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, owned and operated by GEO Group,
ROBERT HAGAN, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Denver Field Office,
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, and
PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

RESPONDENTS' SUPPLEMENTAL BRIEFING
PURSUANT TO ECF No. 15

Respondents respectfully submit the following supplemental brief in response to the Court's Order at ECF No. 15 (dated January 7, 2026), which directs the parties to submit additional briefing on whether Petitioner received written notice of the termination of his parole from custody and, "if not, the effect of that failure, if any, on the claims raised in the Petition." ECF No. 15.

Respondents have issued written notice of the termination of Petitioner's parole, on January 14, 2026. Ex. A (Notice of Parole Termination). Petitioner is not

entitled to release or a hearing, the relief he seeks in this action, based on any deficiency in the process by which Respondents issued that notice.

BACKGROUND

A. Petitioner's parole and detention

Petitioner Grigor Depelian is a native and citizen of Russia who presented himself at the San Ysidro port of entry on October 18, 2022, as an applicant for admission. ECF No. 9-1 ¶¶ 4-5. He did not have any visa or document authorizing his admission into the United States; he requested asylum in the United States. *Id.* ¶ 5. U.S. Customs and Border Protection determined that Petitioner was inadmissible to the United States and, pursuant to its discretionary authority under 8 U.S.C. § 1182(d)(5), paroled Petitioner into the United States pending removal proceedings and his pursuit of asylum. ECF No. 9-1 ¶ 5. Once in the United States, Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE") pursuant to 8 U.S.C. § 1225(b) and issued a Notice to Appear ("NTA") that classified him as an Arriving Alien and initiated removal proceedings under 8 U.S.C. § 1229a.[1] ECF No. 9-1 ¶¶ 6, 7. Petitioner appeared before an Immigration Judge on November 29, 2022, and admitted the allegations and charge in the NTA. *Id.* ¶ 10.

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[1] In his reply, Petitioner questions why he was not subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i). That statute provides for expedited removal "*unless* the alien indicates either an intention to apply for asylum . . . or a fear of persecution" (emphasis added). Here, Petitioner presented himself at the border and stated that he sought asylum in the United States. ECF No. 9-1 ¶ 5. He was therefore paroled into the United States and placed in regular removal proceedings under 8 U.S.C. § 1229a.

While in detention, Petitioner began a hunger strike on December 2, 2022. *Id.* ¶ 11. He requested release from custody and provided ICE with sponsor documents. *Id.* That same day, ICE staff at the Otay Mesa Detention Center (where Petitioner was detained) performed a custody review and recommended paroling Petitioner out of custody due to his hunger strike. *Id.* ¶¶ 8, 14; *see also* Ex. B (Custody Review Worksheet).[2] The Assistant Field Office Director subsequently released Petitioner from custody on parole, subject to a $5,000 bond and successful enrollment in the Alternatives to Detention Program ("ATD"). Ex. C (Custody Determination Memorandum). Petitioner paid the $5,000 bond and was released. ECF No. 9-1 ¶ 15.

In August 2025, ICE officials reviewed Petitioner's case and determined that the purpose of parole had been served. *Id.* ¶ 19. ICE officials arrested Petitioner on August 28, 2025, terminating his enrollment in ATD and detaining him under 8 U.S.C. § 1225(b) pending resolution of the removal proceedings. ECF No. 9-1 ¶ 19. ICE issued written notice of the termination of Petitioner's parole on January 14, 2026. Ex. A.

B. The habeas petition

Petitioner filed this habeas action on November 25, 2025, arguing that his detention violates the Immigration and Nationality Act ("INA") because he should

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[2] Respondents' response erroneously stated that this custody review occurred on December 21, 2022. *See* ECF No. 9 at 3. It occurred on December 2, 2022. *See* Ex. B.

be detained under 8 U.S.C. § 1226(a) and not § 1225(b), and that revocation of his parole from custody without a hearing violates due process. *See* ECF No. 2. The Petition seeks immediate release or a bond hearing. *See id.* at 2-4, 15.

In response, Respondents explained that Petitioner is lawfully detained without a bond hearing under 8 U.S.C. § 1225(b) because he presented for admission at a port of entry, was designated as an "arriving alien"—a charge that he has admitted—and is thus an "applicant for admission" subject to mandatory detention under § 1225(b)(2)(A). *See* ECF No. 9 at 5-6. Furthermore, as an arriving alien, Petitioner has no more procedural rights than those afforded by statute, and 8 U.S.C. § 1182(d)(5)(A)—which governs discretionary parole—makes clear that parole "shall" be revoked "when the purpose[] of such parole . . . ha[s] been served." *See* ECF No. 9 at 7-10. ICE officials did not, therefore, violate Petitioner's due process rights when they determined that the purpose of Petitioner's parole—a response to his 2022 hunger strike—had been served and so arrested him without a hearing. *See id.*

The Court has since ordered additional briefing on whether Petitioner received written notice of the termination of his parole under 8 C.F.R. § 212.5(e)(2)(i) and, "if not, the effect of that failure, if any, on the claims raised in the Petition." ECF No. 15.

