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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **DARIEN RODRIGUEZ FERNANDEZ**

12 Petitioner

13 v.

14 **Kristi NOEM, Secretary, U.S. Department of**
15 **Homeland Security; et al.,**

16 Case No.:25-cv-03399-DMS-KSC

17 **Judge: Hon. Dana M. Sabraw**

18 **PETITIONER’S TRAVERSE TO**
19 **RESPONDENT’S RETURN**

20 **I. INTRODUCTION**

21 Petitioner challenges the legality of his continued detention on the ground that he was
22 granted humanitarian parole pursuant to INA § 212(d)(5)(A) and that such parole has never been
23 lawfully terminated in accordance with the governing statute and regulations. This Petition does
24 not concern an entry without inspection, nor does it challenge the initiation or conduct of
25 removal proceedings. Rather, it presents a narrow threshold issue: whether the Department of
26 Homeland Security may detain a parolee under INA § 235(b) without first terminating parole
27 through the procedures required by 8 C.F.R. § 212.5(e).

28 The Court ordered Respondents to show cause why Petitioner’s detention is lawful.
Respondents’ Return, however, does not address that question. Instead, it advances arguments
applicable to a different detention framework—one involving individuals who were never

1 paroled and who are treated as applicants for admission subject to detention under INA § 235(b).
2 The Return does not identify any action revoking Petitioner’s parole, any individualized
3 determination that the purpose of parole has been served, or any compliance with the written
4 notice and substantive requirements governing parole termination.

5 Because the Return does not address whether parole was lawfully terminated—a
6 prerequisite to detention under INA § 235(b) in this context—it does not respond to the basis of
7 the Petition and does not satisfy the Order to Show Cause. As courts in this District have held in
8 materially indistinguishable cases involving humanitarian parolees, detention under INA §
9 235(b) cannot be justified where parole remains legally operative and has not been terminated
10 pursuant to regulation. Respondents have therefore failed to justify Petitioner’s continued
11 detention, and the writ should issue.

12 **II. JURISDICTION**

13 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241 because
14 Petitioner challenges the legality of his current immigration detention and seeks release from
15 unlawful custody. Federal courts retain habeas jurisdiction to review whether the Department of
16 Homeland Security has statutory and constitutional authority to detain a noncitizen, including
17 where the challenge concerns the legal basis for detention rather than the validity of a removal
18 order.

19 The Petition does not seek review of removal proceedings, prosecutorial discretion, or the
20 merits of any immigration relief application. Instead, it presents a pure detention challenge:
21 whether Respondents possess lawful authority to detain a parolee under INA § 235(b) where
22 parole has not been terminated in accordance with 8 C.F.R. § 212.5(e). Such claims fall squarely
23 within the traditional core of habeas jurisdiction and are not barred by INA §§ 242(b)(9) or
24 242(g).

25 Courts in this District have consistently held that §§ 1252(b)(9) and 1252(g) do not bar
26 habeas review of detention challenges brought by paroled noncitizens challenging the legal
27 authority for their custody. Because Petitioner challenges only his present custody and the

1 statutory authority for that custody, this Court has jurisdiction to adjudicate the Petition and to
2 order appropriate relief.

3 **III. EXHAUSTION**

4 Respondents suggest that this Petition should be dismissed for failure to exhaust
5 administrative remedies. That contention lacks merit. This habeas action arises under 28 U.S.C. §
6 2241 and challenges only the statutory and regulatory authority for Petitioner’s present detention
7 —specifically, whether DHS may detain a parolee under INA § 235(b) where parole has not
8 been lawfully terminated pursuant to 8 C.F.R. § 212.5(e). Exhaustion in this context is prudential
9 rather than jurisdictional, and it is excused where no adequate administrative remedy exists or
10 where pursuit of such remedies would be futile.

