, and CAT pending. Doc. 1 ¶ 40. During the hearing, ICE moved to dismiss his Section 240 proceedings, and the IJ granted the motion. Doc. 7 at 1, 3. ICE then immediately detained Munoz Materano and initiated expedited removal proceedings pursuant to INA § 235(b), 8 U.S.C. § 1225(b).[15] Doc. 8 ¶ 10.

On May 23, 2025, Munoz Materano filed a motion to reopen and for an emergency stay of removal, in New York immigration court. *See* Doc. 8 ¶ 13. DHS filed an opposition on May 27. *Id.* ¶ 14. On June 4, Munoz Materano "renewed the motion," and DHS filed an opposition that same day. Doc. 7 at 3. On June 6, 2025, the IJ denied the motion to reopen. Doc. 8 ¶ 17. On June 10, Munoz Materano filed a third motion to reopen and for an emergency stay of removal, which DHS opposed on June 11. *Id.* ¶¶ 19, 20. The next day, on June 12, 2025, Munoz Materano timely filed an appeal with the Board of Immigration Appeals ("BIA"), challenging the IJ's dismissal of his Section 240 removal proceedings. *Id.* ¶¶ 21, 22. The BIA granted the stay of removal, however the appeal of the IJ's decision granting ICE's motion to dismiss the Section 240 removal proceedings remains pending. *Id.* ¶¶ 22, 29.

***8** It is undisputed that Munoz Materano remains in Section 240 removal proceedings while his appeal is pending with the BIA. Doc. 1 ¶ 98; Doc. 7 at 7. Respondents state that, although Munoz Materano is currently subject to § 1229a proceedings, if the dismissal of those proceedings is affirmed by the BIA, "then the expedited removal provisions of § 1225(b)(1) would apply." Doc. 7 at 5 n.1.

*2. The Instant Case*

On July 25, 2025, Munoz Materano filed the instant petition for *habeas corpus*, seeking his immediate release from custody, declaratory relief, injunctive relief, and reasonable attorneys' fees. Doc. 1. Munoz Materano attached various exhibits, including his own declaration and a declaration by Dr. Kate Sugarman. Docs. 1-2, 1-3. Dr. Sugarman states in part that, based on her review of an excerpt of his medical records,[16] Munoz Materano "suffers from chronic headaches, [Redacted] pain, fungal skin infection, and a [Redacted] mass," and that his symptoms "could be an indication of [Redacted] torsion, infection, or [Redacted] cancer," which require immediate attention. Doc. 1-3 at ECF 3; *id.* ¶ 5. She expresses concern that Munoz Materano has not been "referred to a urologist or oncologist, nor received diagnostic imaging or a biopsy," and opines that his "[c]urrent medical records do not indicate appropriate referrals, imaging, testing or follow-up care." *Id.* ¶¶ 7, 10. Dr. Sugarman also explains that if [Redacted] torsion goes untreated, it can lead to permanent loss of the [Redacted], and if [Redacted] cancer is not diagnosed early, it could require intensive treatment such as chemotherapy or radiation and could lead to infertility, metastatic cancer, or even death. *Id.* ¶¶ 6, 8, 9. Therefore, Dr. Sugarman concludes that, "[w]ithout timely evaluation," Munoz Materano's condition "could lead to infertility, permanent injury, or death if cancer is present." *Id.* ¶ 10.

On August 8, 2025, Respondents filed an opposition to Munoz Materano's petition, and on August 13, 2025, Munoz Materano filed his reply. Docs. 7, 16. In support of his reply, on August 13, Munoz Materano submitted a declaration by his lawyer, Rosanna Eugenio, in which Ms. Eugenio describes certain conversations she has had with Munoz Materano, as well as with his fiancée, throughout his detention. Doc. 16-1. Ms. Eugenio states in part that, on August 11, she learned during a telephone call with Munoz Materano, with the assistance of an English-speaking detainee, that he received a notice stating that the parole he was granted on August 28, 2023, and that was to extend through August 28, 2025, was revoked. *Id.* ¶ 15. Ms. Eugenio adds that she has not received a copy of the notice. *Id.*

Munoz Materano filed two notices of supplemental authority, on August 19 and 20, 2025, respectively. Docs. 17, 17-1 and 18, 18-1, respectively.

## II. DISCUSSION

Munoz Materano argues that his detention is not authorized, that his arrest violated the Fourth and Fifth Amendments as well as the INA and APA, and that the conditions of his confinement violate the Fifth Amendment, INA, and APA.

### A. The Court's Jurisdiction

***9** As a threshold matter, this Court has jurisdiction to hear Munoz Materano's *habeas* petition pursuant to 28 U.S.C. § 2241, which "authoriz[es] any person to claim in federal court that he or she is being held 'in custody in violation of the Constitution or laws ... of the United States.' " *Zadvydas v. Davis*, 533 U.S. 678, 687, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (quoting 28 U.S.C. § 2241(c)(3)). While Respondents do not contest that the Court has jurisdiction to review Munoz Materano's challenges to his detention, they argue that it does not have jurisdiction over his challenges concerning expedited removal; Respondents also argue that this Court's jurisdiction is precluded by various jurisdictional bars imposed by the INA: 8 U.S.C. §§ 1252(a)(2)(A), 1252(g), and 1252(e)(3)(A). Each of these jurisdictional challenges fails.

*1. Jurisdiction to hear claims regarding removal and expedited removal.*

Respondents argue that Munoz Materano cannot challenge "matters relating to removal proceedings and expedited removal," first, because *habeas* petitions are only appropriate for challenging detention itself, and second, because "§ 1252(a)(2)(A) deprives [the] court[s] of jurisdiction to hear challenges relating to the Attorney General's decision to invoke expedited removal, [her] choice of whom to remove in this manner, [her] procedures and policies, and the implementation or operation of a removal order." Doc. 7 at 5–6 (quoting *Shunaula v. Holder*, 732 F.3d 143, 146 (2d Cir. 2013) (quotations omitted)). Munoz Materano responds that he does not challenge the *fact* that Respondents decided to subject him to expedited removal proceedings, but rather the "procedural irregularities" with which Respondents exercised their discretion. Doc. 16 at 2.

Federal courts can review " 'how' [the respondents] exercise their discretion because such a claim does not ask 'why the Secretary chose to execute the removal order' but rather 'whether the way [the respondents] acted accords with the Constitution and the laws of this country.' " *Torres-Jurado v. Biden*, No. 19 Civ. 3595 (AT), 2023 WL 7130898, at *2 (S.D.N.Y. Oct. 29, 2023) (citation omitted) (granting petitioner's motion for a stay of removal). The Second Circuit

has clearly stated that while § 1252 "strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges." *Mantena v. Johnson*, 809 F.3d 721, 728 (2d Cir. 2015) (finding that the court had jurisdiction to review petitioner's claim that respondent "erred procedurally" in revoking an employment visa petition on grounds that it "violated its own regulations by providing insufficient notice of the revocation"). Therefore, because Munoz Materano challenges the "*procedure* surrounding the substantive decision" to invoke expedited removal against him, this Court clearly has jurisdiction over his claims. *Id.* (emphasis in original).

