

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION**

TEMUR PUKHAEV,

Petitioner,

v.

MIGUEL VERGARA, Field Office Director  
Immigration and Customs Enforcement (ICE)  
Enforcement and Removal Operations, in his  
Official Capacity, *et al.*,

Respondents.

Civil Action No.5:25cv-00240

PETITIONER'S REPLY TO  
RESPONDENTS' ANSWER TO PETITION  
FOR WRIT OF HABEAS CORPUS

**REPLY TO GOVERNMENT'S ANSWER TO PETITIONER'S PETITION FOR WRIT  
OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

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**PRELIMINARY STATEMENT**

Petitioner, TEMUR PUKHAEV (“Mr. Pukhaev”), respectfully submits the instant Reply to Respondent’s Opposition to the Petitioner’s Writ for Habeas Corpus (“Petition”). Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing §2254 cases.

The Petitioner, and his wife and two daughters who entered with him, were given permission to enter the United States on or about July 1, 2022, based on a humanitarian parole. **ECF 1-1.** Petitioner’s parole expired on June 29, 2023, but nothing in the record supports that it was properly revoked. *See* ECF No. 13-1. He was re-arrested by the Department of Homeland Security (“DHS”) in the interior of the United States when he was working as a truck driver. Despite showing his valid driver’s license and valid work authorization, DHS arrested him, nonetheless. Now, three years later, Respondent’s attempt to justify his mandatory detention under 8 U.S.C. §1225(b)(2), as an “applicant for admission.”

Respondents' logic rests on a fundamental legal error: the assumption that a person who was paroled into the United States remains perpetually “seeking admission” and therefore subject to mandatory detention as an arriving alien whenever DHS later chooses to re-arrest them. That is not what the statute says, and it is not how courts have interpreted it.

First, Section § 1225(b) applies to individuals who are *presently* seeking admission at or near the border—not to parolees who have long since entered the country, lived and worked in the community, complied with DHS supervision, and are now pursuing relief in pending § 240 removal proceedings. Reading § 1225(b)(2) to cover all parolees indefinitely would impermissibly erase the statutory phrase “*seeking admission*,” collapse the careful distinction Congress drew between border detention and interior detention, and convert parole into a meaningless fiction that carries perpetual mandatory custody.

Second, 8 U.S.C. § 1225(b)(2) is written to capture noncitizens at the threshold of entry, specifically those who are *arriving* (in the present tense) or who are encountered shortly after arrival and have not yet been permitted to enter the United States. The statute expressly limits expedited removal to “certain other” noncitizens “who have not been admitted or paroled into the United States,” thereby excluding individuals whom DHS has already allowed to enter through admission or parole. 8 U.S.C. § 1225(b)(1)(A)(i). This limitation is not incidental.

Here, DHS’s own actions confirm that Mr. Pukhaev’s detention is governed by 8 U.S.C. § 1226(a).<sup>1</sup> In July 2022, DHS exercised its discretion to parole Mr. Pukhaev and his family into the United States for humanitarian reasons, issued a Notice to Appear commencing § 240 proceedings, and necessarily determined that he was neither a flight risk nor a danger to the community. DHS did not re-arrest him when his parole expired in July 2023. Instead, it allowed him to remain at liberty, obtain work authorization, support his family, and fully comply with all court appearances and check-ins. Only in September 2025, after more than three years of lawful presence under DHS supervision, did the government reverse course and arrest him in the interior at a checkpoint, without notice, without a hearing, and without any allegation of changed circumstances. Under the plain structure of the Immigration and Nationality Act, DHS cannot retroactively transform an interior arrest into § 1225 (b)(2) detention simply by invoking Mr. Pukhaev’s manner of entry.

The Government’s authority to re-arrest a noncitizen and revoke their release is not only proscribed by statute and regulation, but also by the Due Process Clause. “This most basic American principle—that individuals placed at liberty are entitled to process before the

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<sup>1</sup> Respondents presented a Declaration of Deportation Officer Naiokie Guerra at ECF 13-1. While the Declaration states that she has “reviewed the relevant documents from the petitioner’s alien file (“A-file”) and other government records,” Respondents fail to provide any of those documentary evidence, such as an inadmissibility finding at the port of entry pursuant to expedited removal, or the warrant of arrest for Petitioner’s interior re-arrest.

government reimprisons them—has particular meaning here.” *Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R. & R. adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025). Therefore, release is the only appropriate remedy for Mr. Pukhaev’s unlawful re-detention.

