UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 0:25-cv-62406-KMW

DAILIN DE LA CARIDAD MONTEL MANRESA,
Petitioner,

v.

PAMELA BONDI, Attorney General of the United States, et al.,
Respondents.

_____/

RESPONSE TO ORDER TO SHOW CAUSE

Respondents, through the undersigned Assistant United States Attorney, hereby respond to the Court's Order to Show Cause (ECF No. 5) and respectfully request that the Court dismiss or deny Petitioner Dailin De La Caridad Montel Manresa's ("Petitioner") Petition for a Writ of Habeas Corpus.

INTRODUCTION

Petitioner challenges the legality of her immigration detention under 8 U.S.C. § 1231 following the revocation of her parole. She alleges violations of DHS regulations, Due Process, the *Accardi* doctrine, and relies heavily on *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petition at ¶¶ 39-52. The petition should be dismissed or denied for multiple independently sufficient reasons.

Petitioner is currently being held at Broward Transitional Center ("BTC"), in a non-punitive, civil detention pursuant to 8 U.S.C § 1225(b)(1)(B)(iii)(IV). Petitioner is an "arriving alien" under Section 1225(b)(2)(A) and as such is not entitled to any procedures beyond those proscribed by statute, which have been followed). Petitioner admits that she applied for admission at a port of entry pursuant to a CBPOne appointment. Accordingly, Petitioner is an arriving alien and is subject to mandatory detention pursuant to 1225(b)(2)(A). Her due process rights have not been violated, and granting her release is not authorized or warranted under applicable law.

As a secondary matter, the Petitioner raises multiple claims as a basis for the relief that she seeks. However, as discussed more fully below, those claims fail because the district court either lacks jurisdiction to hear Petitioner's collateral attacks to her immigration proceedings, the facts she alleges are not applicable to her case, or the claims fail as a matter of law.

STATUTORY BACKGROUND

Generally, when an alien arrives at a port of entry into the United States, she is "an applicant for admission." 8 U.S.C. § 1225(a)(1), who must "be inspected by immigration officers" to ensure that she may be admitted into the country. *Id.* § 1225(a)(3). These individuals are often referred to as "arriving aliens," 8 C.F.R. § 1001.1, and include individuals who are inadmissible due to fraud, misrepresentations, or lack of valid documentation to enter the United States. 8 U.S.C. § 1225(b)(1)(A)(i). Applicants for admission who were intercepted at entry can be subject to an expeditious process to remove them from the United States under 8 U.S.C. § 1225(b)(1). Under this process -known as expedited removal- applicants for admission arriving in the United States (as designated by the Secretary of Homeland Security) who entered illegally and lack valid entry documentation or make material misrepresentations shall be "order[ed]... removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

Once an alien becomes subject to an administratively final removal order, the authority for her detention shifts to § 1231(A). *See Johnson v. Guzman Chavez,* 594 U.S. 523, 528-29 (2021). Section 1231 establishes a 90-day "removal period" within which the government generally must secure removal. 8 U.S.C. § 1231(a)(1)(A). The government "shall" detain aliens during that period, and "[u]nder no circumstances during the removal period shall the [government] release" those whose removal is based on certain criminal or national-security grounds. *Id.* § 1231(a)(2). In some cases, the government is unable to secure removal within the removal period and "may" continue to detain certain aliens beyond the removal period. *Id. § 1231(a)(6).* Detention beyond the removal period may last only for "a period reasonably necessary to bring about" removal. *Zadvydas v. Davis,* 533 U.S. 678, 689 (2001).

FACTUAL BACKGROUND

Petitioner is a native and citizen of Cuba. Exh. A, Notice to Appear (NTA) and Exh. B, I-213, Record of Deportable/ Inadmissible Alien. She last entered the United States on or about May 14, 2023, by presenting herself for her CBPOne appointment at the Paso Del Norte Port of Entry in El Paso, Texas. Exh. B, I-213. At that time, U.S. Customs and Border Protection (CBP) determined that she was inadmissible pursuant to INA § 212(a)(7)(A)(i)(I) for being an alien not in possession of a valid admission document and placed her in removal proceedings under INA § 240, 8 U.S.C. § 1229a. Exh. B, I-213. Petitioner was not detained at the time of arrival at the port of entry; she was immediately paroled under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5) for one year. Exh. B, I-213. CBP filed the NTA with the Miami Immigration Court on May 14, 2023, charging Petitioner as an arriving alien subject to inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I). Exh. A, NTA.