Moreover, Courts have reviewed these kinds of challenges when raised in *habeas* petitions. *See, e.g.*, *Orellana v. Francis*, No. 25 Civ. 04212 (OEM), 2025 WL 2402780 (E.D.N.Y. Aug. 19, 2025) (evaluating petitioner's claim that the revocation of his parole violated the APA, asserted as part of petitioner's *habeas* petition, and finding an APA violation because the respondents did not meet the statutory and regulatory standards for revocation); *Mata Velasquez v. Kurzdorfer*, No. 25 Civ. 493 (LJV), —— F.Supp.3d ——, ——, 2025 WL 1953796, at *6 (W.D.N.Y. July 16, 2025) ("[Petitioner] argues that ICE violated the statutory framework as well as constitutional law when it re-detained him. That is a question that falls squarely within this Court's *habeas* jurisdiction."). Respondents provide that the writ of *habeas corpus* is, at its core, a means for reviewing and remedying unlawful detention, yet they fail to show how that principle precludes judicial review over the claims at issue.

*2. Jurisdiction to review challenges to the Attorney General's "decision or action" to "commence proceedings" and to adjudicate cases."*

***10** Respondents argue that Munoz Materano's "challenges are barred to the extent he challenges decisions and actions to commence proceedings and to adjudicate cases," Doc. 7 at 6, because 8 U.S.C. § 1252(g) bars courts from hearing claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien[.]" 8 U.S.C. § 1252(g). In response, Munoz Materano reiterates that he "is not asking the Court to review the exercise of Respondents' discretion in connection with any of the enumerated acts in Section 1252(g)," but rather whether Respondents acted lawfully in the manner that they exercised their discretion. Doc. 16 at 3.

This jurisdictional challenge fails for the same reason as the first. Section 1252(g) does not bar the Court from exercising jurisdiction over Munoz Materano's claim that "Respondents violated his constitutional due process rights and the INA when [they] moved to dismiss his Section 240 removal proceedings and re-detained him without prior notice or process," Doc. 16 at 3–4, because Munoz Materano does not seek to challenge the Attorney General's substantive use of discretion. *See You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 457 (S.D.N.Y. 2018) ("[H]ere, the *habeas* petition does not challenge the discrete decision to remove Petitioner. The question before the Court is not why the Secretary chose to execute the removal order. Rather, the question is whether the way Respondents acted accords with the Constitution and the laws of this country. Whether Respondents' actions were legal is not a question of discretion, and, therefore, falls outside the ambit of § 1252(g)."); *see also Torres-Jurado*, 2023 WL 7130898, at *3 (holding that plaintiff's claims that ICE violated his due process rights in revoking a stay without providing notice or an opportunity to be heard was not barred by § 1252(g) because it was not a challenge on "ICE's discretion to execute the removal order," but rather on "ICE's legal authority to revoke the ICE Stay without process.").

*3. Jurisdiction to evaluate challenges to a policy, statute, or regulation concerning expedited removal under the APA or the INA.*

Finally, Respondents argue that, pursuant to 8 U.S.C. § 1252(e)(3)(A), any challenges to "a policy, statute, or regulation concerning expedited removal under the APA or the INA," must be filed in the U.S. District Court for the District of Columbia, and are therefore barred in this District. Doc. 7 at 6–7. Munoz Materano responds that § 1252(e)(3) is inapplicable because it concerns challenges to the validity of a "system," and he "does not raise any systemic challenges." Doc. 16 at 4.

Section 1252(e)(3), entitled "Challenges on validity of the system," provides in subsection (A) that "judicial review of determinations under [§] 1225(b) ... is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of— (i) whether such section, or any regulation issued to implement such section, is constitutional; or (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is ... in violation of law." 8 U.S.C. § 1252(e)(3). Here, Munoz Materano does not challenge the lawfulness of any particular

statute, regulation, or written policy or procedure. Therefore, § 1252(e)(3)(A) does not strip this Court of jurisdiction over his claims. *See Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *7 (holding in part that § 1252(e)(3) did not bar the court's review where the crux of petitioner's argument was that the government did not have the lawful authority to initiate the expedited removal process against him at that time; he did not challenge "the statutory framework"). [17]

**B. Munoz Materano's Arrest**

*1. Section 1225 is not a legal basis for Munoz Materano's detention.*

***11** Respondents state that, on May 21, 2025, they initiated the expedited removal process and detained Munoz Materano, pursuant to § 1225(b)(1). Doc. 7 at 2, 3. Subsequently, on June 12, 2025, Munoz Materano timely filed an appeal with the BIA, challenging the IJ's dismissal of his Section 240 removal proceedings. Doc. 8 ¶¶ 21, 22. Respondents therefore expressly concede that, while Munoz Materano's appeal is pending, he remains in Section 240 removal proceedings subject to § 1229a, not expedited removal pursuant to § 1225(b)(1). Doc. 7 at 7; Doc. 8 ¶ 29. They express their intention to continue pursuing expedited removal proceedings "*[s]hould* the BIA affirm" the IJ's dismissal of the Section 240 proceedings. Doc. 7 at 1 (emphasis added). There is no dispute, however, that Munoz Materano "is currently subject to" § 1229. *Id.* at 5 n.1. Therefore, Respondents' contention—made in response to Munoz Materano's Due Process challenges—that his "detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is mandatory, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A)," is inapposite. Doc. 7 at 14. Section § 1225(b) is not currently applicable to Munoz Materano. *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("*Habeas* review is not limited to evaluating the lawfulness of detention when it is first imposed ... but is also available to challenge whether, at some point, an ongoing detention has become unlawful.").

Furthermore, the Court finds that § 1225(b) could not apply to Munoz Materano even absent the pending BIA appeal. This Court joins *Coalition for Humane Immigrant Rights v. Noem*, No. 25 Civ. 872 (JMC), —— F.Supp.3d ——, ——, 2025 WL 2192986, at *30 (D.D.C. Aug. 1, 2025), in holding that § 1225 does not authorize expedited removal of individuals who have ever been paroled into the U.S. under either of its provisions: § 1225(b)(1)(A)(i), which applies to individuals "arriving in" the U.S., or § 1225(b)(1)(A)(iii)(II), which applies to individuals who "ha[ve] not been admitted or paroled" into the U.S. and cannot show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." [18] *See Coalition for Humane Immigrant Rights*, —— F.Supp.3d at ——, 2025 WL 2192986, at *30 (explaining that "the only way to make sense of the statutory scheme Congress created is to see that parolees fall under neither [provision of Section 1225(b)(1)]. Any other result conflicts with other aspects of the statute and regulations, Congress's evident purpose, and the ordinary meaning of the statute's words."); *see also id.* at ——, 2025 WL 2192986, at *25 (finding 8 C.F.R. § 1.2, which defines "arriving alien" for purposes of § 1225(b)(1)(A)(i) to include noncitizens "paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked" to be "*ultra vires* to the extent it subjects parolees to expedited removal"); *see also Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), —— F.Supp.3d ——, ——, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (explaining that treating all "applicants for admission" as individuals "arriving in" the U.S. and "seeking admission" would negate the plainly present-tense construction of the latter phrases, violate statutory interpretation canons such as the rule against surplusage and the "meaningful-variation canon," dramatically narrow the applicability of related, and even recently amended, INA statutes, and "expand § 1225(b) far beyond how it has been enforced historically, potentially subjecting millions more undocumented immigrants to mandatory detention"). Therefore, § 1225 is inapplicable to Munoz Materano and thus ICE violated the INA by invoking it against him.

