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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DANILO GUERRA PUPO

Petitioner,

v.

CHRISTOPHER LAROSE, et al.,

Respondents.

Case No.: 25-cv-03448-JO-VET

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents fail to engage Petitioner's argument that his parole was unlawfully revoked. Respondents assert that this Court lacks jurisdiction because of the jurisdiction-stripping provisions of 8 U.S.C. §1252; that Petitioner's issues have not been administratively exhausted; and that Petitioner's detention is lawful because it is mandatory under 8 U.S.C. §1225(b)(2).

Petitioner demonstrates below that (1) this Court has jurisdiction because his petition raises core habeas issues that are collateral to the issues covered by section 1252; (2) any prudential exhaustion requirement should be waived for futility because Petitioner is bound to be denied bond by an immigration judge given recent binding BIA precedent; (3) his detention is discretionary under section 1226(a) because he was not "seeking admission" at the time of his arrest, and the arrest warrant indicates it was issued under section 1226; and (4) the revocation of his parole and subsequent detention were unlawful because he was deprived of his liberty interest without requisite notice, evidentiary findings, or an opportunity to be heard.

ARGUMENT

1. 8 U.S.C. §1252 does not strip this court of jurisdiction.

Respondents argue that the Court lacks jurisdiction to hear this Petition under 8 U.S.C. § 1252(g). Return at 8–9. But the jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this Court's review of the legality and constitutionality of Petitioner's detention. The bar against judicial review of the Attorney General's decision to

"commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen]" has been narrowly interpreted by the Supreme Court to apply "only to [those] three discrete actions that the Attorney General may take." 8 U.S.C § 1252(g); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025). Nor does it bar due process claims. *Walters v. Reno*, 145 F.3d 1032, 1052–53 (9th Cir. 1998) (finding that the petitioners' objective was not to review the merits of their proceeding, but rather "to enforce their constitutional rights to due process in the context of those proceedings").

Petitioner does not challenge any decision to *commence* proceedings, *adjudicate* his case, or *execute* a removal order. Rather, he challenges his re-detention without a pre-deprivation notice and hearing and showing of materially changed circumstances in violation of due process and his constitutionally protected liberty interest. Petition at 10–14. Petitioner is enforcing his "constitutional rights to due process in the context of the removal proceedings—*not* the legitimacy of the removal proceedings or any removal order." *Garcia v. Noem*, No. 25-CV-2180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Sanchez v. Larose*, No. 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose*, No. 25-cv-1824 GPC (MSB), 2025 WL 2800149, at *7–8 (S.D. Cal. Oct. 1, 2025)

(same); *Rodriguez v. Kaiser*, No. 25-cv-1111-KES-SAB (HC), 2025 WL 2855193, at *4 (E.D. Cal. Oct. 8, 2025) (same).

Respondents also argue that Petitioner's claims are barred because they "necessarily arise" from the Attorney General's decision to commence removal proceedings against him. Return at 8–9. But this is imprecise because Petitioner's claims are merely collateral to, and do not arise from, the decision to commence and adjudicate proceedings. Respondents' interpretation of 8 U.S.C. § 1252(g) would "eliminate judicial review of immigration [detainees'] claims of unlawful detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial review of the detention of noncitizens under 28 U.S.C. § 2241." *Sanchez*, 2025 WL 2770629, at *2 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)); *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022)). Other courts in this District have found this interpretation unavailing. *See Sanchez*, 2025 WL 2770629, at *2; *Rokhfirooz v. LaRose*, No. 25-cv-2053-RSH-VET, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025) (finding the petition challenging the legality of his detention and seeking release from custody is not barred by § 1252(g)); *Garcia*, 2025 WL 2549431, *4 (finding the petition seeking a bond hearing did not contest charges brought against petitioners or the initiation of removal proceedings); *Nguyen v. Fasano*, 84 F. Supp. 2d 1099, 1104 (S.D. Cal. 2000) ("Petitioners' challenge to their indefinite detention is [ ] distinct from a petition that seeks review of the bond determination itself."); *Alikhani v. Fasano*, 70 F. Supp. 2d 1124, 1126 (S.D. Cal. 1999) ("[A] challenge to