On June 26, 2025, Immigration and Customs Enforcement/Enforcement and Removal Operations (ICE ERO) Miami Criminal Alien Program (CAP) encountered the Petitioner at the Turner Guilford Knight Correctional Center (TGK) in Miami-Dade County, Florida, after being arrested for "prostitution commit, engage commit offer prostitution." Exh. B, I-213.

ICE-ERO detained Petitioner on June 30, 2025, and transferred her to Broward Transitional Center (BTC) in Pompano Beach, FL where she has remained detained since that date. Exh. C, I-200.

As a result of her detention, ICE-ERO filed a Form I-830, Notice to EOIR: Alien Address ("I-830") to change venue from the Miami Immigration Court to the immigration court at BTC, advancing Petitioner's hearing date from April 30, 2026, to July 10, 2025. Exh. D, I-830; Exh. E, NOH.

On August 5, 2025, the Petitioner appeared *pro se* before an immigration judge ("IJ") at BTC for her initial master calendar hearing. The IJ granted a continuance for her to find an attorney. Exh. E, NOH.

On September 9, 2025, Petitioner appeared *pro se* before an IJ at BTC and moved to administratively close her removal proceedings based on a pending application for adjustment of status filed before U.S. Citizenship and Immigration Services. The Department of Homeland Security (DHS) opposed her motion, and the IJ denied the motion based on his finding that no good cause was established to administratively close removal proceedings. Exh. F, IJ denial of MTAC. At the same hearing, Petitioner admitted the allegations on the NTA, the IJ sustained the

charge of inadmissibility and then designated Cuba as the country of removal. Petitioner was scheduled for an individual hearing on the merits of her requested relief on September 29, 2025. Exh. E, NOH.

On September 29, 2025, the IJ granted Petitioner another continuance to allow her additional time to complete her application for relief before the court. The next individual merits hearing was set for October 28, 2025. Exh. E, NOH.

On October 22, 2025, Petitioner filed a Motion to Terminate removal proceedings, alleging that the IJ lacked jurisdiction to adjudicate her application for adjustment of status pending with USCIS.

On October 29, 2025, the IJ denied Petitioner's motion to terminate, and proceeded to adjudicate the application pending before the immigration court. Exh. G, IJ Denial of MTT. Petitioner testified in support of her pending application. The IJ denied the relief sought and ordered her removed to Cuba. Exh. H, Summary of Oral Decision.

Petitioner filed an appeal with the Board of Immigration Appeals on November 17, 2025. Exh. I, E-26 and Exh. J, BIA Filing Receipt. The appeal remains pending. Petitioner remains detained at BTC.

ARGUMENT

I. Petitioner is an Arriving Alien Subject to Detention Under 8 U.S.C. § 1225(b)(2).

"Congress has established the requirements for admission of aliens that arrive at the border without authorization to enter." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *4 (S.D.N.Y. June 12, 2018) (citing 8 U.S.C. § 1225). Under § 1225(a), "aliens who arrive at the nation's borders" without authorization to enter this country "are deemed 'applicants for admission,' and must be inspected by an immigration official before being granted admission." *Id.* (citing 8 U.S.C. § 1225(a)(1), (3)). Under 8 U.S.C. § 1225(b), "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 1229(a) of this title [i.e., a removal proceeding]." *Id.* (quoting 8 U.S.C. § 1225(b)(2) (A)) (brackets in original). Thus, detention is mandatory for arriving aliens subject to Section 1225(b). *See Yvens v. Ripa,* 24-22693-

CV-MIDDLEBROOKES; *Lopez-Barrillas v. Cruz,* 17-60466-CIV-DIMITROULEAS; *D.A.V.V. v. Warden, Irwin Cnty Det. Ctr.,* 2020 WL 13240240 M.D. Georgia 2020

If an arriving alien is subject to mandatory detention under Section 1225(b), "an immigration judge 'may not' conduct a bond hearing to determine whether [the] arriving alien should be released into the United States during removal proceedings." *Id.* (quoting 8 C.F.R. § 1003.19(h)(2)(i)(B)). Arriving aliens who are detained pursuant to § 1225(b)(2)(A), however, may be released from custody pursuant to DHS's discretionary parole authority. *See* 8 U.S.C. § 1182(d)(5)(A).