*2. Due Process*

Even if § 1225 were statutorily applicable to Munoz Materano, the Court finds that Respondents violated his Fifth Amendment Due Process rights by moving to dismiss his Section 240 proceedings, revoking his parole, and arresting him pursuant to § 1225, without providing him notice or an opportunity to be heard. [19]

***12** Respondents argue that, as an "applicant for admission" into the U.S., Munoz Materano has no due process rights beyond "those rights regarding admission that Congress has provided by statute." Doc. 7 at 10, 11 (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 140, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020)); *see also Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) ("In concluding that *Thuraissigiam*'s due process rights were not violated, the Supreme Court

emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides."). Therefore, Respondents argue, Munoz Materano cannot identify a statutory violation because Respondents did not violate § 1225, and without a statutory violation, he cannot establish a due process violation. Doc. 7 at 12, 13–17.

As an initial matter, Respondents misstate the law. The Due Process Clause of the Fifth Amendment "covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (citing *Zadvydas*, 533 U.S. at 693, 121 S.Ct. 2491); *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). The Supreme Court has repeatedly—and recently—reiterated this principle. *See, e.g.*, *Trump v. J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 1006, 221 L.Ed.2d 529 (2025) (" 'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (citation omitted)); *see also A.A.R.P. v. Trump*, 605 U.S. 91, 145 S. Ct. 1364, 1367, 221 L.Ed.2d 765 (2025) ("We have long held that 'no person shall be' removed from the United States 'without opportunity, at some time, to be heard.' " (citation omitted)). The Court's decision in *Thuraissigiam* does not suggest that Munoz Materano does not have Due Process rights, as Respondents claim. There, the petitioner was arrested a mere 25 yards after crossing the border, and the Court held he was still "at the threshold of initial entry."[20] 591 U.S. at 107, 140 S.Ct. 1959. Thus, *Thuraissigiam* serves to reinforce the principle that those present in the U.S., even undocumented individuals, are protected by the Fifth Amendment. *See Make the Road New York v. Noem*, No. 25 Civ. 190 (JMC), —— F.Supp.3d ——, ——, 2025 WL 2494908, at *11 (D.D.C. Aug. 29, 2025) (stating that *Thuraissigiam* "reflects the ... proposition that noncitizens 'on the threshold of initial entry stand[ ] on a different footing' than those who have 'passed through our gates' " (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212, 73 S.Ct. 625, 97 L.Ed. 956 (1953))).

Respondents further argue that, even if Munoz Materano could invoke additional due process protections, they would fail because he cannot make the necessary showing that he was "denied a full and fair opportunity to present [his] claims or that the IJ or BIA otherwise deprived [him] of fundamental fairness." Doc. 7 at 12, 13 (quoting *Burger v. Gonzales*, 498 F.3d 131, 134 (2d Cir. 2007)). Respondents' argument fails. "The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review." *Id.* The Second Circuit applies the *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), balancing test "when determining the adequacy of process in the context of civil immigration confinement." *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (citation omitted). That is, "[t]he determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Lopez Benitez*, —— F.Supp.3d at ——, 2025 WL 2371588, at *9 (quoting *Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931, at *2 (S.D.N.Y. July 13, 2025)). Applying the *Mathews v. Eldridge* test, the Court determines that Munoz Materano's Due Process rights have been violated.

*a. Private Interest*

***13** With regards to the first factor, Munoz Materano invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851. On May 21, 2025, he was detained without any notice, explanation, or an opportunity to be heard, handcuffed for hours, then transported to multiple detention centers across the country. Munoz Materano's "liberty interest is clearly established." *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), —— F.Supp.3d ——, ——, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (granting habeas petition and finding ICE violated the petitioner's Due Process rights by arresting him as he exited an immigration hearing, after determining—with no support—that the respondent was a flight risk, and then "re-detain[ing] him with no notice, explanation, or opportunity ... to be heard"); *see also Make the Road*, —— F.Supp.3d at ——, 2025 WL 2494908, at *10 ("[O]nce they are present in the United States, noncitizens have a 'weighty' liberty interest in remaining, as they 'stand to lose the right to stay and live and work in this land of freedom,' and 'may lose the right to rejoin their immediate family, a right that ranks high among the interests of the individual.' " (alterations adopted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S.Ct. 321, 74 L.Ed.2d 21 (1982))).

*b. Risk of Erroneous Deprivation*

As to the second factor, the risk of erroneous deprivation of Munoz Materano's liberty interest is high. Respondents do not deny that on May 21, Munoz Materano was not provided any notice (or Spanish interpretation)[21] that Respondents were moving to dismiss his Section 240 proceedings and seeking to invoke § 1225, much less given an opportunity to be heard. Respondents' argument that "[h]aving been placed in removal proceedings to pursue an asylum application and having been considered for release on parole, [Munoz Materano] has been afforded all of the process that he is due," Doc. 7 at 14, is inapposite.[22] "A person's liberty cannot be abridged without 'adequate procedural protections,' " *Lopez Benitez*, —— F.Supp.3d at ——, 2025 WL 2371588, at *9 (quoting *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491), and Munoz Materano "does not contend that greater judicial-type procedures must be imposed upon the administrative actions of ICE than those already required by law[.]" *Id.* (quoting *Chipantiza-Sisalema*, 2025 WL 1927931, at *3). Even if, *arguendo*, ICE had the "statutory, discretionary authority" to detain Munoz Materano pursuant to § 1225, "the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process. There is no dispute that it is." *Kelly*, 2025 WL 2381591, at *4 (holding that ICE violated petitioner's Due Process rights when arresting him pursuant to 8 U.S.C. § 1226(a)[23] at his immigration hearing, seven months after releasing him on his own recognizance, in part because ICE's "mere 'review' " of his May 2025 criminal convictions prior to arresting him did not amount to "an individualized assessment of a suspect's flight risk or dangerousness"); *see also Torres-Jurado*, 2023 WL 7130898, at *4 ("[B]efore the Government unilaterally takes away that which is sacred, it must provide *meaningful* process." (emphasis in original) (citation omitted)). Here, it is clear that Munoz Materano did not receive process regarding the revocation of his parole.

***14** Respondents do not contest that Munoz Materano's humanitarian parole, granted on August 28, 2023, was valid until August 28, 2025, and they do not provide any indication that any individualized determination was made for its revocation—it is not even clear from the record exactly when, or how, a revocation was effected.[24] "Section 1182 provides that parole may be granted 'only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.' " *Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *10 (quoting 8 U.S.C. § 1182(d)(5)(A)). "To revoke parole, in turn, a DHS official with authority must decide either that the 'the purpose for which parole was authorized' has been 'accomplished' or that 'neither humanitarian reasons nor public benefit warrants the continued presence of the noncitizen' in the United States.' " *Id.* (alteration adopted) (quoting 8 C.F.R. § 212.5(e)(2)(i)); *see also Y-Z-L-H*, 792 F.Supp.3d 1123, 1138 (D. Or. 2025) ("Common sense suggests ... that parole given only on a case-by-case basis is to be terminated only on such a basis." (citation omitted)); *Orellana*, 2025 WL 2402780, at *6 (holding that respondents violated the APA by failing to make a "case-by-case" determination as to the revocation of the petitioner's parole, and also failed to demonstrate that petitioner received adequate notice of his parole revocation).