the constitutionality of confinement pending deportation does not address any discretionary action by the Attorney General, and "does not implicate the three categories of unreviewable decisions specified in § 1252(g)."); *Diaz-Zaldierna v. Fasano*, 43 F. Supp. 2d 1114, 1117 (S.D. Cal. 1999) ("The propriety of holding petitioner without any possibility of release on bail is distinct from a 'decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.'"); *see also Bello-Reyes v. Gaynor*, 985 F.3d 696, 700 n.4 (9th Cir. 2021) (finding § 1252(g) did not bar the court's review of the petition that challenged the petitioner's re-arrest and detention as unconstitutional because it did not challenge the commencement or adjudication of removal proceedings or execution of removal orders). Accordingly, § 1252(g) does not deprive this Court of jurisdiction to hear Petitioner's claims.

Respondents next argue that 8 U.S.C. § 1252(b)(9) and (a)(5) bar judicial review of Petitioner's claims because Petitioner is challenging the basis upon which he is detained, and the exclusive means of judicial review of such claims is a petition for review to a court of appeals. Return at 9–11.

Section 1252(b)(9) provides that judicial review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." Section 1252(a)(5) reserves "judicial review of an order of removal" for the courts of appeals.

Section 1252(b)(9) "has built-in limits, specifically, claims that are independent of or collateral to the removal process do not fall within the scope" of § 1252(b)(9). *Gonzalez v. United States Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016) (internal quotation marks omitted)). "[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process." *Id.* Section 1252(b)(9) was "intended to 'channel judicial review over final orders of removal to the courts of appeals,' not 'foreclose *all* judicial review of agency actions' touching on deportation proceedings writ large." *Salvador v. Bondi*, Case No. 2:25-cv-07946-MRA-MAA, 2025 WL 2995055, at *4 (C.D. Cal. Sept. 2, 2025) (quoting *J.E.F.M.*, 837 F.3d at 1031). The Supreme Court has explained that "§ 1252(b)(9) 'does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision . . . to seek removal,' or 'the process by which . . . removability will be determined.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020) (quoting *Jennings*, 583 U.S. at 294–95).

Here, Petitioner is not seeking review of an order of removal or challenging the government's decision to commence removal proceedings or to adjudicate removability. Rather, Petitioner is challenging his re-detention without notice or an opportunity to be heard, which is collateral to the removal process, and the lawfulness of his parole termination that forms Respondents' basis for his detention. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)."

J.E.F.M., 837 F.3d at 1032; *see Rodriguez*, 2025 WL 2855193, at *4 (finding jurisdiction under similar facts). Therefore, sections 1252(b)(9) and (a)(5) also do not strip this Court of jurisdiction.

2. Prudential exhaustion should be waived for futility.

Respondents ask the Court to "ensure Petitioner properly exhausts administrative remedies." Return at 11 n.2.

The exhaustion requirement for habeas claims under 8 U.S.C. § 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011) (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003)). A prudential exhaustion requirement may be waived if any of the *Laing* factors apply: "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." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). "The party moving the court to waive prudential exhaustion requirements bears the burden of demonstrating that at least one of these *Laing* factors applies." *Aden v. Nielsen*, No. C18-1441RSL, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019).

This Court should find that Respondents have waived the issue of exhaustion by failing to identify how Petitioner could further exhaust administrative remedies, and for raising exhaustion in a footnote. Return at 11; *United States v. Rodriguez*, 971 F.3d 1005, 1015 n.8 (9th Cir. 2020) (finding an issue in a footnote insufficiently raised).