**BACKGROUND**  
**STATEMENT OF THE FACTS**

Petitioner, Temur Pukhaev, is a fifty-year-old native and citizen of Russia, a father and asylum seeker who fled Russia with his wife, Irina Kabisova, and their three minor daughters [REDACTED] after he suffered political persecution and physical torture by [REDACTED] **ECF 1**. The family entered the United States as a unit on or about June 30, 2022, at the Otay Mesa Port of Entry. **ECF 1-3**. On July 1, 2022, Customs and Border Protection processed the family and issued them humanitarian parole so they could pursue asylum in § 240 removal proceedings. **ECF 1-2**. The family traveled to Brooklyn, New York, where they have remained while Mr. Pukhaev has been detained. **ECF 1 at 13**. That same day, DHS issued Mr. Pukhaev a Notice to Appear placing him into removal proceedings and directing him to appear at 26 Federal Plaza on October 13, 2022. **ECF 1-3**.

After DHS released him on parole, Mr. Pukhaev complied with every requirement imposed on him and followed the process for seeking asylum in immigration court. **ECF 1-2**. On or about August 22, 2022, he timely filed his Form I-589, Application for Asylum, with the immigration court and also filed a copy with USCIS; USCIS issued a receipt notice for his asylum case. **ECF 1 at 14**. Mr. Pukhaev and his family appeared for their first master calendar hearing on October 13, 2022, and the immigration judge scheduled an individual merits hearing for December 22, 2027. On March 22, 2023, Mr. Pukhaev was granted employment

authorization in connection with his pending asylum application; although that authorization was set to expire in March 2025, he renewed it and DHS extended it through May 26, 2030. **ECF 1-4.** DHS did not re-arrest him when his parole expired on or around July 1, 2023, and instead permitted him to continue living in the United States for more than three years with DHS's knowledge and approval while he reported as required and litigated his case.

On September 26, 2025, while driving in Texas from San Antonio to Laredo for work, Mr. Pukhaev stopped at a traffic checkpoint. **ECF 1 at 2.** CBP asked whether he was a U.S. citizen or lawful permanent resident; he produced a valid driver's license and a valid Employment Authorization Document. Nevertheless, CBP detained him at approximately 11:30 p.m. and later transferred him into ICE custody; on October 15, 2025, he was moved to the Webb County Detention Center in Laredo, Texas, where he remains detained. **ECF 1 at 14.** Before re-detaining him, Respondents did not provide any written notice explaining the basis for revoking his liberty, and they did not provide a hearing before a neutral decisionmaker at which ICE was required to justify re-detention or explain why—after years of compliance—Mr. Pukhaev had suddenly become a flight risk or danger. **ECF 1 at 44.** Mr. Pukhaev requested a custody redetermination hearing, but the immigration judge found there was no jurisdiction to review custody. Mr. Pukhaev then withdrew his bond request. He remains detained far from his wife and children, and far from counsel located in New York. **ECF at 16.**

#### **A. Relevant Statutory Framework**

The Immigration and Nationality Act (“INA”) and its implementing regulations set forth the procedures for detaining, paroling, and removing inadmissible noncitizens from the United States. Immigration laws “have long made a distinction between those [noncitizens] who have come to our shores seeking admission...and those who are within the United States after entry, irrespective of its legality.” *Leng May Ma v. Barber*,

357 U.S. 185, 187 (1958). In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Congress established the three main mechanisms for detaining noncitizens: (1) those *seeking admission* into the country under §§ 1225(b)(1) and (b)(2); and (2) those *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” Jennings v. Rodriguez, 583 U.S. 281, 289 (2018)(emphasis added); and (3) Section 1231, for post-final-order detention. Detention is mandatory under 1225, but discretionary under 1226. Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025).

#### **A. Mandatory Detention Under Section 1225(b)(2)**

Section 1225(a)(2)(A) provides that “in the case of a [noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained” pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A)(emphasis added). Thus, for § 1225 Detention requirement to apply, and quote examining immigration officer must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘*seeking admission*’ and 3. ‘not clearly and beyond a doubt entitled to be admitted.’” Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025) (quoting Martinez v. Hyde, 792 F. Supp. 3d 211, 214 (D. Mass. 2025)); J.G.O. v. Francis, No. 25-cv-07233 (AS), 2025 WL 3040142, at \*2–3 (S.D.N.Y. Oct. 28, 2025).