Here, Respondents provide no indication that an individualized determination was made as to the revocation of Munoz Materano's parole; nor do they articulate, even now, either that the purpose for which Munoz Materano's parole was authorized has been accomplished, nor that neither humanitarian reasons nor public benefit warrants his continued presence in the United States. *Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *17 (finding a risk of erroneous deprivation, where, "[d]espite the government's previous finding to the contrary, it has not provided 'a reasoned explanation or any changed circumstances,' that would support a decision that 'neither humanitarian reasons nor public benefit warrants [his] continued presence ... in the United States[.]' " (quoting *Y-Z-L-H*, 792 F.Supp.3d at 1145–46 and 8 C.F.R. § 212.5(e)(2)(i))); *see also Lopez Benitez*, —— F.Supp.3d at ——, 2025 WL 2371588, at *12 (alterations adopted) (citation omitted) ("[W]hen DHS first released [petitioner] in 2023 pursuant to § 1226(a), it could not have done so validly unless it did not consider him to be a flight risk or danger to the community at that time, and Respondents do not contend that his 2023 release was erroneous ... Moreover, Respondents have failed to articulate any change in circumstances between the time of [the petitioner's] initial release in 2023 and his re-detention in 2025 that now makes him a flight risk or a danger to the community." (alterations adopted) (internal quotation marks and citations omitted)). To the contrary, Respondents do not contest that Munoz Materano's application for asylum, withholding of removal, and CAT was pending, and that meanwhile, he was living as a law-abiding member of his community, working lawfully, and in compliance with the requirements of his immigration proceedings.

***15** In their opposition, Respondents appear to side-step the issue of the revocation of Munoz Materano's parole

from 2023; they argue only that they properly invoked the expedited removal process, on the heels of the IJ's dismissal of Munoz Materano's Section 240 proceedings, and that § 1225(b) mandates detention with "only the possibility of discretionary parole." Doc. 7 at 17. However, "nothing in the record reflects ... (1) who made the decision to detain [Munoz Materano], (2) when that decision occurred, (3) on what basis the decision to detain him was made, (4) whether there was any material change in circumstances with respect to [Munoz Materano] that triggered his detention, or (5) whether there was any sort of new policy in place that triggered his detention." *Lopez Benitez*, —— F.Supp.3d at ——, 2025 WL 2371588, at *11 (granting the *habeas* petition of a noncitizen who was re-detained more than two years after being released on his own recognizance from ICE custody, pursuant to § 1226(a), and remarking, "the utter lack of transparency here is problematic, to say the least, as it makes it impossible to determine why [petitioner] was detained in the first place"); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding a Due Process violation where ICE took petitioner into custody under § 1226(a) without explaining why it detained her or contending that it made an individualized assessment that she should be detained, and stating: "ICE summarily detained [the petitioner] pursuant to an agency policy of arbitrary detention without affording her notice or opportunity to be hear"); *Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *17 ("To mitigate the risk of erroneous deprivation, due process requires, 'at a minimum, the opportunity for [petitioner] to submit evidence relevant to whether the government should revoke his parole before it makes a revocation decision.' " (alterations adopted) (citing *See Torres-Jurado*, 2023 WL 7130898, at *4)).

In sum, Munoz Materano's re-detention without any individualized assessment such as "any change in circumstances" since the government released him on parole "establishes a high risk of erroneous deprivation of his protected liberty interest." *Lopez Benitez*, —— F.Supp.3d at ——, 2025 WL 2371588, at *12 (quoting *Valdez*, —— F.Supp.3d at ——, 2025 WL 1707737, at *4); *see also Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *17 ("DHS has announced that it intends to revoke parole for everyone like [petitioner] without any regard for individual circumstances ... To mitigate the risk of erroneous deprivation, due process requires, 'at a minimum, the opportunity for [petitioner] to submit evidence relevant to whether the government should revoke his parole before it makes a revocation decision.' " (alterations adopted) (citing, *inter alia*, Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13612 (Mar. 25, 2025) ("Termination Notice") [25] )).

*c. Government Interest*

Finally, Respondents have "failed to show a significant interes" in Munoz Materano's detention. *Valdez*, —— F.Supp.3d at ——, 2025 WL 1707737, at *4. Respondents do not argue that Munoz Materano is dangerous or a flight risk, nor could they—it is not disputed that Munoz Materano has lived lawfully in this country since his parole, has worked, and voluntarily presented himself at his immigration hearing. *See Velasco Lopez*, 978 F.3d at 854 ("[T]he Government has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight."); *cf. Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *17 (the government "has an interest in detaining noncitizens 'to ensure that they will be available if they are determined to be deportable.' " (alterations adopted) (citation omitted)). Moreover, courts have recognized that "*minimizing* the enormous impact of incarceration in cases where it serves no purpose" furthers the government's interest, which pursuant to *Mathews v. Eldridge*, includes "he fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez*, 978 F.3d at 854 (emphasis added) (citation omitted); *see also Mons v. McAleenan*, No. 19 Civ. 1593 (JEB), 2019 WL 4225322, at *2 (D.D.C. Sept. 5, 2019) (explaining that, according to a 2009 DHS "Parole 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 *not* in the public interest,' and thus ICE '*should*, absent additional factors ... parole the alien.' " (emphasis in original)) (citing ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009)). While the government has an interest in enforcing immigration laws at the border, it must pursue that interest "in a manner consistent with the Constitution." *Make the Road*, —— F.Supp.3d at ——, 2025 WL 2494908, at *19 (quoting *A.A.R.P.*, 145 S. Ct. at 1368); *id.* (noting that the government "has not explained why it is unable to efficiently enforce the immigration laws, including the expedited removal statute, while also affording individuals with their 'core' due process right: 'notice and a meaningful opportunity to be heard.' ").

***16** In sum, applying the *Mathews v. Eldridge* balancing test, the Court finds that Munoz Materano's sudden and continuing detention, "with no process at all, much less prior notice, no showing of changed circumstances, or an

opportunity to respond, violates his due process rights." *Valdez*, —— F.Supp.3d at ——, 2025 WL 1707737, at *4; *see also Lopez v. Sessions*, No. 18 Civ. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment."). "In light of the deprivation of [Munoz Materano's] liberty, formerly granted and approved by Respondents" through their grant of humanitarian parole, "the absence of any deliberative process prior to, or contemporaneous with, the deprivation, and the statutory and the constitutional rights implicated, a writ of *habeas corpus* is the only vehicle for relief. It is, in essence, the most appropriate remedy." *Id.* at *15.[26]

*3. APA*

Munoz Materano also argues that Respondents violated the APA by revoking his parole, moving to dismiss his case, and invoking § 1225. The APA requires courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "contrary to constitutional right," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)–(D). In opposition, Respondents argue that their motion to dismiss was properly brought before the IJ; however, they do not provide any argument regarding Munoz Materano's claim that they violated the APA by revoking his parole. Doc. 7 at 7–8.[27] The Court finds that, in arresting Munoz Materano, Respondents revoked his parole in violation of the APA.

As discussed, "[a]fter parole has been granted, the Secretary may only revoke parole 'when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served.' " *Orellana*, 2025 WL 2402780, at *5 (quoting 8 U.S.C. § 1182(d)(5)(A)). "Several courts have found that, as in the case of grants of parole, Section 1182 requires an individualized case-by-case determination before parole can lawfully be revoked." *Id.* (internal citations omitted) (collecting cases).