To the extent the Court would require Petitioner to seek a bond hearing before an immigration judge to exhaust his administrative remedies, the Court should find that exhaustion would be a futile gesture because immigration judges have consistently ruled that they lack jurisdiction to redetermine the custody of arriving aliens. *See* ECF No. 6-1 at 2 (Notice to Appear designating Petitioner an "arriving alien."). Immigration judges are bound by recent BIA precedent to deny bond to arriving aliens. 8 C.F.R. §§ 1003.1(g)(1), (d)(i); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). For this very reason, other courts in this District have excused exhaustion for futility. *Esquivel-Ipina v. LaRose*, Case No.: 25-CV-2672 JLS (BLM), 2025 WL 2998361, at *3–4 (S.D. Cal. Oct. 24, 2025); *see also Garcia*, 2025 WL 2549431, at *4–5 (same); *Chavez*, 2025 WL 2730228, at *3–4 (same). Given the certainty, and thus futility, of seeking bond before an immigration judge, this Court should do the same.

3. Petitioner's detention is discretionary under 28 U.S.C. §1226(a), not mandatory under §1225(b)(2).

Noncitizens are detained during removal proceedings under two statutes: 8 U.S.C. §§ 1225 and 1226. Whereas section 1225(b) "authorizes the Government to detain certain [noncitizens] *seeking admission into the country*," section 1226(a) authorizes the detention of certain noncitizens "*already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphasis added).

Section 1226(a) governs the detention of noncitizens "inside the United States" and "present in the country." *Id.* at 288–89. By contrast, section 1225(b)(2) authorizes the detention of applicants for

admission who are "seeking admission" but "not clearly and beyond a doubt entitled to be admitted." Unlike section 1226(a), section 1225(b)(2) provides that individuals who fall under its authority "shall be detained" during the pendency of proceedings. *Id.* at 300. The Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Id.* at 287.

Respondents concede that Petitioner has been present in the United States but assert that his claims must "fail because [he] is subject to mandatory detention under 8 U.S.C. § 1225." Return at 11–12. To support their reading, they advance arguments that discourage interpreting the relevant legislation in a way that would provide advantage to those who entered unlawfully. *See id.* at 12–13. They also argue (1) that their reading of the statutes does not render the Laken Riley Act, which added a subsection to §1226(c)(1), superfluous, and (2) that the phrase "seeking admission" does not limit the scope of §1225(b)(2)(A). Return at 14–15; Laken Riley Act, Pub. L. No. 119-1, 139 Stat 3 (2025); §1226(c)(1)(E). However, Respondents "acknowledge . . . courts in this district have recently rejected similar arguments in other similar habeas matters." *Id.* at 15.

First, Petitioner did not enter the United States unlawfully, but presented at a port of entry with a CBP One appointment and was inspected by immigration authorities. He was then issued a Notice to Appear for immigration proceedings and paroled from custody. It therefore cannot be said that he sought any advantage; he was playing by the rules and in fact seeks to not be *disadvantaged* for doing so.

Next, as Respondents admit, Petitioner was present in the United States and detained in the interior of the country outside an immigration courtroom in downtown San Diego. He was attending his scheduled court hearing to seek asylum in the United States. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013). Because Petitioner was not "seeking admission" at the time of his detention, his detention is governed by section 1226(a). *See, e.g., Esquivel-Ipina*, 2025 WL 2998361, at *5; *Garcia*, 2025 WL 2549431, at *6; *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025).

Another reason that his detention is governed by section 1226(a) is that Petitioner was arrested on a warrant that states that it was issued under 8 U.S.C. §§ 1226 and 1357. ECF No. 1-2, Exh. D at 10. ICE officers arrested Petitioner pursuant to that warrant as soon as he exited the San Diego Immigration Court. *Id.*, Exh. A at ¶10. His arrest on a warrant issued under section 1226(a) further undermines the government's argument that he is subject to mandatory detention under section 1225(b)(2)(A), which does not require a warrant for arrest. *Compare* 8 U.S.C. § 1225(b)(2)(A) (mandating that "[any noncitizen subject to this section] shall be detained") *with* § 1226(a) (permitting a noncitizen's arrest pending a decision on removal "[o]n a warrant issued by the Attorney General").