ARGUMENT

I. Petitioner has received the process he is due.

As an inadmissible arriving alien—charges that Petitioner has admitted, ECF No. 9-1 ¶ 10—he is "'treated,' for constitutional purposes, 'as if stopped at the border.'" *Zadvydas v. Davis*, 533 U.S. 678, 692-94 (2001) (discussing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (an alien who "arrives at a port of entry . . . is on U. S. soil, but the alien is not considered to have entered the country"). Petitioner's parole under 8 U.S.C. § 1182(d)(5)(A) did not change that—§ 1182(d)(5)(A) expressly provides that discretionary parole under that statute "shall not be regarded as admission," a principle that the Supreme Court has affirmed, *see Thuraissigiam*, 591 U.S. at 139 ("aliens who arrive at ports of entry—*even those paroled elsewhere in the country for years pending removal*—are 'treated' for due process purposes 'as if stopped at the border.'" (quoting *Shaughnessy*, 345 U.S. at 215) (emphasis added)). Thus, because Petitioner has retained his status as "an alien on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process as far as [Petitioner] is concerned." *Shaughnessy*, 345 U.S. at 212 (internal quotation marks and citations omitted).

Congress addressed discretionary parole into the United States in 8 U.S.C. § 1182(d)(5)(A). That statute vests in the Secretary of Homeland Security

discretionary authority to both parole a noncitizen into the United States subject to certain conditions and return a noncitizen to custody "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served." 8 U.S.C. § 1182(d)(5)(A). Thus, Congress left revocation of parole to the discretion of the Secretary. *See id.*[3]

It is the implementing regulations—found at 8 C.F.R. § 212.5—that provide for written notice of the termination of discretionary parole. As relevant here, 8 C.F.R. § 212.5(e) addresses "[t]ermination of parole," distinguishing between: (1) parole that terminates "automatically," i.e., upon the noncitizen's departure from the United States or "expiration of the time for which parole was authorized," 8 C.F.R. § 212.5(e)(1); and (2) parole that terminates "[o]n notice," *id.* § 212.5(e)(2). Regarding the latter, subsection (e)(2) provides that:

> [U]pon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in [§ 212.5(a)], 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.

Id. § 212.5(e)(2)(i). Thus, regulations state that discretionary parole may be terminated for two reasons: (1) if the purpose of parole is accomplished; or (2) if, in the opinion of the relevant agency official, humanitarian reasons and the public

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[3] That authority is further delegated to other DHS officials by regulation. *See* 8 C.F.R. § 212.5(a) (delegation to, among others, ICE Field Office Directors, Deputy Field Office Directors, "and those other officials as may be designated in writing").

benefit no longer warrant parole. If parole is terminated on either of those grounds, then written notice should be issued.

Petitioner has received the process he is due by statute. Petitioner was paroled for a specific purpose: because he began a hunger strike in ICE detention in 2022. ECF No. 9-1 ¶ 14. Thus, his parole could be terminated once that purpose was accomplished. Furthermore, Respondents have issued the additional written notice of termination. *See* Ex. A.

Petitioner questions whether he was paroled for a specific purpose, i.e., due to his hunger strike. He argues that "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." ECF No. 11 at 3. Petitioner also highlights a written notice of parole that he received in 2022, which states that he was paroled because an asylum officer determined that he had a credible fear of persecution or torture, not because he was on hunger strike. *Id.* at 2-3 (referencing ECF No. 2-2, Exhibit B to the Petition).

As an initial matter, ICE's discretionary decisions to parole Petitioner—and to revoke that parole—are not judicially reviewable. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) ("[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any . . . decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this

subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security" (with a limited exception not applicable here)); *id.* § 1182(d)(5)(A) (providing that the Secretary of Homeland Security "*may . . . in his discretion* parole" an applicant for admission into the United States temporarily, and that the noncitizen shall be returned to custody "when the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served"). As the Tenth Circuit has clarified, a constitutional challenge to the *procedures* used in a parole proceeding may be heard in habeas, but a challenge to the *discretionary decision* whether to grant parole may not. *See Sierra v. Immigration & Naturalization Serv.*, 258 F.3d 1213, 127 (10th Cir. 2001).

Furthermore, even if those discretionary decisions were reviewable, Petitioner's own allegations and the record belie his assertions. Petitioner himself confirms that he could not have been paroled based on a credible-fear screening because—as he states in his reply—"he never went through the Credible-Fear process." ECF No. 11 at 2-3. And contemporaneous documents confirm that Petitioner *was* paroled because of his hunger strike. The custody review worksheet, which ICE staff at the Otay Mesa Detention Center completed on December 2, 2022, the same day that Petitioner was paroled from custody, clearly establishes that he was paroled because of his hunger strike. *See* Ex. B. The "comments" section expressly references the hunger strike, stating that "On December 2, 2022, Depelian initiated a hunger strike." *See id.* at 2. So does the executive summary

section, which notes that Petitioner is a "Hunger Striker" and recommends "[p]arole with ATD requirement." *See id.* at 3.