The fact that an arriving alien remains present—or even released—in the United States for even a lengthy period does not change the alien's immigration status or rights under the INA. As the Supreme Court recently recognized in *Thuraissigiam v. Department of Homeland Security*, 591 U.S. 103 (2020), an arriving alien's mere presence in the United States does not confer additional status or rights because "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.' " *Thuraissigiam*, 591 U.S at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215, 73 S.Ct. 625, 97 L.Ed. 956 (1953)).

The Supreme Court has long rejected the proposition that an alien ceases to be an arriving alien and attains rights otherwise unavailable to arriving aliens solely based on his length of detention, release, or presence in the United States. *Id.; Jennings v. Rodriguez*, 583 U.S. 281, 138 S.Ct. 830, 842-45, 200 L.Ed.2d 122 (2020) (rejecting Ninth Circuit's holding that after six months, detention of alien under section 1225(b) shifts to section 1226(a)); *Landon v. Plasencia*, 459 U.S. 21, 32, 103 S.Ct. 321, 74 L.Ed.2d 21(1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative."); *Leng May Ma v. Barber*, 357 U.S. 185, 188, 78 S.Ct. 1072, 2 L.Ed.2d 1246 (1958) ("For over a half century this Court has held that the detention of an alien in custody pending determination of his admissibility does not legally constitute an entry though the alien is physically within the United States."); *see also Bouchikhi v. Holder*, 676 F.3d 173, 177 (5th Cir. 2012) (" 'Arriving alien' is a legal term of art explicitly defined in 8 C.F.R. § 1.2" and "the definition takes in various categories of aliens who are physically present in the United States but for one reason or another are not yet admitted.")

In *Jennings v. Rodriguez*, the Supreme Court rejected application of the canon of constitutional avoidance to read into the statute an implicit six-month limit on detention. *Jennings*, 138 S.Ct. at 842-845. Instead, the Court concluded the statute mandated detention until "the completion of applicable proceedings." *Id.* at 845. Nevertheless, the Court left open whether prolonged detention of arriving aliens without a bond hearing would violate the Due Process Clause of the Fifth Amendment. *Id.* at 851-52.

As an arriving alien, Petitioner enjoys only those rights afforded to her under the INA. The Eleventh Circuit has not addressed whether prolonged detention of arriving aliens without a bond hearing violates due process since the Supreme Court's decision in *Jennings*. However, the Supreme Court addressed arriving aliens' due process rights in *Thuraissigiam*. There, petitioner entered the United States without permission, immigration authorities apprehended him twenty-five yards from the border and placed him in expedited removal proceedings, and petitioner claimed asylum. *Thuraissigiam*, 140 S. Ct. at 1968. An asylum officer determined petitioner failed to demonstrate a credible fear of persecution, an IJ affirmed, and Petitioner filed a habeas application claiming immigration authorities wrongfully denied his asylum claim. *Id.* at 1969. The district court dismissed petitioner's habeas application for lack of jurisdiction pursuant to 8 U.S.C. §§ 1252(a)(2) and (e)(2), but the Ninth Circuit reversed, holding that such an application of these statutes violated the Suspension Clause. *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097, 1113-1119(9th Cir. 2019). In a footnote, however, the Ninth Circuit also "disagree[d] with the government's contention ... that a person like [petitioner] lacks all procedural due process rights." *Id.* at 1111 n.15 (citations omitted).

The Supreme Court reversed, holding the application of §§ 1252(a)(2) and (e)(2) to foreclose jurisdiction did not violate the Suspension Clause, but, as relevant here, the Court also addressed the Ninth Circuit's due process concerns. *Thuraissigiam*, 140 S. Ct. at 1968-81. The Court stated that the Ninth Circuit's holding [as to due process] is contrary to more than a century of precedent ... that as to "foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 1982 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660, 12 S.Ct. 336, 35 L.Ed. 1146 (1892)). The Court reasoned that the Ninth Circuit's extension of arriving aliens' procedural due process rights beyond the confines of the statutory

scheme disregards the reason for our century-old rule ... [which] rests on fundamental propositions: [T]he power to admit or exclude aliens is a sovereign prerogative[;] ...the Constitution gives the political department of the government plenary authority to decide which aliens to admit[;] ... and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted[.] *Id.* (internal quotations and citations omitted). The Court specifically declined to hold that arriving aliens enjoy due process rights beyond those provided by statute solely because they enter the United States: "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country[.]" *Id.* The Court concluded that "an [arriving alien in the United States] has only those rights regarding admission that Congress has provided by statute." *Id.* at 1983.

