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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GURPARTAP SINGH,

Petitioner,

WARDEN OF THE GOLDEN STATE ANNEX DETENTION FACILITY, OR ACTING FIELD OFFICE DIRECTOR, SAN FRANCISCO FIELD OFFICE, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, CURRENT OR ACTING DIRECTOR UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, CURRRENT OR ACTING SECRETARY, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, CURRENT OR ACTING UNITED STATES ATTORNEY GENERAL,

Respondents.

Case No. 1:25-CV-01689-EPG-HC

REPLY TO OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION AND ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

Gurpartap Singh ("Petitioner") respectfully requests that this Court issue a preliminary injunction to prevent the ongoing violation of his due process and statutory rights. Respondents' Answer to Petition for Writ of Habeas Corpus; Opposition to Motion for Preliminary Injunction ("Opposition," ECF 21) fails to address the due process and statutory violations that resulted in Petitioner's summary re-arrest and re-detention without notice or an opportunity to contest the basis for his re-detention after he had been paroled into the United States on May 9, 2023 under 8 U.S.C § 1226(a) of the Immigration and Nationality Act ("INA"). *See* Exhs. 1, 2 to the Declaration of Deportation Officer Mayra Gallenkamp ("Gallenkamp Decl.," ECF 21-1). Nor does the Opposition address the fact that the official immigration records confirm that Petitioner was paroled pursuant to 8 U.S.C. § 1226(a) and thus could not, absent changed circumstances, be moved into 8 U.S.C § 1225 proceedings.

While Respondents claim that Petitioner is subject to mandatory detention under 8 U.S.C. §1225 of the INA, the INA does not authorize such a reclassification after Petitioner's parole pursuant to 8 U.S.C. § 1226(a). In addition, Petitioner's placement into expedited removal proceedings in May 2025 after he had been paroled in May 2023 violated the INA.

II. Argument

A. Petitioner is Not Subject to Expedited Removal or Mandatory Detention

Petitioner should have remained subject to Section 240 removal proceedings rather than be placed into expedited removal. In *Coalition For Humane Immigrant Rights, v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025), the District of Columbia District Court held that § 1225(b)(1)(A)(iii) "forbids the expedited removal of noncitizens who have been, at any point in time, paroled into the United States." 2025 WL 2192986, at *22. *Coalition* at *22-*27 conducts a thorough analysis of § 1225(b)(1)(A)(iii), § 235.3(b)(1),

legislative history, relevant directives and case authority to reach its holding, which is relevant to Petitioner's case.

Respondents concede that Petitioner was paroled into the United States on May 9, 2023. *See* Exhs. 1, 2 to the Gallenkamp Decl., ECF No. 21-1. While Petitioner may have been eligible for expedited removal when he initially arrived in the United States in May of 2023, Respondents violated the INA by placing him into expedited removal proceedings *after* he had been paroled. *See Coalition*, at *22.

Respondents take the position that Petitioner nonetheless remains an "applicant for admission" who is "present in the United States without being admitted or paroled[.]" 8 U.S.C. § 1182(a)(6)(A)(i)." Opposition at 4. If Petitioner was paroled on May 9, 2023, he no longer qualifies as a noncitizen who *has not been "paroled."* Even if Petitioner could be considered an "applicant for admission," after approximately two years of parole and his receipt of express work authorization from DHS valid through 2029 (the Declaration of Carrie LeRoy ("LeRoy Decl.") at ¶ 6, ECF 16-2), Respondents' official records demonstrate that Petitioner is subject to 8 U.S.C. § 1226 rather than §1225.

Petitioner was not paroled "for urgent humanitarian reasons or significant public benefit." Rather, he was paroled and released on his own recognizance in accordance with 8 U.S.C. § 1226(a). *See* Exh. D; LeRoy Decl. at ¶ 4. On May 9, 2023, Petitioner was provided a Notice of Custody Determination that stated that he was being released "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations," which is 8 U.S.C. § 1226 and its corresponding regulations, "due to a lack of space" at the applicable detention facility. *See* Opposition at 2; Exhs. 1, 2 to the Gallenkamp Decl., ECF No. 21-1. A "lack of space" is not an "urgent humanitarian reason" or

"significant public benefit" justification. *See* Exh. 1 to the Gallenkamp Decl., ECF No. 21-1. Once immigration authorities "elect to proceed with full removal proceedings under § 1226, [they] cannot [ ] reverse course and institute § 1225 expedited removal proceedings." *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025). Petitioner reasonably relied on the official notices that he received from the immigration authorities in 2023 indicating that he had been paroled pursuant to 8 U.S.C. § 1226. *See* Exhs. 1, 2 to the Gallenkamp Decl., ECF No. 21-1.