*17 Respondents fail to show on what grounds they might have revoked Munoz Materano's humanitarian parole.[28] As previously discussed, "[t]o revoke parole, in turn, a DHS official with authority must decide either that the 'the purpose for which parole was authorized' has been 'accomplish[ed]' or that 'neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen]' in the United States' " *Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *10 (quoting 8 C.F.R. § 212.5(e)(2)(i)); *See also Y-Z-L-H*, 792 F.Supp.3d at 1138–39. Here, however, "Respondents do not argue that the purpose of parole was satisfied and they do not contend that they engaged in an individualized analysis to determine whether the purpose of [Munoz Materano's] parole had been accomplished." *Orellana*, 2025 WL 2402780, at *5; *see also Mata Velasquez*, —— F.Supp.3d at ——, 2025 WL 1953796, at *11 ("[T]he words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole 'must attend to the reasons an individual [noncitizen] received parole.' " (citation omitted)). Nor do Respondents present any evidence that humanitarian reasons no longer warrant his continued presence in the United States. *Id.* Rather, as discussed, they do not deny that Munoz Materano is an applicant for asylum who has lived and worked as a law-abiding member of his community, in accordance with his parole and work authorization, and that he has shown compliance with the requirements of his immigration proceedings—including by appearing at his hearing on May 21. Therefore, Respondents have not shown compliance with 8 U.S.C. § 1182. "Thus, Respondents acted arbitrarily and capriciously, in violation of the APA, when they denied [Munoz Materano] the required procedure before revoking his parole." *Orellana*, 2025 WL 2402780, at *6 (finding an APA violation and stating: "Respondents represented to the Court that, because petitioner no longer had parole status, ICE lawfully detained him pursuant to 8 U.S.C. § 1225(b)(2).").

*4. Fourth Amendment*

Munoz Materano argues that his arrest violated the Fourth Amendment, because the "government lacked reliable information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided [he] could pursue his claims for immigration relief at liberty" when they granted him parole. Doc. 1 ¶ 112. Respondents do not provide any arguments in opposition to Munoz Materano's Fourth Amendment claim, and therefore, the Court deems this claim uncontested. Because, as previously discussed, Respondents have not asserted any new circumstances about Munoz Materano, nor any particular circumstances from May 21, 2025 that would have reasonably triggered his arrest, the Court finds Respondents violated his Fourth Amendment rights. *See Zuniga-Perez v. Sessions*, 897 F.3d 114, 122 (2d Cir. 2018) (explaining that the Fourth Amendment applies to undocumented individuals).

**C. Munoz Materano's Confinement**

Finally, Munoz Materano argues that he has been denied medical care in violation of his Due Process rights. The Fifth Amendment of the Constitution guarantees that civil detainees, including noncitizen detainees, may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); *see also Charles v. Orange County*, 925 F.3d 73, 85 (2d Cir. 2019) ("In *Estelle v. Gamble*, ... the Supreme Court held that the state has a constitutional obligation to provide medical care to persons it is punishing by incarceration.") (citing *Estelle v. Gamble*, 429 U.S. 97, 103, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)). "[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment[.]" *Helling v. McKinney*, 509 U.S. 25, 32, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993) (citation omitted); *see also Charles*, 925 F.3d at 85 (explaining that this principle extends to civil detainees (citing *Youngberg v. Romeo*, 457 U.S. 307, 321–22, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982))). Munoz Materano must make two showings: (1) the existence of a "serious medical need," and (2) that Respondents acted with deliberate indifference to such need. *Charles*, 925 F.3d at 85.

***18** Under the first, objective prong, the Second Circuit has held that a medical condition is "sufficiently serious" if it presents a "condition of urgency such as one that may produce death, degeneration, or extreme pain." *Id.* 925 F.3d at 86 (citing *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir. 1996)). In assessing whether the condition is sufficiently serious, courts consider facts such as "whether a reasonable doctor or patient would find the injury important and worthy of treatment," whether the condition "significantly affects an individual's daily activities," and whether it "inflicts chronic and substantial pain." *Id.* (citing *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998)).

The Second Circuit has stated that the second, deliberate indifference prong, "can be established by either a subjective or objective standard: A [petitioner] can prove deliberate indifference by showing that the defendant official 'recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, *or should have known*, that the condition posed an excessive risk to [the plaintiff's] health or safety.' " *Charles*, 925 F.3d at 87 (emphasis in original) (quoting *Darnell v. Pineiro*, 849 F.3d 17, 35 (2017)). While "mere negligence" does not suffice, "medical malpractice ... may rise to the level of deliberate indifference when it involves culpable recklessness, i.e., an act or a failure to act ... that evinces a conscious disregard of a substantial risk of serious harm." *Charles*, 925 F.3d at 87 (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 107 (2d Cir. 2000)).

The Court determines, first, that Munoz Materano has a sufficiently serious medical condition. Munoz Materano has a fungal infection that began [Redacted] and appears to have spread to his face, a swollen, tender [Redacted] with an unidentified mass, and various symptoms including a burning sensation when he urinates, persistent pain [Redacted], as well as numbness in his legs. These symptoms began during Munoz Materano's detention, and they have made it increasingly difficult for him to urinate, sleep, and walk—even leading him to resort to a wheelchair for transportation on July 28. Munoz Materano's health condition has thus significantly affected his daily activities, and it is one which "a reasonable doctor or patient would find ... important and worthy of treatment." *Charles*, 925 F.3d at 86. In fact, multiple medical providers who have examined him while in detention have ordered further tests; for example, on June 19, one doctor who observed that Munoz Materano's "[Redacted] [were] enlarged," and that his [Redacted] had a "[Redacted] mass" referred him to radiology for a [Redacted] ultrasound. Doc. 9-2 at ECF 44, 108. And on June 28, a different medical provider recommended an ultrasound, as well as an "[Redacted] lab" and testing for hepatitis, [Redacted]. Doc. 9-1 at 101.

The record also shows that Munoz Materano's condition has degenerated. While Munoz Materano's earlier medical records reflect mere itchiness and discomfort while urinating, subsequent records indicate—among other symptoms—the proliferation of white spots and red patches, a burning sensation while urinating, and aching pain rated at a 7/10 or 8/10. Munoz Materano also states in his July 19 declaration that his pain, which "feels like throbbing, almost like [he has] been beaten or kicked in that area," is so intense that it causes him to feel briefly disoriented. Doc. 1-2 ¶ 28. Should Munoz Materano's condition continue to degenerate, it could lead to severe consequences. In Dr. Sugarman's July 23 declaration in support of Munoz Materano's petition, she explains that, if [Redacted] torsion goes untreated, it can lead to permanent loss of [Redacted], and if [Redacted] cancer is not diagnosed early, it could require intensive treatment such

as chemotherapy or radiation and could lead to infertility, metastatic cancer, or even death. Doc. 1-3 ¶¶ 6, 8, 9. While Dr. Sugarman does not make any specific diagnosis or prognosis, she expresses her concern—based on Munoz Materano's symptoms—that he has not been "referred to a urologist or oncologist, nor received diagnostic imaging or a biopsy." *Id.* ¶ 7. Dr. Sugarman cautions: "Current medical records do not indicate appropriate referrals, imaging, testing or follow-up care. Without timely evaluation, it could lead to infertility, permanent injury, or death if cancer is present." *Id.* ¶ 10.