Pursuant to §1182(d)(5)(A), noncitizens detained following inspection under § 1225 can be paroled into the United States for urgent humanitarian reasons or significant public benefit, based on a case-by-case assessment by DHS. § 11829(d)(5)(A). Moreover, inherent in extending humanitarian or public interest parole, is a finding that “the [noncitizen] presents neither a security risk nor a risk of absconding. 8 C.F.R. § 212.5(b).

Parole under § 1182(d)(5)(A) is temporary. It may terminate automatically upon the noncitizen’s “departure from the United States” or “at the expiration of the time for which parole was authorized.” 8 C.F.R. § 212.5(e)(1). Alternatively, parole may terminate “upon written notice to the [noncitizen],” 8 C.F.R. § 212.5(e)(2)(i), and in that circumstance, a “charging document,” such as a Notice to Appear (“NTA”), may serve as “written notice” if it is “served on the [noncitizen].” *Id.*; *see also* 8 C.F.R. § 244.1.

Once parole terminates, § 1182(d)(5)(A) directs that the noncitizen “forthwith return or be returned to the custody from which he was paroled” and that the case “shall continue to be dealt with in the same manner as that of any other applicant for admission.” 8 U.S.C. § 1182(d)(5)(A). Accordingly, the end of parole—regardless of the method of termination—triggers processing under 8 C.F.R. § 212.5(e)(2). *See* 8 C.F.R. § 212.5(e)(1)(ii) (“[T]he [noncitizen] shall be processed in accordance with paragraph (e)(2) of this section except that no written notice shall be required.”). Under § 212.5(e)(2), the noncitizen is “restored to the status that he or she had at the time of parole,” and “[a]ny further inspection or hearing shall be conducted under section 235 or 240 of the [INA] and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed.” 8 C.F.R. § 212.5(e)(2)(i).

**i. Removal Proceedings Under 8 U.S.C. § 1229a**

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Congress established the two main processes for removing noncitizens deemed ineligible to enter or remain in the United States. *See Pub. L. 104-208*, 110 Stat. 3009, 3009-546 (1996); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020)(deemed ineligible to enter or remain in the United States. *See Pub. L. 104-208*, 110 Stat. 3009, 3009-546 (1996).

The “usual removal process” is commonly referred to as “Section 240” and is codified in 8 U.S.C. § 1229a. *Thuraissigiam*, 591 U.S. at 108. Section 240 proceedings involve an evidentiary hearing before an immigration judge, where a noncitizen may “attempt to show that he or she should not be removed.” *Id.*; *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2192986, at \*3 & n.4 (D.D.C. Aug. 1, 2025) (“*Coalition*”). This process was established by Congress to create “a ‘streamlined’ removal process . . . [f]or [noncitizens] already present in the U.S.” *Coalition*, 2025 WL 2192986, at \*3 (quoting H.R. Rep. 104-469, at 12, 107–08 (1996)). In these proceedings, noncitizens have a right to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). The proceedings themselves are recorded, typically take place over the course of multiple hearings and months, and, upon a decision by the immigration judge, either party may appeal to the Board of Immigration Appeals (“BIA”). *Coalition*, 2025 WL 2192986, at \*3; see also 8 C.F.R. §§ 1003.1, 1240.15; *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), (E.D.N.Y. Nov. 28, 2025).

### **B. Discretionary Detention Under Section 1226(a) and Re-Detention After Release**

Under § 1226(a), the Attorney General may release a detainee on bond either through ICE or by order of an Immigration Judge. There are standards for release: bond is available if the detainee “demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). “[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond.” *Id.* § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody

redetermination hearing before an IJ. That request will “be considered only upon a showing that the alien’s circumstances have changed materially.” *Id.* § 1003.19(e).

As a result, any “[r]elease” of a noncitizen “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).

Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials “at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen].” 8 U.S.C. § 1226(b); *see* 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

Courts have stated that conditional parole “provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a ‘danger to persons or property’ and ‘is likely to appear for any further proceeding.’” *Delgado-Sobalvarro v. Attorney Gen. of U.S.*, 625 F.3d 782, 787 (3d Cir. 2010); *See also Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010).

DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the “discretion of the district, acting district director, deputy director, assistant district director for investigations, assistant

district director for detention and deportation, or officer in charge (except foreign).” 8 C.F.R. § 236.1(c)(9).