B. Petitioner's Parole Was Unlawfully Revoked

ICE may choose to release a noncitizen on parole. The decision is discretionary and is made on a case-by-case basis. An immigrant who has been detained at the border may be paroled for humanitarian reasons or due to it providing a significant public benefit (8 U.S.C. § 1182(d)(5)(A)), or he may be conditionally released (8 U.S.C. § 1226(a)), as in the case of Petitioner. In either case, to release a noncitizen from custody requires a case-by-case determination, where the noncitizen must "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons" and that the noncitizen is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1I(8); *see also Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007); *Fernández López v. Wofford*, 2025 WL 2959319, *2 (E.D. Cal. 2025).

In *Y-Z-H-L v. Bostock*, 2025 WL 1898025, at *10–12 (D. Or. July 9, 2025), the court explained the parole process in immigration cases and noted that before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons supporting the revocation decision. The *Y-Z-H-L* court determined that under the Administrative Procedure Act, immigration parolees are entitled to determinations related to their parole revocations that are not arbitrary, capricious or an abuse of

discretion. *Id.* at *10. An agency acts arbitrarily and capriciously by failing to make a reasoned determination or failing to "articulate[] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Id.*

In considering *Y-Z-H-L* and § 212.5I, other courts have found that the statute requires a case-by-case analysis as to the decision to revoke parole and that written notice without individualized reasons for the revocation of parole is insufficient for compliance with 8 C.F.R. § 212.5I(2)(i). In *Mata Velasquez v. Kurzdorfer*, No.25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D. N.Y. July 16, 2025), the court held similarly, in the context of humanitarian parole:

> This Court agrees that both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole "must attend to the reasons an individual [noncitizen] received parole." *See Doe. V. Noem*, 778 F.Supp.3d 311, 339 (D. Mass. April 14, 2025)]. There is no indication in the record that the government conducted any such analysis here. On the contrary, the letter Mata Velasquez received merely stated summarily that DHS had "revoked [his] parole." Docket Item 62-1 at 5. Thus, there is no indication that—as required by the statute and regulations—an official with authority made a determination specific to Mata Velasquez that either "the purpose for which [his] parole was authorized" has been "accomplish[ed]" or that "neither humanitarian reasons nor public benefit warrants [his] continued presence...in the United States." See 8 C.F.R. § 212.5I(2)(i). As a result, DHS's revocation of Mata Velasquez's parole violated his rights under the statute and regulations. *See Y-Z-L-H*, 2025 WL 1898025, at *13.

Respondents do not dispute that Petitioner was not provided individualized reasons for the revocation of his parole or the opportunity to contest this revocation when he was re-arrested and re-detained on May 26, 2025. *See* Opposition, generally. Rather, Respondents appear to take the position that the INA trumps the due process clause. Respondents contend that "Petitioner is an applicant for admission originally apprehended near the border, so his due process rights are minimal," citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020). Opposition at 8-9.

Respondents effectively argue that Petitioner has no due process rights and that his rights

are limited to those provided by statute. *Id.* This argument misconstrues *Thuraissigiam.* First, it fails to appreciate the distinction between persons already located inside the United States, like Petitioner, and persons attempting to *enter* the United States, like the petitioners in *Thuraissigiam.* "It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). *Zadvydas*, (citing *United States v. Verdugo–Urquidez*, 494 U.S. 259, 269 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950)). "But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693; *see Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) ("[I]t is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority.").

Second, Respondents' argument misconstrues the nature of the challenge that Petitioner brings in this case, which is a challenge to his *detention. Thuraissigiam* held that a petitioner who was stopped at the border did not have any due process rights regarding admission into the United States. *Thuraissigiam*, 591 U.S. at 107. However, Petitioner challenges as unlawful his re-detention without a hearing; he does not challenge in this habeas action and motion for a preliminary injunction any determination regarding his admissibility. *See Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170–72 (W.D. Wash. 2023) (discussing *Thuraissigiam* and explaining the distinction between a challenge to admission and a challenge to detention); *Hernandez*, 872 F.3d at 981 ("[T]he government's discretion to [detain] non-citizens is always constrained by the requirements of due process."). "Although the Supreme Court has described Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must

generally 'defer to Executive and Legislative Branch decisionmaking in that area,' it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority"—through detention or otherwise. *Hernandez*, 872 F.3d at 990 n.17 (*citing Kleindienst*, 408 U.S. at 769; *Zadvydas*, 533 U.S. at 695). The Due Process Clause protects Petitioner, a person who has resided inside the United States since May 2023, from unlawful detention. *See Zadvydas*, 533 U.S. at 693.