Significantly, the Court's pronouncements as to arriving aliens' due process rights, however, are broad and would appear to extend to the detention context. As the Court stated, for arriving aliens "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 1982 (internal quotations and citations omitted). Additionally, in describing the extent of arriving aliens' due process rights, the Court relied on decisions which did concern immigration detention. *Id.* ("Since [*Nishimura Ekiu*], the Court has often reiterated this important rule." (citing *United States ex rel.Knauff v. Shaughnessy*, 338 U.S. 537, 544, 70 S.Ct. 309,94 L.Ed. 317 (1950); *Mezei*, 345 U.S. at 212, 73 S.Ct. 625; *Landon*, 459 U.S. at 32, 103 S.Ct. 321)).

Even before *Thuraissigiam*, one court in the Eleventh Circuit agreed with other courts in holding that arriving aliens have no procedural due process right to a bond hearing. *Dini v.Warden, Etowah Det. Ctr.*, No. 4:19-cv-01065-RDP-JEO, 2019 WL 4888018, at *2 (N.D. Ala. Oct. 3, 2019). At the very least, *Thuraissigiam* comports with this analysis. Moreover, one court has cited *Thuraissigiam* in holding that arriving aliens have no procedural due process right to bond beyond what the INA provides. *Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8-9 (D. Kan. July 1, 2020).

In sum, arriving aliens' procedural due process rights entitle them only to the relief provided by the INA. *Thuraissigiam*, 140 S. Ct. at 1983 ("[A]n [arriving alien] has only those rights regarding admission that Congress has provided by statute."); *Landon*, 459 U.S. at 32, 103S.Ct. 321 ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to

admit or exclude aliens is a sovereign prerogative."); *Mezei*, 345 U.S. at 212, 73 S.Ct. 625 (holding that for arriving aliens, due process amounts to "[w]hatever the procedure authorized by Congress is"); *Nishimura Ekiu*, 142 U.S. at 660, 12 S.Ct. 336 ("[T]he decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.").

As other courts have held, because the INA does not provide arriving aliens the right to bond, Petitioner has no independent procedural due process right to a bond hearing. *A.M.Y.*, No. 7:20-cv-61-CDL-MSH, Order & R. 34-37 (M.D. Ga. Oct.13, 2020), ECF No. 47, r*ecommendation adopted by* Order 1 (M.D. Ga. Nov. 4, 2020), ECF No. 49; *Bataineh*, 2020 WL 3572597, at *8-9; *de la Rosa Espinoza v. Guadian*, No. 20-3126-JWL, 2020 WL 3452967, at *5-8 (D. Kan. June 24, 2020); *Gonzalez Aguilar v. McAleenan*, No. 19-cv-0412 WJ/SMV, —— F. Supp. 3d ——, 2020 WL 1429673, at *5-7, 448 F.Supp.3d 1202 (D.N.M. Nov. 8, 2019); *Dini*, 2019WL 4888018, at *2; *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 648-650 (S.D.N.Y. 2018). Petitioner may only seek relief from detention under the parole procedure set forth in 8 U.S.C. § 1182(d)(5)(A).

Under Section 1182(d)(5)(A), DHS "may ... in [its] discretion parole into the United States temporarily under such conditions as [it] 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[.]" *Id.* Importantly, however, DHS's discretionary parole of an alien "shall not be regarded as an admission of the alien and when the purposes of such parole shall . . .have been served the alien shall forthwith return or be returned to the custody from which she was paroled[.]" *Id.* "[T]hereafter[,]" a formerly paroled alien's "case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*

Petitioner is an "arriving alien" subject to the removal and detention provisions in 8 U.S.C. § 1225(b)(2). "Arriving alien means an applicant for admission coming or attempting to come into the United States **at a port-of-entry**..." 8 C.F.R. § 1.2. Petitioner, arrived on or about May 14, 2023, by presenting herself for her CBPOne appointment at the Paso Del Norte Port of Entry in El Paso, Texas. Exh. B, I-213. It is undisputed that Petitioner applied for admission at a port of entry. *See* Petition, ¶ 2. Petitioner, herself, admits to applying for admission pursuant to the CBPOne appointment. *Id.* Because her alien classification of "arriving alien" is undisputed, her claim must be denied because Arriving Aliens are subject to mandatory detention. As the Supreme Court

observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) "says anything whatsoever about bond hearings.