11 Here, there is no administrative mechanism through which Petitioner may obtain review
12 or redress of DHS’s failure to lawfully terminate parole. Immigration Judges lack jurisdiction to
13 adjudicate the legality of parole termination under § 212.5(e) or to order release on that basis,
14 and no DHS component provides a forum for such relief. Accordingly, exhaustion should be
15 excused because administrative remedies are unavailable and incapable of addressing the purely
16 legal detention challenge presented by this Petition. See *Hernandez v. Sessions*, 872 F.3d 976,
17 988 (9th Cir. 2017); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

18 **IV. RESPONDENTS FAIL TO ADDRESS THE BASIS OF THE PETITION**

19 **A. The Petition Challenges Detention of a Parolee, Not an Entry Without** 20 **Inspection**

21 The Petition challenges the legality of Petitioner’s detention on the ground that he was
22 granted humanitarian parole pursuant to INA § 212(d)(5)(A) and that such parole has never been
23 lawfully terminated in accordance with governing law. Petitioner did not enter the United States
24 without inspection and is not detained as an individual apprehended at or near the border. Rather,
25 he was inspected and paroled into the United States, issued a valid Form I-94, and later granted
26 employment authorization consistent with that parole.

1 Consistent with this posture, the Petition does not dispute Petitioner’s removability, seek
2 review of removal proceedings, or challenge DHS’s discretionary enforcement decisions.
3 Instead, it raises a narrow detention question: whether DHS may invoke detention authority
4 under INA § 235(b) against a parolee whose parole has not been terminated pursuant to 8 C.F.R.
5 § 212.5(e). That regulatory framework governs the termination of parole and requires an
6 individualized determination and notice—requirements that are central to the Petition and
7 dispositive of the detention claim presented here.

8 Accordingly, the Petition does not present the type of detention challenge arising from an
9 entry without inspection or an initial border apprehension. It rests instead on the continued legal
10 effect of an unrevoked parole grant and the absence of any lawful termination of that parole. Any
11 detention framework that presumes parole never existed, or that treats Petitioner as an arriving
12 noncitizen subject to initial inspection, fails to engage the actual basis of the Petition.

13 **B. The Return Contains No Argument That Petitioner’s Parole Was Lawfully**
14 **Terminated**

15 The Return does not contend that Petitioner’s humanitarian parole was ever lawfully
16 terminated. Nor does it identify any action taken by the Department of Homeland Security to
17 revoke parole pursuant to 8 C.F.R. § 212.5(e), which governs the termination of parole and
18 requires an individualized determination and written notice. The Return does not reference that
19 regulation, describe any termination decision, or dispute the documentary evidence submitted
20 with the Petition establishing that parole was granted and remained valid at the time of detention.

21 Absent any showing that parole was terminated in accordance with the regulatory
22 framework, the Return does not explain how DHS obtained authority to detain Petitioner under
23 INA § 235(b). Instead, the Return proceeds as if parole were irrelevant or nonexistent, without
24 addressing the legal consequences of an operative parole grant or the procedural prerequisites
25 required to extinguish it. That omission is dispositive of the detention challenge presented here.

26 Because lawful termination of parole is a necessary predicate to detention under INA §
27 235(b) in this context, Respondents’ failure to advance any argument, factual or legal,

1 establishing termination of parole leaves the basis of the Petition unanswered and the claimed
2 detention authority unsupported.

3 **C. Respondents' § 235(b) Arguments Do Not Satisfy the Order to Show Cause**

4 The Court ordered Respondents to show cause why Petitioner's detention is lawful on the
5 facts and theory presented in the Petition. Respondents' reliance on detention authority under
6 INA § 235(b), however, does not satisfy that Order because it does not address the threshold
7 issue raised: whether DHS may invoke § 235(b) against a parolee whose parole has not been
8 lawfully terminated pursuant to 8 C.F.R. § 212.5(e).

9 The Return advances generalized arguments applicable to noncitizens treated as
10 applicants for admission who were never paroled, including assertions regarding the scope of §
11 235(b) custody, the unavailability of bond hearings, and limitations on judicial review. Those
12 arguments do not respond to the Petition's parole-based challenge and do not establish detention
13 authority in the absence of lawful parole termination. Where parole remains legally operative,
14 reliance on § 235(b) alone is insufficient to justify continued custody.

15 Because the Return does not address the regulatory prerequisites for terminating parole or
16 explain how § 235(b) could apply notwithstanding the absence of such termination, Respondents
17 have failed to demonstrate lawful authority for Petitioner's detention. Accordingly, the Return
18 does not satisfy the Order to Show Cause, and Respondents have not met their burden of
19 justifying continued custody under the circumstances presented.