***19** Therefore, based on the record, the Court finds that, because Munoz Materano's medical condition could "degenerate with increasingly serious implications if neglected over sufficient time, it presents a 'serious medical need' within the meaning of our case law." *Harrison v. Barkley*, 219 F.3d 132, 137 (2d Cir. 2000) (citation omitted) (holding that a detainee's tooth cavity constituted a serious medical condition because, while "[o]rdinarily, a tooth cavity is not a serious medical condition," it is "a degenerative condition that tends to cause acute infections, debilitating pain and tooth loss if left untreated.").

Second, the Court finds that Respondents acted with deliberate indifference towards Munoz Materano's serious medical needs, by inconsistently administering his medications despite his evident deterioration—all while transferring him at least ten times, to eight different detention centers in four different states, under un-hygienic conditions. On July 8, 2025, a medical provider observed that Munoz Materano's epididymitis had likely persisted because he "never completed a full course" of Doxycycline. Doc. 9-1 at ECF 101. Then, between July 14 and 26, Munoz Materano's Clotrimazole 1% was administered only seven total times instead of 26 times over 13 days. Doc. 9-1 at ECF 8–9. From July 14 to 18, his Doxycycline was administered seven total times instead of 10 times over five days. *Id.* at 10. And from July 14 to 22, Munoz Materano's Ibuprofen was administered 11 total times instead of 18 times over nine days. *Id.* at 11–12. Therefore, although Respondents argue that Munoz Materano "has been seen no fewer than 23 times since he was detained," the number of medical visits does not demonstrate that "ICE has provided [Munoz Materano] with adequate care," as Respondents claim. Doc. 7 at 21. Rather, the medical records reveal that Respondents did not adhere to the medication plans on the recommended schedules, all while Munoz Materano complained of persistent and worsening symptoms. *See Hathaway v. Coughlin*, 37 F.3d 63, 68 (2d Cir. 1994) (finding deliberate indifference, and stating that the fact that the defendant "frequently examined" the plaintiff detainee did not vindicate him, because "[t]he course of treatment [plaintiff] received clearly did not alleviate his suffering" and so "a jury could infer deliberate indifference from the fact that [defendant] knew the extent of [plaintiff's] pain, knew that the course of treatment was largely ineffective, and declined to do anything more to attempt to improve [his] situation.").

Respondents also argue that the medical provider who observed a mass on Munoz Materano's [Redacted] is an "outlier"—because providers who examined Munoz Materano before and after that provider did not find [Redacted] masses—and therefore Respondents' failure to conduct the imaging that he recommended does not give rise to a constitutional claim. Doc. 7 at 21–22. However, as previously discussed, Munoz Materano has various serious symptoms aside from the [Redacted] mass, particularly when considered in the context of his generally deteriorating condition. In fact, even the medical provider that, on July 8, stated she found no "palpable masses" when examining Munoz Materano at Coastal Bend, recommended an ultrasound to further evaluate his nodule, as well as various labs based on his [Redacted] lesions. Doc. 9-1 at ECF 101. Nonetheless, as Dr. Sugarman attested, Munoz Materano's records "do not indicate that he was referred to a urologist or oncologist, nor received diagnostic imaging or a biopsy." Doc. 1-3 ¶ 7.

***20** In sum, Respondents failed to provide recommended testing, and failed to ensure that Munoz Materano has the continuity of access to medications that he needs; this, it is clear, is likely as a result of the frequent, haphazard transfers to which he was subjected. These omissions, in the face of Respondents' awareness of Munoz Materano's worsening condition, indicate Respondents' deliberate indifference to his serious medical needs.[29]

## III. CONCLUSION

For the reasons set forth above, Munoz Materano's petition is GRANTED. Respondents are ORDERED to immediately release Munoz Materano from custody.

Further, the Court finds that Respondents detained Munoz Materano in violation of his Fifth Amendment Due Process Rights, the Fourth Amendment, the INA, and the APA, and that the conditions of Munoz Materano's confinement violate the Fifth Amendment.

Munoz Materano's counsel is instructed to submit its fee application and corresponding billing records to the Court by September 23, 2025. Respondents are instructed to file any opposition by October 7, 2025.

It is SO ORDERED.

**All Citations**

--- F.Supp.3d ----, 2025 WL 2630826

## Footnotes

1 The following facts are primarily drawn from Munoz Materano's *habeas* petition, Doc. 1, his sworn declaration, Doc. 1-2, the declarations of Dr. Kate Sugarman and attorney Rosanna Eugenio in support thereof, Docs. 1-3 and 16-1, Respondents' opposition, Doc. 7, Respondents' declaration in support thereof, Doc. 8, and Munoz Materano's medical records, Docs. 9-1 and 9-2. The facts recited here are undisputed unless otherwise noted.

2 Tren de Aragua is a criminal organization based in Venezuela which "the State Department has designated as a foreign terrorist organization." *Trump v. J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 1005, 221 L.Ed.2d 529 (2025) (citing 90 Fed. Reg. 10030 (2025)); *see also id.* at 1008 (Sotomayor, J., dissenting) (explaining that, on March 14, 2025, President Trump "invoked the Alien Enemies Act to address an alleged 'Invasion of the United States by Tren De Aragua.' " (citation omitted)).

3 "During the Biden Administration, DHS began directing noncitizens to use the CBP One mobile application as the primary, if not exclusive, mechanism to seek parole and/or asylum at the southwestern border. The Trump Administration disabled that functionality in CBP One in January 2025[.]" *Coalition for Humane Immigrant Rights v. Noem*, No. 25 Civ 872 (JMC), —— F.Supp.3d ——, ——, 2025 WL 2192986, at *8 (D.D.C. Aug. 1, 2025) (citing, *inter alia*, Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31317–18 (May 16, 2023)).

4 Although Munoz Materano does not explain whether he understands or speaks any English, it is apparent from the record that his English proficiency is limited. His medical records state that he speaks Spanish and requires a language interpreter. *See* Doc. 9-1 at ECF 79. As discussed below, Munoz Materano states he could not understand what was said in English at his May 21 hearing, nor the English language document that was provided to him at that time. Moreover, one of his attorneys, Rosanna Eugenio, states in her declaration that Munoz Materano had to rely on a fellow detainee to convey to her over the phone what was stated on an English document he received while in detention.

5 Section 240 of the INA is codified at 8 U.S.C. § 1229a. An individual placed in Section 240 removal proceedings may raise an asylum claim as a defense to removal. *See Shakova v. Cioppa*, No. 24 Civ. 07763 (LJL), 2025 WL 1531696, at *1 (S.D.N.Y. May 29, 2025) ("A noncitizen may seek asylum either affirmatively before USCIS or defensively during removal proceedings in immigration court."); *see also J.O.P. v. U.S. Department of Homeland Security*, 338 F.R.D. 33, 43 (D. Md. 2020) (explaining that the defensive asylum process "begins when an individual is placed in section 240 removal proceedings in immigration court and raises their asylum claim as a defense to removal.").