II. Applicants for Admission in 8 U.S.C. § 1229a Removal Proceedings Are Subject to Mandatory Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A).

The plain language of 8 U.S.C. § 1225(b)(2)(A) expressly requires Petitioner's detention, "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. . .". *Jennings*, 583 U.S. at 301–03. Petitioner failed to show that she is clearly and beyond doubt entitled to be admitted. In fact, the removal charges against her were already sustained and her applications for relief were denied.

"It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the Immigration Judge is authorized to exercise the authority in [8 U.S.C. § 1226]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. §1182(d)(5).]"). "An immigration judge is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

III. The Court Lacks Jurisdiction Over Petitioner's Challenges to Venue, IJ Choice-of-Law, and Alleged BIA Errors.

A petition under 8 U.S.C. § 2241 may challenge the fact or duration of custody only. It cannot be used to litigate removal orders, immigration court venue decisions, IJ or BIA legal rulings, or collateral attacks on the conduct of removal proceedings. *See Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Hernandez v. Gonzales*, 424 F.3d 42 (1st Cir. 2005); 8 U.S.C. § 1252(b)(9). The Court lacks jurisdiction over Petitioner's challenges to the *sua sponte* change of

venue, IJ choice-of-law, specifically the alleged improper application of Sixth Circuit vs. Eleventh Circuit law and alleged BIA errors, including the denial of administrative closure, the denial of a motion to terminate, the interpretation of *Matter of M-N-I-* (BIA 2024), and the "voidness" of immigration court decisions. *See* Petition at ¶¶ 5-6, 25-27, 38, 42. All these matters that Petitioner raises are challenges to the removal proceedings themselves, not to Petitioner's detention.

It is also worth noting that some of these claims brought up by the Petitioner have no application to her case. For example, the BIA has not issued any decisions in her case. Nevertheless, under 8 U.S.C. § 1252(a)(5) and (b)(9), "a petition for review filed in an appropriate court of appeals…shall be the sole and exclusive means for judicial review of an order of removal." District courts lack jurisdiction to review venue decisions, IJ legal determinations, BIA precedent application, and allegations of procedural error in removal proceedings. Such claims must be brought, if anywhere, in a petition for review to the Eleventh Circuit Court of Appeals. Therefore, these portions of the petition must be dismissed under Fed. R. Civ. P. 12(b)(1).

IV. Petitioner has Failed to Allege Any Other Claims That Would Provide the Basis for the Relief Requested

First, Petitioner fails to state a cognizable *Zavydas* claim. Petitioner appears to argue that length of her detention runs afoul of *Zavydas* and that she was entitled to certain due process rights, namely, notice before parole revocation, an interview, an opportunity to contest, and a hearing on alternative countries. *See* Petition at ¶¶ 4, 25, 30, 34, 43, 46, 53. However, *Zavydas* applies only when a petitioner is subject to an administratively final order of removal. *Zadvydas v. Davis*, 533 U.S. 678, at 682-683. In this case, there is no administratively final order of removal due to the Petitioner's appeal of her removal order to the BIA on November 17, 2025.

Second, Petitioner's parole revocation was lawful and provides no basis for habeas relief. Parole is governed by 8 U.S.C. § 1182(d)(5)(A) which states that when the Secretary of Homeland Security deems the purposes of the parole to have been served, the parole may be terminated and the alien returned to their pre-parole custody. Further, the regulation confirms that "[p]arole shall be automatically terminated…at the expiration of the time for which parole was authorized, and…that no written notice shall be required." 8 C.F.R. § 212.5(e). In addition,

although no written notice is required to terminate parole, "[u]nder 8 C.F.R. § 212.5(e)(2)(i), the service of a "charging document" on a noncitizen constitutes "written notice of termination of parole." *Matter of Arambula-Bravo,* 28 I&N Dec. 388, 392 (BIA 2021). The NTA is a charging document as defined in 8 C.F.R. § 1003.13. *Id.* Therefore, contrary to Petitioner's assertion, there is no requirement for a pre-deprivation hearing. Thus, Petitioner's argument that her parole revocation and detention are both arbitrary and unlawful fails.

