IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-3765-SKC-TPO

GRIGOR DEPELIAN,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the ICE Denver Contract Detention Facility,

ROBERT HAGAN, in his official capacity as Director of the Denver Field Office of United States Immigration and Customs Enforcement, Enforcement and Removal Operations,

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,

Respondents.

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO HIS PETITION FOR A WRIT OF HABEAS CORPUS (ECF NO. 9), FILED DECEMBER 15, 2025

Introduction

Petitioner Grigor Depelian respectfully submits this reply to Respondent's Response to Habeas Petition (ECF No. 9). He makes three principal arguments. First, it is far from clear why he was released or what authority justifies his detention. Second, since he is challenging his detention, not the procedures the government employs to determine whether he should be allowed to remain lawfully in the United States, he does have procedural due-process rights that his re-detention without a hearing violates. Finally, either immediate release or a hearing at which the government bears the burden of proof to justify his re-detention is warranted to protect his strong liberty interest. He thus respectfully asks the Court to grant his Petition.

Argument

I. It is not clear why Mr. Depelian was released or which statute authorizes his detention.

Respondents assert that Mr. Depelian is indisputably subject to mandatory detention under I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2) because he was apprehended at the border, released on humanitarian parole, and then re-detained once DHS had determined that the purpose of the parole had been served. Resp. Habeas Pet. 5–6, ECF No. 9. But the matter is not as clear-cut as Respondents would have it.

To begin with, the notice Mr. Depelian received when he was released from detention in December 2022 contains a rather mystifying reference to his having been found to have a credible fear of persecution or torture—a finding that was not

and could not have been made since he never went through the Credible-Fear process. *See* Notification to Grant Parole, ECF No. 2-2, Pet. Writ of Habeas Corpus 6–7, ECF No. 2. Indeed, nowhere does the document specify the statutory authority for his release. Notification to Grant Parole. It is only in Officer Escareno's declaration, written nearly three years after the fact, that any information appears about Mr. Depelian's having received parole because of his hunger strike. Decl. Rosa Escareno 4, ECF No. 9-1. The document contemporaneously issued to Mr. Depelian says nothing about any medical concerns; it does not even specify when the parole expires. Notification to Grant Parole.

Moreover, it appears from Officer Escareno's declaration that DHS went through a convoluted, not to say incoherent, procedure when it apprehended Mr. Depelian at the border. As Officer Escareno's declaration correctly states, he did not have any documents authorizing his entry into the United States as a permanent resident and was therefore inadmissible under I.N.A. § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). Escareno Decl. 2–3. Contrary to Respondents' claim, he was amenable to the expedited-removal process at I.N.A. § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i). *Contra* Resp. 5. But DHS did not invoke this procedure. Instead, Customs and Border Patrol (CBP) paroled Mr. Depelian into the United States, though for how long is unknown. *See* Escareno Decl. 2. The very next day, however, CBP issued a Notice to Appear, which served to terminate the grant of parole. *See* Escareno Decl. 2; *See also* 8 C.F.R. § 212.5(e)(2)(i). What purpose the single day's grant of parole served Mr. Depelian does not know.

Given that the document Mr. Depelian received does not specify what kind of parole he was granted in December 2022 or when it expires and only lists two conditions, it is not even clear that DHS considered him to be detained under I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2). Subparagraph (B)(ii) of that section specifically states that the mandatory-detention provision in subparagraph (A) does not apply to noncitizens subject to paragraph (1) (i.e., the expedited-removal scheme) applies.

Mr. Depelian finally observes that if the government considered him to be subject to I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2) and his release from detention in December 2022 to arise from a grant of humanitarian parole, then it acted with curious disregard for the applicable procedure to terminate humanitarian parole and restore him to the applicant-for-admission-seeking-admission status he had before his release. 8 C.F.R. § 212.5(e)(2)(ii) expressly calls for written notice that parole is being terminated when termination is not automatic. Termination is automatic only when either a noncitizen departs the United States or the time authorized for parole expires. *See* 8 C.F.R. § 212.5(e)(1). Neither of the automatic-termination conditions arises here; Mr. Depelian never departed the United States, and no time period appears on the notice granting parole. Yet Mr. Depelian did not receive any kind of written notice when DHS elected to terminate his parole in 2025. The Notice to Appear could not serve; it was issued two months before the parole was granted. In short, the government's conduct reflects that it did not clearly understand Mr. Depelian to be subject to detention under I.N.A. § 235(b)(2), 8 U.S.C. § 1225(b)(2).

And in light of the statute's clear language that it is inapplicable to those to whom the expedited-removal process applies, like Mr. Depelian, this confusion is not surprising. Since Mr. Depelian was re-detained after living in the United States for several years, he asks the Court to find that I.N.A. § 236(a), 8 U.S.C. § 1226(a) governs his detention.

II. Regardless of which statute governs his detention, Mr. Depelian does have a protected liberty interest that the government can infringe upon only after complying with due process.