While Respondents deny that Petitioner is detained under section 1226(a), that is the only provision that could have applied under the plain terms of the statute. *See Jennings*, 583 U.S. at 281

(explaining that section 1226(a) applies to those "already in the country"); *Gomes v. Hyde*, --- F. Supp. 3d ---, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (reaching the same conclusion). As Respondents acknowledge, other courts in this district have determined that this is the case. Return at 15; *see Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844, at *5 (S.D. Cal. Nov. 17, 2025); *Noori*, 2025 WL 2800149, at *14; *Garcia*, 2025 WL 2549431, at *6; *see also Beltran v. Noem*, 25-cv-02650-LL-DEB, 2025 WL 3078837, at *6 (S.D. Cal. Nov. 4, 2025) (finding that "seeking admission" *does* indeed limit the scope of §1225(b)(2) and that the Laken Riley Act amendments *would* be superfluous under the government's reading). For these same reasons, this Court should reject the Respondents' arguments and find that Petitioner is detained under section 1226(a).

4. The revocation of Petitioner's parole and his subsequent detention were unlawful.

Petitioner is not lawfully detained because the termination of his parole without notice and a pre-deprivation hearing violates due process, the APA, and the agency's own regulations. Petition at 10–14. Respondents do not address this argument or offer any evidence that notice or a pre-deprivation hearing was provided prior to the termination of Petitioner's parole. *See generally* Return.

Petitioner was granted parole for one year upon entry but that parole was revoked before its expiration date without explanation or consideration of his individualized circumstances. ECF No. 1-2, Exh. A at ¶¶3, 6; *see also id.*, Exh. B at 8; *id.*, Exh. C at 9. As such, the

termination of his parole was unlawful, arbitrary and capricious, and Petitioner is now unlawfully detained.

A. Respondents' actions violated Petitioner's due process right to be free from physical restraint.

Petitioner's liberty from immigration custody is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690. Following his parole into the United States, Petitioner retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in not being incarcerated. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). In *Morrissey*, the Supreme Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.*

At stake for Petitioner is a profound individual interest: whether ICE may unilaterally nullify a prior parole decision with no consideration of his individualized circumstances and subsequently take away his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). "[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is

released from custody she has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

Courts in this district have joined a growing chorus of district courts that have recognized that noncitizens have a significant liberty interest in both "continued freedom after *release on own recognizance*," *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in "freedom from imprisonment" after "the government grants a [noncitizen] *parole* into the country," *Sanchez*, 2025 WL 2770629, at *3 (emphasis added). *See also Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan*, 2025 WL 3208844; *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC), 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

Because due process constrains the detention of individuals who were previously released, to determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, the Court applies the three-part test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court must consider: (1) "the private interest that will be affected by the official action;" (2) the "risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

All three factors support a finding that Respondents' revocation of Petitioner's parole without an opportunity to be heard deprived Petitioner of his due process rights. First, as discussed above and in the petition, Petitioner has a significant liberty interest in remaining out of custody pursuant to his parole. "Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Pinchi*, 792 F. Supp. 3d at 1032.

"Second, the risk of an erroneous deprivation of such interest is high as Petitioner's parole was revoked without . . . giving [him] an opportunity to be heard." *Salazar* v. Casey, No. 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where, as here, Petitioner "has not received any bond or custody redetermination hearing," the "risk of an erroneous deprivation of liberty is high").

"Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690).

Here, there is *no* evidence that Petitioner's detention would serve either purpose. "Since DHS's initial determination that Petitioner should be paroled because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Salazar*, 2025 WL 3063629 at *3 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176) (N.D. Cal. 2017) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). To the contrary, Petitioner has "no criminal record" and is not a flight risk, as he was arrested outside the courtroom after he attended his immigration court hearing. ECF No. 1-2, Exh. A at ¶¶7, 10.

Third, Respondents' interest in detaining Petitioner without a hearing is low. *See Ortega*, 415 F. Supp. 3d at 970 ("If the government wishes to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."); *Pinchi*, 792 F. Supp. 3d at 1036 ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest."). "Therefore, because Respondents detained Petitioner by revoking [his] parole in violation of the Due Process Clause, [his] detention is unlawful." *Salazar*, 2025 WL 3063629, at *5.