Because Petitioner was paroled for a specific purpose, § 1182(d)(5) provides that his parole could be terminated once that purpose was accomplished. Thus, consistent with their Congressionally prescribed duties, ICE officials reviewed Petitioner's case in 2025 and determined that the purpose of that parole—for a hunger strike that occurred almost three years ago—had been served. ECF No. 9-1 ¶ 14. Accordingly, they re-detained Petitioner under § 1225(b) and, pursuant to 8 C.F.R. § 212.5(e)(2), issued written notice of the parole termination on January 14, 2026. *See* Ex. A.

II. Petitioner is not entitled to release or a hearing based on any deficiency in the process by which Respondents terminated his parole.

Petitioner is not entitled to habeas relief based upon any defect in the issuance of the termination notice under 8 C.F.R. § 212.5(e)(2). Petitioner argues that his re-detention without a *hearing* violates due process, and he seeks immediate release or a bond hearing. *See* ECF No. 2 at 4, 15. But Petitioner has been provided all the process that he is entitled to—a determination that the purpose of his parole was served and written termination notice. There are no grounds to conclude that ICE's failure to provide him something *beyond* what is required, i.e., release or a hearing, is warranted. *See Thuraissigiam*, 591 U.S. at 138-39 (for noncitizens like Petitioner who are "treated for due process purposes 'as

if stopped at the border,'" "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are due process of law*" (citation omitted, emphasis added)).

A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process is additional process, not immediate release. As explained above, Petitioner, as an arriving alien, is due the process that he is afforded by Congress. The appropriate relief for any alleged due process violation would therefore be to order that Respondents provide Petitioner the process afforded by 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2). *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board," which will afford him the "due process required"). Here, ICE officials made the requisite determination—that the purpose of Petitioner's parole had been served—before re-detaining him under § 1225(b). And Respondents have now issued the written notice of parole termination under 8 C.F.R. § 212.5(e)(2). Accordingly, there is no ongoing due process violation and no grounds to grant Petitioner his requested habeas relief—release or a hearing—which goes far beyond what the statute and regulation require.

Additionally, Petitioner fails to establish that any deviation from the procedures for termination of parole is so serious as to amount to a due process violation. Respondents have issued written notice of Petitioner's parole termination, but they had not done so as of the date that he was arrested. To succeed on a due process claim for that violation, however, Petitioner would need to show prejudice from any violation. *Cf. Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). Petitioner has not done so. As a baseline, Petitioner is subject to mandatory detention under § 1225(b). His re-detention under that statute without immediate written notice of parole termination did not deprive him of the ability to challenge his detention. Furthermore, Petitioner's parole could be revoked upon a discretionary determination that the purpose of his parole had been served, which immigration officials made. Although Petitioner did not receive separate notice of the termination at the time he was arrested, he has not shown that the failure entitles him to release or a hearing. Indeed, his request for that relief seems based in his assertion that he should be detained under 8 U.S.C. § 1226(c), *not* because of any alleged prejudice arising from the termination of his parole without immediate written notice.

Savane v. Francis, the out-of-circuit unpublished decision cited in ECF No. 15 for the proposition that "failure to provide the statutorily required written notice is

a violation of Petitioner's due process rights," is distinguishable. *See* ECF No. 15 (citing *Savane v. Francis*, No. 25-CV-6666-GHW, 2025 WL 2774452, at *8 (S.D.N.Y. Sept. 28, 2025)). In *Savane*, the petitioner was initially detained and released from custody under § 1226, not detained under § 1225(b) (which provides for mandatory detention) and paroled from custody under § 1182(d)(5)(A). 2025 WL 2774452, at *2. In the habeas action, Respondents later represented that it "was a mistake" that petitioner was released under § 1226 and that he "should have been" paroled under § 1182(d)(5)(A). *Id.* at *3. The district court assumed without holding that Petitioner was paroled under § 1182(d)(5)(A), *id.* at *6, but, in finding that revocation of the petitioner's release violated due process, the court noted that: at oral argument, "Respondents could not confirm whether they had complied with 8 C.F.R. § 212.5 and could not even identify what that regulation 'says or doesn't say'"; Respondents did not "provide any explanation or reasoning for why or how they revoked Petitioner's parole"; and there was "no indication in the record that Respondents made any assessment—much less an individualized assessment—before revoking Petitioner's parole." *Id.* at *8. Accordingly, *Sannes* differs markedly from the instant case, in which Petitioner was clearly initially detained under § 1225(b) as an arriving alien, paroled under § 1182(d)(5)(A), and arrested after immigration officials made an individualized determination that the purpose of his parole—for his 2022 hunger strike—had been accomplished.

CONCLUSION

The Court should deny the habeas petition.

Respectfully submitted January 14, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Alexandra J. Berger
U.S. Attorney's Office