Additionally, despite “the breadth of [the] statutory language” in 8 U.S.C. § 1226(b), the federal government’s authority is subject to “an important implicit limitation”: It cannot lawfully re-arrest or re-detain someone without “a material change in circumstances.”

*Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested “solely on the ground that he is subject to removal proceedings,” without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to “limit” scope of immigration agents’ seizure authority); *Gonzalez v. United States Immigr. & Customs Enf’t*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. “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.” *Zadydas v. Davis*, 533 U.S. 678, 690 (2001).

And those due process protections extend to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”

*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

## **ARGUMENT**

### **I. THE COURT HAS JURISDICTION**

The Court has jurisdiction under 28 U.S.C. § 2241(c)(3) to grant a writ of habeas corpus to a person in custody in violation of the Constitution, laws, or treaties of the United States. *Demore v. Kim*, 538 U.S. 510, 517 (2003). “[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)(citing the Suspension Clause). A habeas petitioner has “the burden of sustaining his allegations by a preponderance of evidence.” *Walker v. Johnston*, 312 U.S. 275, 286 (1941). A court considering a habeas petition must “determine the facts, and dispose of the matter as law and justice require.” 28 U.S.C. § 2243. When the Court finds a petitioner’s constitutional rights have been violated, the petitioner is entitled to the issuance of a writ. *Id.*

### **II. LEGAL STANDARD**

A noncitizen may seek relief through a petition for writ of habeas corpus under 28 U.S.C. § 2241 when he is “in custody” and alleges that the custody violates the Constitution or laws of the United States. The Fifth Circuit recognizes that § 2241 provides a vehicle to challenge unlawful federal custody and that the “in custody” requirement is satisfied not only by physical confinement, but also by significant restraints on liberty. *Rosales v. Bureau of Immigration & Customs Enf’t*, No. 04-10630 (5th Cir. Aug. 16, 2005) (holding an alien subject to a final order is

“in custody” under § 2241; explaining that custody is not limited to physical confinement and citing *Padilla*).

**III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE, 8 U.S.C. § 1225(b)(2)**

Statutory interpretation begins with the statutory text. “The appropriate starting point when interpreting any statute is its plain meaning.” *United States v. Molina-Gazca*, 571 F.3d 470, 472 (5th Cir. 2009). Mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is premised on an immigration officer’s determination that a noncitizen is: (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Applying that framework here, Mr. Pukhaev cannot lawfully be held under § 1225 because—at the time of his September 26, 2025 re-arrest at an interior checkpoint in Texas after more than three years living in the United States pursuant to DHS parole and while his § 240 case remained pending—he was not “*seeking* admission” in any ordinary, present-tense sense. He was working, as he was allowed by DHS to work pursuant to his valid work authorization.

To be clear, Mr. Pukhaev may still be an “applicant for admission” as a term of art, because Congress defines that category to include not only those who “arrive[ ],” but also those “present in the United States who ha[ve] not been admitted.” 8 U.S.C. § 1225(a)(1). And parole does not constitute admission: § 212(d)(5)(A) provides that parole “shall not be regarded as an admission.” 8 U.S.C. § 1182(d)(5)(A). The Fifth Circuit likewise recognizes that “admission” is a procedurally proper entry “other than parole,” and that “even aliens who are paroled into the United States are considered to be applicants for admission.” *Duarte v. Mayorkas*, No. 18-20784

(5th Cir. Mar. 3, 2022) (citing *Tula Rubio v. Lynch*, 787 F.3d 288, 292–93 (5th Cir. 2015), and 8 U.S.C. § 1182(d)(5)(A)). Nonetheless, it does not follow that every “applicant for admission” is perpetually “seeking admission” such that § 1225(b)(2)(A)’s mandatory detention applies years after DHS has allowed the person to enter the country on parole, live in the community, work, and litigate removal proceedings. Instead, under the statute’s plain language, the “seeking admission” element requires a present-tense effort to enter at or near the border; when Mr. Pukhaev was re-arrested in 2025, he was already inside the United States and was simply continuing the same § 240 process DHS had placed him in since 2022.

Finally, Respondents’ effort to collapse “applicant for admission” into “seeking admission” would read the latter phrase out of § 1225(b)(2)(A). Congress used both terms, and courts must give effect to each. See, e.g., *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (courts should give effect to every word and avoid superfluity). Where DHS arrests a noncitizen on a warrant while he is already residing in the United States and pending a decision on removability, the detention authority is 8 U.S.C. § 1226(a)—not § 1225. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Congress intended for § 1226(a)’s discretionary framework to apply to noncitizens arrested on a warrant while residing in the United States, as Petitioner here was. The only exception is provided under § 1226(c), which Respondents do not argue apply here.

