

IN THE UNITED STATES DISTRICT COURT  
FOR THE FEDERAL DISTRICT OF NEW MEXICO

Nazir Borisov

Petitioner,

vs.

DORA CASTRO, Warden, Otero Processing  
Center;

MARY DE ANDA-YBARRA, Field Office  
Director, El Paso Field Office, United States  
Immigration and Customs Enforcement;

TODD M. LYONS, Acting Director, United  
States Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of Homeland  
Security;

PAMEA JO BONDI, Attorney General of the  
United States, in their official capacities,

Respondents

Case No.: 2:25-cv-1315-jb-gjf

**PETITIONER'S RESPONSE TO  
RESPONDENTS' MOTION TO DISMISS**

Petitioner Nazir Borisov provides this response to Respondents' Motion to Dismiss to his  
Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order.

Mr. Borisov is currently detained in violation of his inherent liberty interest and his due  
process rights. Every additional day that he is detained in violation of these fundamental rights, he  
is experiencing immediate irreparable harm. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.  
2017).

Respondents wholly ignore Mr. Borisov's straightforward constitutional and due process  
claims. Respondents' egregious constitutional violations against Mr. Borisov began on December 4,  
2025. Those violations are substantial. Respondents further violated parole regulations by arbitrarily  
revoking Mr. Borisov's parole without a rational or lawful explanation. They also violated

1 governing regulations concerning the determination of whether Mr. Borisov is subject to mandatory  
2 detention.

3 Accordingly, Mr. Borisov reasserts his request that the Court act as soon as possible to  
4 ameliorate the Respondents extensive and harmful violations. Mr. Borisov requests that the Court  
5 order his immediate release from detention on conditions pending resolution, as is the only remedy  
6 available in a habeas petition.

7 In the alternative, order a prompt, constitutionally adequate custody redetermination hearing,  
8 to take place not more than 7 days from the time of the Court's order, with evidence-based findings  
9 and consideration of alternatives to detention.

10  
11 **A. Misstatements in Respondents' Motion to Dismiss**

12 As an initial matter, Respondents incorrectly allege that Mr. Borisov entered the United  
13 States at a time and place other than as designated by the Secretary of Homeland Security. (Doc. 11,  
14 page 2). This is incorrect because Mr. Borisov entered the United States at a port of entry and this  
15 manner of entry is a critical point in these proceedings.

16 The Notice to Appear issued but the Department of Homeland Security to Mr. Borisov  
17 alleges that he applied for admission at the San Ysidro California port of entry on February 26,  
18 2023. (Doc. 11, Exhibit 3). The fact that Mr. Borisov was issued a form I-94 document is further  
19 evidence of an entry after inspection at a port of entry. (Doc. 11, Exhibit 2). Respondents Exhibit  
20 Form I-213, which Respondents claim demonstrates that Mr. Borisov entered without inspection, is  
21 incomplete because it is missing pages 2 and 4. (Doc. 11, Exhibit 1). Nevertheless, the first page of  
22 Mr. Borisov's form I-213 states that he entered at SYS, which stands for the San Ysidro port of  
23 entry. *9 Fam 102.5-3 Port-Of-Entry Codes Used By The Department Of Homeland Security, United*  
24 *States Customs And Border Protection*. Page two of Form I-213, which most likely includes details  
25 regarding exactly how Mr. Borisov came to the port of entry or exactly how immigration officers  
26 encountered Mr. Borisov, is again missing and so we are not afforded that information.

26 //

27 //

**B. This Court has Jurisdiction to review the constitutionality and legality of Respondents' decision to re-detain Mr. Borisov**

The Government argue that this Court lacks jurisdiction to consider Mr. Borisov's petition pursuant to 8 USC §§1252(e)(3), 1252(g), and 1252(b)(9). These jurisdictional questions have already been considered by District Courts in this Circuit and other District Courts all over the United States, and have been rejected as baseless.

*1. Section 1252(e)(3) does not bar the Court from reviewing Mr. Borisov's claims and from ordering Mr. Borisov's release*

Mr. Borisov brings an individual as-applied challenge to his misclassification as being subject to mandatory detention under §1225(b), arguing that §1226 applies to him instead. Section 1252(e)(3) of title 8 of the United States Code limits jurisdiction to challenges to the statute and implementing regulations itself. But that is not what Mr. Borisov is challenging. Mr. Borisov is not "challenge the legality or constitutionality of any regulation implementing removal procedures." *Celio Romario Guncay Castro, Petitioner, v. Kristi Noem, et. al.*, No. 1:25-CV-01129-KWR-LF, 2026 WL 280470, at \*2 (D.N.M. Feb. 3, 2026). He is challenging that these sections are being incorrectly applied to him and in their application, are egregiously depriving him of his constitutional rights. "The plain language of § 1252(e)(3) makes clear that it governs jurisdiction over systemic challenges to § 1225." See 8 U.S.C. 1252(e)(3)(A) *Danny Briceno Solano, Petitioner, v. Christopher Mason, et al., Respondents.*, No. 2:26-CV-00045, 2026 WL 311625, at \*5 (S.D.W. Va. Feb. 4, 2026).

Therefore Respondents' jurisdictional argument under §1252(e)(3) is without any merit.