Respondents fail to point to any burdens on the government if it were to have provided proper notice, reasoning, and a pre-deprivation

hearing. *See generally* Return. Because the *Mathews* factors tip in Petitioner's favor, the Court should conclude that due process requires Petitioner to be released from custody and receive a bond hearing before an immigration judge before he can be re-detained. *See Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

B. Respondent's actions violated Petitioner's right to notice, evidentiary findings, and an opportunity to be heard.

"The essence of due process is the requirement that 'a person in jeopardy of a serious loss [be given] notice of the case against him and the opportunity to meet it.'" *Mathews*, 424 U.S. at 348 (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72 (Frankfurter, J., concurring)). In the immigration context, the Constitution requires the government provide notice and a meaningful opportunity to be heard "at a meaningful time and in a meaningful manner." *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004).

A noncitizen's opportunity to be heard regarding the revocation of his parole is only meaningful if the government comports with its own internal standards regarding parole revocation. As relevant here, the regulation provides that DHS may terminate a noncitizen's parole either "automatically" or "[o]n notice." 8 C.F.R. §212.5(a), (e)(1)–(2). A grant of parole terminates automatically, without written notice, if

the noncitizen departs the country or "at the expiration of the time for which parole was authorized." 8 C.F.R. §212.5(e)(1). In all other cases, parole "shall be terminated upon written notice to the [noncitizen]." 8 C.F.R. §212.5(e)(2).

Not only was Petitioner not found to be a danger or flight risk, but he did not receive notice in advance of the revocation of his parole. *See* 8 C.F.R. §212.5(b) (requiring a finding that a noncitizen is neither a danger nor flight risk prior to release on parole). He learned that his parole had been revoked when his work authorization application under the parolee category was denied. ECF No. 1-2, Exh. A at ¶6. Because Respondents have made no showing that notice was provided, this Court should grant the petition. *Mendez Los Santos v. Larose*, No. 25-cv-02216 at ECF No. 14 (granting petition in minute order where the record established that "Petitioner was not provided with written notice that her parole had been terminated, as required by 8 C.F.R. §212.5(e)(2)(i)").

Further, Petitioner was deprived of a case-by-case determination citing changed circumstances to justify revocation of his parole, as required by due process. *Noori*, 2025 WL 2800149 at *13 (S.D. Cal. Oct. 1, 2025) (finding that the revocation of parole "requires an individualized determination"); *see also Ortega*, 415 F. Supp. 3d at 968 ("DHS re-arrests individuals only after a 'material' change in circumstances") (citing *Saravia*, 280 F. Supp. 3d at 1197); *Matter of Sugay*, 171 I&N Dec. 637, 640 (B.I.A. 1981) ("[W]here a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance."); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1158-59 (granting

petition on due process grounds due to a lack of individualized legal justification for changing the petitioner's status). These same shortcomings also violate the APA. *See United States ex rel. Accardi v. Shaughnessy*, 347 US. 260, 268 (1954) (government agencies are required to follow their own regulations); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003). Courts have determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered. *See, e.g., Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *25-26 (D. Md. Aug. 25, 2025); *M.S.L. v. Bostock*, No. 6:25-cv-1204-AA, 2025 WL 2430267, at *10 (D. Or. Aug. 21, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017).

CONCLUSION

Respondents arguments have all been repeatedly rejected by courts in this district, circuit, and beyond. They should be rejected once more. Critically, Respondents do not assert or show that Petitioner was given notice, that there was a material change in circumstances, or that Petitioner was given an opportunity to be heard, all of which were required before the revocation of his parole and re-detention.

For these reasons, the Court should grant the petition and order Petitioner's immediate release. Should the Court find release to be an improper remedy, it should order a constitutionally adequate bond hearing in which DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the immigration judge takes into consideration alternatives to detention

and Petitioner's ability to pay a bond, and order that bond cannot be denied on the basis that 8 U.S.C. §1225(b)(2) requires mandatory detention.

Dated: December 11, 2025

Respectfully submitted,

By: /s/ Zohaile Kakavand
Zohaile Kakavand
Casa Cornelia Law Center
Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2025, I electronically filed the foregoing and all attachments with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record at the following email addresses:

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