**A. 8 C.F.R. § 212.5(e)(2) Does Not Revert a Paroled Noncitizen to Threshold § 235 Mandatory Detention**

Congress and DHS’s own regulations show that 8 C.F.R. § 212.5(e)(2) is about how DHS processes a person after parole ends, not a rule that automatically places a parolee back at the

threshold of entry for mandatory detention. By statute, parole under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A) “shall not be regarded as an admission,” and upon termination of parole the person is to be “dealt with in the same manner as that of any other applicant for admission.”

The regulation implements that instruction by providing that, when parole ends, the noncitizen is “restored to the status that he or she had at the time of parole,” and that any further inspection or hearing “shall be conducted under section 235 or 240 of the Act.” 8 C.F.R. § 212.5(e)(2)(i). Nothing in the statute or regulation states that parole termination itself triggers mandatory detention under INA § 235(b), nor does Congress equate “restored to status” with being newly “seeking admission” within the meaning of § 1225(b)(2)(A). See 8 U.S.C. § 1225(b)(2)(A) (conditioning mandatory detention on an officer’s determination that the person is an applicant for admission and is “seeking admission”).

Second, courts have expressly rejected DHS’s argument that § 212.5(e)(2) places a parolee back in the position of a noncitizen “standing at the border” for purposes of § 235 mandatory detention or expedited removal. (*Salgado Bustos v. Raycraft*, No. 25-13202 (E.D. Mich. Oct. 29, 2025) (rejecting DHS’s “threshold of entry” theory and holding prior parole defeats § 235(b)(1) treatment); *Ev v. Raycraft*, No. 4:25-cv-02069 (N.D. Ohio Oct. 16, 2025) (same); *Coal. for Humane Immigrant Rts. v. Noem*, 2025 WL 2192986, at \*28 (D.D.C. Aug. 1, 2025) (rejecting the argument that parolees return, upon termination/expiration, to the position of an applicant for admission standing at the threshold of entry)).

In *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL , at \* (E.D. Mich. Oct. 29, 2025), the government argued that once the petitioner’s § 212(d)(5)(A) parole expired, § 1182(d)(5)(A) and § 212.5(e)(2) required his return to custody and rendered him subject to § 235(b)(1). The court rejected that interpretation, holding that courts have “explicitly rejected the argument that

under § 1182(d)(5)(A), parolees return, upon the termination or expiration of their parole, to the position of an applicant for admission standing at the threshold of entry.” *Id.* (quoting Coalition for Humane Immigrant Rights v. Noem, 2025 WL 2192986, at \*28 (D.D.C. Aug. 1, 2025)). The court further held that the INA does not authorize expedited removal of noncitizens who have been paroled into the United States, even if that parole later expires, because § 235(b)(1)(A)(iii)(II) by its terms applies only to those who have “not been admitted or paroled into the United States.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

It's notable that while Respondents make this argument, they did not arrest Petitioner when his temporary parole expired in July 2023.

Third, other federal courts have likewise held that prior parole has continuing legal significance and is not erased by parole termination for purposes of § 235 detention. In Ev v. Raycraft, No. 4:25-cv-02069, 2025 WL , at \* (N.D. Ohio Oct. 16, 2025), the court rejected DHS’s position that parole expiration automatically restored the petitioner to § 235 mandatory detention, explaining that parole is a statutory event that removes a noncitizen from the class of individuals who “have not been admitted or paroled,” even if parole later ends. The court emphasized that § 212.5(e)(2) governs DHS’s administrative handling of the case after parole, but does not rewrite the statutory predicates for § 235 detention, which remain limited to those “seeking admission.” *Id.*; 8 U.S.C. § 1225(b)(2)(A).