20 **V. COURTS IN THIS DISTRICT CONFIRM THAT LAWFUL TERMINATION OF**
21 **PAROLE IS A PREREQUISITE TO DETENTION**

22 Courts in this District have repeatedly held that DHS may not justify detention under INA
23 § 235(b) where a noncitizen was granted parole under INA § 212(d)(5)(A) and that parole has
24 not been lawfully terminated pursuant to 8 C.F.R. § 212.5(e). These decisions recognize that
25 parole remains legally operative unless and until DHS complies with the regulatory framework
26 governing its termination, including an individualized determination and notice. Absent such
27 compliance, detention under § 235(b) is unlawful.

1 In *Arias v. LaRose*, No. 25-cv-2595 (S.D. Cal. 2025), the court granted habeas relief to a
2 paroled noncitizen detained under § 235(b) where DHS failed to establish lawful termination of
3 parole. The court rejected DHS’s reliance on generalized detention authority, declined to infer
4 parole termination from agency silence, and held that DHS bears the burden of demonstrating
5 compliance with § 212.5(e) before invoking § 235(b) custody. Where DHS did not identify any
6 lawful termination of parole, continued detention could not be justified.

7 Similarly, in *Gonzalez-Salazar v. Garland*, No. 25-cv-2784 (S.D. Cal. 2025), the court
8 granted habeas relief to a noncitizen paroled into the United States who was later detained by
9 DHS at the Imperial Regional Detention Facility and classified as subject to detention under INA
10 § 235(b). The court held that DHS could not rely on § 235(b) to justify detention where the
11 petitioner had been granted parole and DHS failed to establish that parole was lawfully
12 terminated pursuant to 8 C.F.R. § 212.5(e). Treating lawful termination of parole as a threshold
13 requirement to detention, the court concluded that DHS’s failure to identify any individualized
14 parole-termination decision or notice was dispositive and ordered the petitioner’s release.

15 In *Navarro Sanchez v. Garland*, No. 25-cv-2396 (S.D. Cal. 2025), the court likewise
16 recognized that humanitarian parole confers a protected liberty interest and that DHS may not
17 revoke or disregard parole—and detain the parolee—without individualized justification and
18 compliance with governing procedures. The court declined to accept conclusory assertions as a
19 substitute for lawful action and granted habeas relief where DHS failed to demonstrate adherence
20 to the parole-termination framework.

21 Here, as in those cases, Respondents do not contend that Petitioner’s parole was
22 terminated pursuant to 8 C.F.R. § 212.5(e), nor do they identify any individualized termination
23 decision or notice. Consistent with recent decisions in this District, Respondents’ failure to
24 establish lawful termination of parole forecloses reliance on INA § 235(b) and requires habeas
25 relief.

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1 **VI. BECAUSE RESPONDENTS FAILED TO JUSTIFY CUSTODY.**

2 **THE WRIT MUST ISSUE**

3 In a habeas proceeding challenging immigration detention, the government bears the
4 burden of demonstrating lawful authority for continued custody. Where Respondents fail to
5 establish such authority, the Court must order relief. Here, Respondents were ordered to show
6 cause why Petitioner’s detention is lawful and failed to do so. Their Return does not address
7 whether Petitioner’s parole was lawfully terminated pursuant to 8 C.F.R. § 212.5(e), a
8 prerequisite to detention under INA § 235(b) in this context.

9 Because Respondents have not identified any lawful termination of parole or articulated a
10 valid statutory basis for Petitioner’s continued detention, the record establishes that custody is
11 unauthorized as a matter of law. Continued detention under these circumstances is unlawful.

12 Accordingly, because Respondents have failed to justify Petitioner’s custody, the Court
13 should grant the Petition and order issuance of the writ.

14 **VII. CONCLUSION**

15 For the reasons set forth above, the Return does not address whether Petitioner’s
16 humanitarian parole was lawfully terminated pursuant to 8 C.F.R. § 212.5(e), nor does it
17 establish any valid basis for detention under INA § 235(b) in the absence of such termination.
18 Accordingly, Respondents have not satisfied the Order to Show Cause.

19 Because Petitioner’s detention is unlawful, the Court should grant the Petition and order
20 issuance of the writ of habeas corpus, directing Respondents to release Petitioner from custody
21 without further delay.

22 Respectfully submitted,

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