6 A "credible fear interview" can occur as part of the expedited removal process pursuant to 8 U.S.C. § 1225. Through the expedited removal process, unlike in Section 240 proceedings, DHS can order the removal of a noncitizen "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i); *cf.* 8 U.S.C. § 1229a(4)(B) (for Section 240 proceedings, providing that noncitizens' rights include "a reasonable opportunity to examine the evidence against the alien, to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses presented by the Government."). However, the expedited removal statute provides for the credible fear interview as a limited additional screening; if a noncitizen in the expedited removal process passes their

credible fear interview, they are then permitted to apply for asylum through Section 240 proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

7 The Court presumes that this is the Port Isabel *Processing* Center, in Los Fresnos, Texas, as it is referred to in Respondents' papers. *See* Doc. 8 ¶¶ 23, 25.

8 Munoz Materano's medical records state that, according to him, he has a history of chronic, severe headaches, which have previously led to hospitalization. *See, e.g.*, Doc. 9-2 at ECF 23.

9 While his medical records contain a "transfer summary" dated June 12. 2025. at Alexandria. Doc. 9-2 at ECF 66–67. it does not appear from the face of those notes whether Munoz Materano received any medical examination or attention.

10 The Court presumes that "U/S" is an abbreviation for "ultrasound." Doc. 9-2 at ECF 108. Medical records from July 12 note that Munoz Materano stated he was awaiting an ultrasound. *See id.* at ECF 17.

11 Respondents have provided Munoz Materano's medical records and state: "[Munoz Materano] has been seen no fewer than 23 times since he was detained, has had a urinalysis completed, has had numerous chest X-rays performed, has been diagnosed with epididymitis, and has received medications to treat his medical conditions[.]" Doc. 7 at 21 (citing to Docs. 9-1. 9-2). Munoz Materano responds, "while Respondents cite numerous x-rays, these were chest scans for tuberculosis and have no relevance to the swollen masses." Doc. 16 at 13.

12 Petitioner states—seemingly in error—that the transfer to Pine Prairie began "on or about Saturday. June 14. 2025." Doc. 1 ¶ 31. The Court presumes that June 22. 2025. the date listed in the affidavit of ICE Deportation Officer Michael Charles, Doc. 8 ¶ 24. is the correct date on which Munoz Materano was transported to Pine Prairie.

13 The Court again interprets "U/S" as "ultrasound." *See supra*, n.10.

14 § 1229a provides that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien"; that "[a]n alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under [§] 1182(a) ... or any applicable ground of deportability under [§] 1227(a) ..."; and "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(1)–(3).

15 8 U.S.C. § 1225(b) applies to the inspection of (1) "aliens arriving in the United States and certain other aliens who have not been admitted or paroled" and (2) "other aliens." §§ 1225(b)(1), (2). Section 1225(b)(1) provides: "If an immigration officer determines that an alien ... who is arriving in the United States ... is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution." § 1225(b)(1)(A)(i). Title 8 U.S.C. § 1225(b)(2) provides: "... 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." § 1225(b)(2)(A).

16 Dr. Sugarman states that, in preparing her declaration, she reviewed intake screening and medical records dated 7/14/2025–7/21/2025. Munoz Materano's ICE Transfer Summary from Alexandria Staging Facility dated 7/12/2025. and a personal declaration by Munoz Materano describing his health conditions. *Id.* ¶ 4.

17 Even if the INA's jurisdictional bars applied in this case, this Court would arguably still have jurisdiction pursuant to the Suspension Clause, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I § 9, cl. 2. Courts consider "at least" the following three factors in determining whether the Suspension Clause applies: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the [detainee's] entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766, 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008); *see also Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020). Here, all three factors weigh in Munoz Materano's favor. As to the first factor, Munoz Materano is a parolee who has been living and lawfully working in the U.S., with no criminal history, for nearly two years. *See Y-Z-L-H v. Bostock*, 792 F.Supp.3d 1123, 1142–43 (D. Or. 2025) (holding that the petitioner, while a noncitizen, had "a much stronger status than the petitioners in *Boumediene* and *Thuraissigiam*" because he "was not apprehended only 25 yards from the border and immediately ordered removed, but was paroled into the United States and has remained here for nearly two years" during which time he "received two separate work authorizations and has developed significant ties to the community"). Moreover, Munoz Materano was re-detained with procedures that "[fell] well short of the procedures and adversarial mechanisms that would eliminate the need for *habeas corpus* review." *Boumediene*, 553 U.S. at 767, 128 S.Ct. 2229. As to the second factor, he was detained within the sovereign territory of the U.S., which weighs in favor of finding that the Suspension Clause applies. *Cf. id.* at 768, 128 S.Ct. 2229. Third, the record does not indicate any "practical obstacles"; to the contrary, it reflects that Munoz Materano is not a flight risk, having never been arrested in the U. S., worked here lawfully for almost two years, and voluntarily presented himself at his court hearing. *See Y-Z-L-H*, 792 F.Supp.3d at 1142–43 (holding that the Suspension Clause conferred jurisdiction to review a petitioner's *habeas* petition, in part because he was not a flight risk and was law-abiding). Finally, because Munoz Materano's pending BIA appeal only concerns his removal proceedings, if this Court were to be deprived of jurisdiction, he "would have no forum to challenge his detention." *Id.*

18 Further, "[t]he statute permits the Attorney General (who has since delegated the authority to the DHS Secretary) to designate the population of noncitizens within that second category who will be subject to expedited removal." *Make the Road New York v. Noem*, No. 25 Civ. 190 (JMC), —— F.Supp.3d ——, ——, 2025 WL 2494908, at *4 (D.D.C. Aug. 29, 2025) (citing § 1225(b)(1)(A)(iii)(I)).

19 Munoz Materano also claims that "[t]he government's efforts to simultaneously subject him to expedited removal under 8 U.S.C. § 1225(b)(1) prior to the culmination of the 8 U.S.C. § 1229(a) proceedings violate the Due Process Clause of the Fifth Amendment of the Constitution." Doc. 1 ¶ 98. The Court does not make a determination as to this claim since, as previously discussed, Respondents concede that Munoz Materano is currently under § 1229a, not § 1225(b), proceedings.

20 Respondents state that Munoz Materano is an "applicant[ ] for admission at the threshold of entry into the United States." Doc. 7 at 9. However, Munoz Materano, who had already been living and working in the U.S. on parole for nearly two years at the time ICE arrested him, is clearly distinguishable from the petitioner in *Thuraissigiam* who had just barely crossed the border when he was arrested. *See Make the Road*, —— F.Supp.3d at ——, 2025 WL 2494908, at *13 ("reject[ing] the Government's extraordinary request to treat as falling outside of the Constitution's due process guarantee the millions of immigrants who, although they may have entered unlawfully, have established lives here and made this country home.").

21 *See Make the Road*, —— F.Supp.3d at —— – ——, 2025 WL 2494908, at *14–18 (explaining that § 1225(b) has inherent flaws that exacerbate the risk of erroneous deprivation, such as "the general lack of oversight or any meaningful 'checks' to ensure that individuals 'understand the proceedings, have an interpreter, or enjoy any other safeguards[.]' " (alterations adopted) (citation omitted)).