Fourth, reading § 212.5(e)(2) to mandate § 235 detention upon parole termination would contradict Congress’s detention framework and collapse distinct statutory categories. Congress created separate detention regimes for noncitizens “seeking admission” under § 1225 and for noncitizens already inside the United States pending removal under § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Interpreting § 212.5(e)(2) to require mandatory § 235

detention whenever parole ends would render the “seeking admission” requirement superfluous, violate the canon against surplusage, and improperly convert a regulatory processing provision into a detention mandate Congress did not enact. See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

#### **IV. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS**

The Due Process Clause extends to all “persons” within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). To determine what process is due before the government deprives an individual of liberty through civil detention, courts apply the three-factor balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, the Court weighs: (1) the private interest affected; (2) the risk of erroneous deprivation under the procedures used and the likely value of additional safeguards; and (3) the Government’s interest, including the burdens of additional procedures. *Id.* at 335. “The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time and in a meaningful manner.” *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).

##### **A. Private Interest**

Mr. Pukhaev was initially detained when he entered the United States with his wife and three minor children on June 30, 2022 and sought asylum. After inspection, DHS exercised its discretion to grant the family humanitarian parole on July 1, 2022, permitting them to live in the community while pursuing their asylum claims. That discretionary release constitutes strong evidence that, at the time, DHS did not view Mr. Pukhaev as requiring detention to mitigate danger or flight risk. See *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) (government release reflects a determination that detention is not necessary to address danger or flight risk).

Mr. Pukhaev fully complied with the conditions of his release. He appeared for all immigration court hearings, reported as required, maintained a stable residence, timely pursued his asylum application, obtained and renewed work authorization, and committed no crimes.

Despite this undisputed history of compliance—and without any allegation of bond violations or material change in circumstances—DHS re-arrested Mr. Pukhaev more than three years later, in September 2025, during an interior checkpoint encounter, and now contends that he is categorically ineligible for bond. Where, as here, a noncitizen has previously been released from custody and remained compliant, courts recognize a protected liberty interest in remaining out of custody absent changed circumstances. See *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019). Numerous courts have reached the same conclusion. See *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at \*2 (N.D. Cal. June 14, 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at \*12 (D. Ariz. Aug. 11, 2025).

Accordingly, the first *Mathews* factor—the private interest at stake—weighs heavily in Mr. Pukhaev’s favor.

#### B. Risk of Erroneous Deprivation

The Court must also consider whether application of 8 U.S.C. § 1225(b) in this case creates a substantial risk of “erroneous deprivation of individuals’ private rights,” and whether alternative procedures could reduce that risk. *Martinez v. Sec’y of Noem*, No. 5:25-CV-01101 JLT SKO, 2025 WL 2581185, at \*11 (E.D. Cal. Sept. 5, 2025). That risk is acute here. Mr. Pukhaev was re-arrested in the interior, more than three years after DHS paroled him into the United States and while his § 240 removal proceedings remained pending. When Mr. Pukhaev sought a

custody redetermination, the immigration judge declined to exercise jurisdiction, concluding that bond was unavailable because DHS treated him as subject to § 1225(b). As a result, Mr. Pukhaev was afforded no forum to contest the basis for his re-detention, no opportunity to address whether he posed any risk of flight or danger, and no individualized assessment of whether continued detention was necessary in light of his years of compliance, family ties, and lawful employment. In the absence of judicial intervention, Mr. Pukhaev will continue to suffer an erroneous deprivation of liberty based solely on a categorical statutory label, rather than any individualized determination required by due process.

### C. Government Interest

Civil detention is different from imprisonment. While the Government has an interest to ensure that noncitizens are not flight risks or dangers to the community, its detention process cannot be punitive. The petitioner entered the U.S. in June 2022. He was not placed into expedited removal proceedings nor denied at entry. DHS made a decision to instead release Petitioner with a conditional parole into the country. This decision to release Petitioner three years ago, in and of itself reflects the DHS's determination by the government that he was not a danger to the community or a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal 2017), *aff'd* 905 F.3d 1137 (9th Cir. 2018). Petitioner did not abscond, nor has he committed any crime. In fact, Petitioner was re-arrested when was working, not due to an arrest.

Since Petitioner has met the *Mathews* test, this Court should find that his detention without any individualized assessment of flight risk or danger deprives Petitioner of his constitutional rights. Petitioner therefore contends that release is the appropriate remedy to this deprivation.

**CONCLUSION**

For the reasons described above, Petitioner's Petition should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to his statutory eligibility for release.

Respectfully Submitted,

**/s/ David H. Square**

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**CERTIFICATE OF SERVICE**

I, DAVID H. SQUARE, hereby certify that the foregoing document was served on Counsel for the Government on December 23rd, 2025 by the ECF electronic filing system.

/s/ David H. Square

David H. Square