Respondents contend that since Mr. Depelian was apprehended at the border and never admitted to the United States, he has no due-process rights beyond those Congress granted him by statute. *See* Resp. 7–10. One of the main cases they rely on is a recent decision from this district that does indeed conclude that even when challenging detention, arriving noncitizens have no more right to due process than Congress accords them. *See Richards v. Choate*, No. 1:25-cv-03141-DDD-STV, Slip Op. at 7–14 (Dec. 5, 2025). While that decision does cite to numerous supporting cases, it also acknowledges the numerous and inconsistent conclusions courts across the country have reached on this point. *Id.* at 10–11.

For his part, Mr. Depelian directs the Court to the thoughtful treatment the District Court for the Western District of Texas gave to the distinction between challenges to, on the one hand, the procedures for determining whether an arriving noncitizen will be allowed to remain lawfully in the United States, and on the other hand, the arriving noncitizen's detention. *See Lopez-Arevelo v. Ripa*, No. EP-25-cv-337-KC,

2025 WL 2691828, at *7–*10 (W.D. Tx. Sep. 22, 2025). As the *Lopez-Arevelo* Court observed, the Supreme Court's recent jurisprudence limiting the availability of habeas relief to arriving noncitizens concerned a challenge to the procedures for the noncitizen to seek lawful status, the Supreme Court has expressly left the issue of the due-process rights detained arriving noncitizens possess unresolved, and petitioners like Mr. Depelian, who have lived in the United States for several years and established a life here are on a different footing to the petitioner in *D.H.S. v. Thuraissigiam*, 591 U.S. 103 (2020), who had never gotten past the border. *Id., See also Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420, at *25–*27 (E.D.N.Y. Nov. 28, 2025). Granted that the *Lopez-Arevelo* Court declined to immediately order the petitioner's release, the fact remains that its decision cogently argues for the existence of due-process rights beyond those Congress conferred in I.N.A. § 235, 8 U.S.C. § 1225.

Because Mr. Depelian's claims in this Petition focus solely on his detention and not on the procedures for determining whether he will be allowed to remain in the United States, he does, in sum, have a protected liberty interest and is entitled to more due process than whatever Congress sees fit to grant him by statute.

III. The remedies Mr. Depelian seeks—either his immediate release or a bond hearing where the government must prove that he is a danger to the community or a flight risk by clear and convincing evidence—are appropriate.

Respondents' final argument is that even if Mr. Depelian is correct that he has a right to be at liberty while his claims for protection are pending, there is no warrant for either his immediate release or a bond hearing at which the government shoulders the burden of justifying his detention. Resp. 10–11. But at least three recent decisions from courts across the country, all applying the balancing test in *Matthews v. Eldridge*, 424 U.S. 319, 334–35 (1976), demonstrate that these remedies represent viable and appropriate resolutions to cases like this one. *See Rodriguez-Acurio*, 2025 WL 3314420, at *28–*32; *Lopez-Arevelo*, 2025 WL 2691828, at *10–*13; *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033–35 (N.D. Cal. 2025).

The *Mathews* test requires the Court to balance three factors: (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 the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the functional and administrative costs of any additional procedure. *Mathews*, 424 U.S. at 335. First, Mr. Depelian has a strong liberty interest, particularly in view of the government's previous decision to release him and the implicit promise it created that so long as he complied with the conditions of release (which he did), he would remain free. Despite his scrupulous compliance with the

check-ins and payment of a $5,000 bond shortly after he had arrived in the United States, ICE elected to terminate his parole and re-detain him. Officer Escareno says that this is because ICE determined that "the purpose of parole had been served." Escareno Decl. 5. Assuming for the sake of argument that the purpose of the parole was to resolve the hunger strike—perhaps by allowing Mr. Depelian to obtain medical attention, one is bound to ask why it was not considered to be satisfied for two and a half years. The most plausible reading of the situation is that Mr. Depelian was detained, not because of any change in his circumstances, but on the whim of the reviewing officer. Certainly, Officer Escareno's declaration does not mention any evidence that circumstances had changed since December 2022, when Ice determined that he was neither a flight risk nor a danger to the community. *See* Escareno Decl. 5; Notification to Grant Parole. And given that the government has Immigration Judges with years of experience conducting bond hearings, the burden of requiring that bond hearing be conducted before Mr. Depelian's re-detention would not be significant.

Mr. Depelian's proposed remedies for the government's violation of his due-process rights are, then, appropriate in the context of his case.

Conclusion

Mr. Depelian has been detained for four months for no reason. He is not subject to mandatory detention, possesses a strong liberty interest of which he cannot be deprived without due process, and seeks a remedy that will speedily resolve the government's violation of his rights. He therefore prays the Court to grant his Petition.

Respectfully submitted this 29th day of December 2025,

s/ Henry D. Hollithron

Henry D. Hollithron

Hollithron Advocates, P.C.

4155 E Jewell Ave, Ste 1004

Denver, CO 80222-4514

Telephone: (303) 954-9989

E-mail: henry@hollithronadvocates.com

Attorney for Petitioner Grigor Depelian

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I, Henry D. Hollithron, hereby certify that no portion of this Reply was prepared using Generative Artificial Intelligence.

s/ Henry D. Hollithron

Henry D. Hollithron

Hollithron Advocates, P.C.

4155 E Jewell Ave, Ste 1004

Denver, CO 80222-4514

Telephone: (303) 954-9989

E-mail: henry@hollithronadvocates.com

Attorney for Petitioner Grigor Depelian