Third, Petitioner makes repeated references to the *Accardi* doctrine, but she identifies no binding regulation that DHS actually violated. *See* Petition at ¶¶ 6, 44, and 46. Petitioner's alleged errors regarding venue, choice-of-law, and unreasonable delay would be attributable to EOIR, not ICE, if such errors occurred. Alleged EOIR errors cannot form the basis of habeas relief because § 1252 bars district court jurisdiction. *Accardi* does not transform immigration-court grievances into a detention challenge. Thus, the *Accardi* Doctrine does not apply.

Petitioner argues she was entitled to notice before parole revocation, an interview, an opportunity to contest, and a hearing on alternative countries. The regulations provide for no such entitlements. Moreover, although notice is *not* required before terminating parole, the filing of Petitioner's NTA served as written notice.

V. Petitioner Has Not Exhausted Administrative Remedies

This Court can dismiss on the alternative grounds that Petitioner failed to exhaust her administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Section 1225(b) prescribes mandatory detention, and Petitioner is not eligible for release on bond because the statute does not allow for release on bond. Likewise, she has no statutory or due process right to a bond hearing or release from custody. In this context, the only possible basis for Petitioner to be released from custody is parole, which is within ICE's sole discretion. *See* 8

U.S.C. § 1182(d)(5)(A) ("The Attorney General[1] may . . . in his discretion parole in 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.") (emphasis added).

The exercise of that discretion is not subject to district court review. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) ("no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security"); *see also Alonso-Escobar v. USCIS Field Office Dir., Miami, Fla.*, 462 F. App'x 933, 935 (11th Cir. Mar. 22, 2012) ("[C]ourts lack jurisdiction to review discretionary decisions or actions of the Attorney General or the Secretary of DHS."). Additionally, ICE's decision is not subject to review by the Immigration Court; the regulations clearly state that an immigration judge "may not" conduct a bond hearing to determine whether an arriving alien should be released in the United States during removal proceedings. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B) ("[A]n immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens: . . . (B) Arriving aliens in removal proceedings, including aliens paroled after arrival.").

Here, Petitioner has not fully availed herself of the administrative remedies available. An IJ denied Petitioner's motion to terminate removal proceedings on October 29, 2025, and ordered her removed to Cuba. On November 17, 2025, Petitioner filed an appeal of that decision to the BIA which has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). The appeal remains pending.[2] Furthermore, Petitioner claims exhaustion of her administrative remedies, yet she identifies no further steps taken to request

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[1] Although the statute refers to "the Attorney General," the Attorney General's parole authority is now exercised by the Secretary of Homeland Security and the Secretary has delegated this authority to ICE officials. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a).

[2] Respondents recognize that this Court has previously agreed with another petitioner in *Fidencio Hernandez Alvarez v. Acting Warden Roger Morris, et al.*, Case No. 25-24806-CV-Williams, stating that "Administrative "exhaustion is not required where . . . an administrative appeal would be futile." *Linfors v. United States*, 673 F.2d 332, 334 (11th Cir. 1982) (citing *Von Hoffberg v. Alexander*, 615 F.2d 633, 638 (5th Cir. 1980)). Therefore, the Court agrees with Petitioner and the growing number of courts that have concluded that since the result of any "bond appeal to the BIA is nearly a foregone conclusion under [*Yajure Hurtado*], any prudential exhaustion requirements are excused for futility."" However, Respondents maintain and preserve this argument for the record in light of evolving precedent on this issue.

release under 8 C.F.R. § 241.4, request a post-order custody review (POCR), provide additional documents, or participate in a 90-day or 180-day custody review. Failure to pursue POCR procedures bars habeas relief. Thus, there has not been an exhaustion of administrative remedies.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that on December 4th, 2025, I uploaded the attached document to the Court's PACER system.

By: */s/ John Ghannam*
John Ghannam
Assistant United States Attorney