22 Respondents argue, in part: "The constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide. In § 1225(b) and related provisions, Congress has afforded applicants for admission a variety of protections, but nevertheless mandated detention with only the possibility of discretionary parole. Consequently, [Munoz Materano's] detention under § 1225(b) does not violate due process right, and so the Court should therefore deny the *habeas* petition." Doc. 7 at 17. Respondents' argument is curious given their prior concession that § 1225(b) does not currently apply to Munoz Materano, while the dismissal of his Section 240 proceedings is under appeal before the BIA. Respondents cannot simultaneously subject Munoz Materano to § 1225(b), much less maintain that doing so would not violate his Due Process rights. In any event, as discussed, noncitizens are also entitled to Due Process rights under the Fifth Amendment. *See Make the Road*, —— F.Supp.3d at ——, 2025 WL 2494908, at *2 ("[T]he Government makes a truly startling argument: that those who entered the country illegally are entitled to no process under the Fifth Amendment, but instead must accept whatever grace Congress affords them. Were that right, not only noncitizens, but everyone would be at risk ... Fortunately, that is not the law."); *see also id.* at —— – ——, 2025 WL 2494908 at *14–18 (discussing how the expedited removal process is fraught with procedural shortcomings which themselves create a high risk of erroneous deprivation, such as by leading to erroneous determinations of whether asylum seekers should be removed from the U.S. or not).

23 8 U.S.C. § 1226(a) concerns the discretionary "arrest, detention, and release" of noncitizens. It provides: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States ... [P]ending such decision, the Attorney General--(1) may continue to detain the arrested alien; and (2) may release the alien on--... (B) conditional parole ..." 8 U.S.C. § 1226(a)(1), (2)(B).

24 In fact, Munoz Materano argues that Respondents are detaining noncitizens without individualized determinations as a matter of course. He argues that in recent months, Respondents have engaged in an aggressive nationwide campaign to seek dismissal of noncitizens' Section 240 removal proceedings without providing them prior notice, arresting them and placing them in expedited removal proceedings, and "denying them any meaningful opportunity to be heard before quickly removing them from the country." Doc. 1 ¶¶ 55–57. Effective January 21, 2025, DHS made a "designation" regarding the population of noncitizens who can be subject to expedited removal pursuant to § 1225(b)(1)(A)(iii)(I). *See supra* n.18. Specifically, the 2025 designation "authorized DHS 'to exercise the full scope of its statutory authority' in utilizing expedited removal." *Make the Road*, —— F.Supp.3d at ——, 2025 WL 2494908, at *5 (quoting Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (the "2025 Designation")); *see also id.* at —— n.7, 2025 WL 2494908, at *5 n.7. Pursuant to the 2025 Designation, "DHS asserts the authority to apply expedited removal to noncitizens 'who are encountered anywhere in the United States more than 100 air miles from a U.S. international land border, and who have been continuously present in the United States for at least 14 days but for less than two years.' " *Id.* (quoting the 2025 Designation).

25 In the Termination Notice, issued on March 25, 2025, DHS terminated the "CHNV Parole Programs," which it had established in 2022 and 2023 for nationals from Cuba, Haiti, Nicaragua, and Venezuela to obtain parole, by, in part, "create[ing] a process under which noncitizens, along with a U.S.-based supporter, could apply in advance to travel to a U.S. port of entry." *See Coalition for Human Immigrant Rights*, —— F.Supp.3d at ——, 2025 WL 2192986, at *8 (quoting Implementation of a Parole Process for Venezuelans, 87 Fed. Reg. 63507 (Oct. 19, 2022)). In the Termination Notice, DHS stated: "The temporary parole period of aliens in the United States under the CHNV parole programs and whose parole has not already expired by April 24, 2025 will terminate on that date unless the Secretary makes an individual determination to the contrary. Parolees without a lawful basis to remain in the United States following this termination of the CHNV parole programs must depart the United States before their parole termination date." *Id.* (quoting the Termination Notice, at 13611). On April 14, 2025, a District of Massachusetts court stayed the termination notice "insofar as it revokes, without case-by-case review, the previously granted parole and work authorization issued to

noncitizens paroled into the United States pursuant to parole programs for noncitizens from Cuba, Haiti, Nicaragua, and Venezuela ... prior to the noncitizen's originally stated parole end date." *Id.* (quoting *Doe v. Noem*, 778 F. Supp. 3d 311, 319 (D. Mass. 2025)). On May 30, 2025, however, the Supreme Court stayed the District of Massachusetts' order, pending disposition of the government's appeal to the First Circuit and any writ of certiorari. *Noem v. Doe*, —— U.S. ——, 145 S. Ct. 1524, —— L.Ed.2d —— (2025).

26 Because of the Court's decision on the Due Process claim, the Court does not reach Munoz Materano's claims that "to the extent that Respondents have violated their own regulations for the revocation of humanitarian parole, their actions have violated the *Accardi* doctrine." Doc. 1 ¶ 117.

27 Respondents only argue, generally, that Munoz Materano cannot assert an APA claim to challenge the validity of his detention because "[t]he Supreme Court recently held that, for an action bringing claims under statutes including the APA and the INA that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such claims fall within the "core" of the writ of *habeas corpus* and *must be brought in habeas.*' " Doc. 7 at 17–18 (emphasis in original) (quoting *J.G.G.*, 145 S. Ct. at 1005). However, the Supreme Court did not specifically state that, if a petitioner challenges his detention through a *habeas* petition, the petitioner cannot also assert an APA claim. In any event, here, this Court considers Munoz Materano's claim that the revocation of his parole, not his detention itself, violated the APA—something which at least one other court within this Circuit has done following the Supreme Court's decision in *J.G.G. See generally Orellana*, 2025 WL 2402780. In *Orellana*, like in the instant case, the petitioner had been granted humanitarian parole pursuant to § 1182 upon entering the U.S. *Id.* at *1. Six months later, the petitioner was arrested by ICE as he exited an immigration hearing; he filed a *habeas* petition in which he also claimed that his humanitarian parole was wrongfully revoked in violation of the APA. *Id.* at * 1. The court found an APA violation because the petitioner was denied the required procedure for revocation of parole. *Id.* at *6.

28 It is unclear from the record whether Respondents even provided Munoz Materano with "notice, let alone *adequate* notice" of the revocation of his parole. *Orellana*, 2025 WL 2402780, at *6 (emphasis in original) (finding an *Accardi* violation and APA violation based on DHS' failure to comply with the procedures in 8 C.F.R. § 235.3(b)(6), which provides that a noncitizen shall be "given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States ... [and] be allowed to present evidence or provide sufficient information to support the claim."). Respondents have not provided a notice of revocation of parole on the record, and the only indication that Munoz Materano might have ever received one is Ms. Eugenio's statement that, on August 11—over two months after Munoz Materano was detained—she learned during a telephone call with him that he received a parole revocation notice. Doc. 16-1 ¶ 15.

29 Because the Court finds that Munoz Materano has been denied medical care in violation of his Due Process rights, it does not reach his claim that ICE has violated the APA and the *Accardi* doctrine by failing to comply with its own rules and standards for immigration detention. Doc. 1 ¶ 85. The *Accardi* doctrine, first announced in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954), mandates federal agencies to adhere to their own procedures and regulations, especially when these regulations affect the rights and interests of individuals. *See Montilla v. I.N.S.*, 926 F.2d 162, 167 (2d Cir. 1991); *see also Accardi*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681. However, the Court notes that facially, there appears to at least be an *Accardi* violation because Respondents have failed to provide Munoz Materano with the access to prescribed medications, timely medical attention, and clean clothing that he is owed pursuant to ICE's detention policies. *See Accardi*, 347 U.S. at 265, 74 S.Ct. 499 ("The crucial question is whether the alleged conduct of the [agency] deprived [the] petitioner of any of the rights guaranteed him by the statute or by the regulations issued pursuant thereto.").

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