Respondents do not suggest in their Opposition that Petitioner was provided any prior individualized notice of the reasons for his parole revocation or an opportunity to contest such revocation in May 2025. *See* Opposition, generally. As explained by the court in *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, F. Supp. 3d, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), a noncitizen's re-arrest without cause and an opportunity to contest the revocation of parole violates the Due Process Clause. *See also, Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); see also *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals."); *See also, J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction).

C. Exhaustion Is Not Required

Petitioner has been unlawfully detained by Respondents for over seven months and yet, Respondents appear to suggest that his remedy is to languish in detention indefinitely and hope that one day the Board of Immigration Appeals will consider an appeal of a bond hearing

denial that he would most certainly receive. Opposition at 5-6. Respondents make it clear that their position is that Petitioner is not entitled to a bond hearing at all, claiming that "[t]he mandatory detention statute does not provide for bond hearings as demanded in the petition." Opposition at 10. Exhaustion should be waived because administrative remedies are futile and Petitioner's continued detention will result in ongoing irreparable harm. Contrary to Respondents' position, there is no requirement to exhaust administrative remedies prior to challenging the constitutionality of an arrest or detention or a policy under the Administrative Procedure Act. Only an order of this Court could effectively grant Petitioner relief.

Prudential exhaustion is not required here because it would be futile, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025).

Even if Petitioner eventually obtains a bond hearing in immigration court, a bond request is likely to be futile, as Respondents contend that Petitioner is categorically ineligible for bond. *See* Opposition at 10. Moreover, immigration court judges will cite *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025) to deny a bond hearing for Petitioner on jurisdictional grounds. This makes the proposed so-called administrative "remedy" of a bond hearing wholly illusory. While Respondents appear to blame Petitioner for delays in his immigration case (*see* Opposition at 2), through no fault of Petitioner's, he was not provided a hearing before an immigration judge for two and a half months after the date his arbitrary detention re-commenced

on May 26, 2025. Gallenkamp Decl., at ¶ 14. The pursuit of administrative remedies for Petitioner in immigration court clearly would not be efficacious.

Crucially, a requirement of exhaustion is not appropriate in Petitioner's case because a *post*-deprivation bond hearing is not an acceptable remedy for the egregious violation of his due process rights. *See Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025); *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53, 59–61 (1993) ("We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event[,]" such as "executive urgency."). There is no "extraordinary situation" or valid "governmental interest" to justify Respondents' arbitrary re-arrest and re-detention of Petitioner without individualized notice, cause or a material change of circumstances in violation of his due process rights.

D. This Court Should Deny Respondents' Request for an Abeyance

Petitioner objects to Respondents' request to hold in "abeyance" its decision on the merits of this case pending the Ninth Circuit's decision in *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025). *See* Opposition at 4-5. The issue raised in the district court that case appears to concern whether 8 U.S.C. § 1225(b)(2)(A) could be applied to noncitizens living in the country for many years. Here, Petitioner raises a due process claim based on the liberty interest that developed during his two years *on release*, and Petitioner argues that Respondents may not re-detain him without a showing at a pre-deprivation hearing that he is either a flight risk or a danger to the community. Moreover, without this Court's prompt issuance of a preliminary injunction, Petitioner will continue to suffer immense irreparable injury. He faces such injury each day that he is detained in violation of his due

process and statutory rights.

E. Petitioner Has Adequately Demonstrated Irreparable Harm

Respondents disregard the evidence of Petitioner's untreated health issues, weight loss and inability to fully practice his religion in detention (see Exh. I; LeRoy Decl. at ¶ 16) to suggest that he is claiming that his "continued detention" alone is *the* irreparable harm. *See* Opposition at 7. The unrefuted evidence in this case shows that it is not. Moreover, *unlawful* continued deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Thus, Petitioner has met his burden of demonstrating irreparable harm. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)), this Court should issue a preliminary injunction requiring Petitioner's prompt release from detention.

I. Conclusion

For the foregoing reasons, Petitioner respectfully requests the Court issue a preliminary injunction to restore the *status quo ante* prior to May 26, 2025—the date on which Petitioner's unlawful detention commenced—that (1) orders Petitioner's immediate release from Respondents' custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) orders Petitioner's immediate release from Respondents' custody and barring his re-detention unless Respondents prove at a hearing before a neutral arbiter by clear and convincing evidence that Petitioner is a flight risk or danger to others, and (3) enjoins Respondents from transferring Petitioner out of this District or deporting him from the United States during the pendency of these proceedings.

Date: January 12, 2026

Respectfully submitted,

/s/Carrie LeRoy
Carrie LeRoy
Attorney for Petitioner