*2. Section 1252(g) does not bar the Court from reviewing Mr. Borisov's claims and from ordering Mr. Borisov's release*

Mr. Borisov has not been ordered removed by any administrative body - he does not have an expedited removal order, nor does he have a removal order issued by an Immigration Court. Mr. Borisov is not challenging any removal order; he is asking the Court to affirm the illegality and unconstitutionality of his detention. Therefore, 8 USC §1252(g) does not bar Mr. Borisov's habeas petition. This Federal District Court has already found "that § 1252(g) does not bar this action. The Supreme Court requires § 1252(g) be read narrowly and applied to just 'the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.' Petitioner . . . does not ask the Court to second-guess Respondents' discretionary decision to

1 commence removal proceedings against him. Section 1252(g) does not bar this action.” *Aguilar v.*  
 2 *Bondi*, No. 1:25-CV-00996-KWR-KK, 2026 WL 84520, at \*3 footnote 2 (D.N.M. Jan. 12, 2026),  
 3 quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) and citing *Reno v. American-Arab Anti-*  
 4 *Discrimination Comm.*, 525 U.S. 471, 482–83 (1999).

5 “The government’s detention of Petitioner lacks the direct link to his removal proceedings or  
 6 to the execution of his removal order to fall under the ambit of § 1252(g) . . . Therefore, these  
 7 provisions do not defeat the Court’s exercise of jurisdiction in this matter.” *Jimenez Chacon v.*  
 8 *Lyons*, No. 2:25-CV-977-DHU-KBM, 2025 WL 3496702, at \*6 (D.N.M. Dec. 4, 2025).

9 The Court has habeas jurisdiction to consider Mr. Borisov’s claims and is not barred by  
 10 1252(g).

11 *3. Section 1252(b)(9) does not bar the Court from reviewing Mr. Borisov’s claims and*  
*from ordering Mr. Borisov’s release*

12 While the government has tried to argue that §1252(b)(9) prohibits the Court from  
 13 exercising jurisdiction in this matter, other Courts have similarly rejected this argument. Mr.  
 14 Borisov is not challenging Respondents’ decision to initiate removal proceedings against him and  
 15 there is no final order of removal in his proceedings. Section 1252(b)(9) does not bar this Court  
 16 from reviewing Mr. Borisov’s challenge to Respondents allegations that he is subject to mandatory  
 17 detention. “The Tenth Circuit has previously determined a habeas corpus proceeding was the  
 18 appropriate avenue for a petitioner a challenge to mandatory detention under § 1226(c). The  
 19 petitioner was not precluded by §1252(b)(9) because a challenge to mandatory detention was  
 20 distinct from an order of removal. . . . Accordingly, the Court finds that § 1252(b)(9) does not strip  
 21 the Court of jurisdiction to consider” Mr. Borisov’s challenge to Respondent’s determination re-  
 22 detain him in these circumstances. *Aguilar v. Bondi*, No. 1:25-CV-00996-KWR-KK, 2026 WL  
 23 84520, at \*3 (D.N.M. Jan. 12, 2026), citing *Ochieng v. Mukasey*, 520 F.3d 1110, 1115 (10th Circuit.  
 2008).

24 Respondents’ attempt to bar this Court from reviewing Mr. Borisov’s petition expands  
 25 §1252(b)(9) beyond. The interpretation given to it by the United States Supreme Court. “The  
 26 Supreme Court has rejected a broad interpretation of § 1252(b)(9) that would expand the phrase  
 27 ‘arising from any action taken’ to preclude habeas review of detention of noncitizens during  
 28 removal proceedings. . . . Accordingly, the Court finds that §1252(b)(9) does not strip the Court of

jurisdiction to consider the narrow detention issues in the Petition.” *Celio Romario Guncay Castro, Petitioner, v. Kristi Noem, et. al.*, No. 1:25-CV-01129-KWR-LF, 2026 WL 280470, at \*2 (D.N.M. Feb. 3, 2026), citing *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018).

**C. Respondents Motion to Dismiss ignores Mr. Borisov’s valid argument that his re-detention Violates Due Process and Statutory Requirements**

In 24 pages of argument, Respondents do not make any reference or credibly challenge Mr. Borisov straightforward argument that Respondents are every-day violating Mr. Borisov’s fundamental, constitutional private liberty interest by re-detaining him.

At this point in time, several cases have been issued by the Federal District Court of New Mexico, joining hundreds of Federal District Courts throughout the United States, ordering Petitioners similarly situated to Mr. Borisov to be immediately released based on conclusions that Respondents violated Fifth Amendment liberty interests. *Noe Patino-Arroyo, Petitioner, v. Kristi Noem, et al., Respondents*, No. 1:26-CV-00091-KG-DLM, 2026 WL 323630, at \*2 (D.N.M. Feb. 6, 2026); *Daliuvis Delfino Gainza, Petitioner, v. Kristi Noem, et al., Respondents.*, No. 2:26-CV-00028-KG-SCY, 2026 WL 280568, at \*2 (D.N.M. Feb. 3, 2026); *Requejo Roman v. Castro*, No. 2:25-CV-01076-DHU-JHR, 2026 WL 125681, at \*9 (D.N.M. Jan. 12, 2026); *Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at \*8 (D.N.M. Sept. 17, 2025); *Francisco v. Dedos*, No. 1:25-CV-1229 MIS-GJF, 2026 WL 145456, at \*9 (D.N.M. Jan. 20, 2026) *Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005, at \*20 (D.N.M. Jan. 20, 2026).

Respondents granted Mr. Borisov parole and allowed him to enter the United States and live here at liberty for over thirty-three (33) months. Respondents, thereby, granted Mr. Borisov a constitutionally protected liberty interest when they paroled him into the United States pursuant to INA §1182(d)(5). “That petitioner’s parole may have expired when its term ended on [February 2, 2024], is irrelevant because ‘petitioner’s liberty interest did not expire along with his parole.’” *Mody v. Warden*, No. ED CV 25-3400 FMO (RAO), 2026 WL 51976, at \*6 (C.D. Cal. Jan. 5, 2026) quoting *Omer G.G. v. Kaiser, et al.*, 2025 WL 3254999, \*5 (E.D. Cal. 2025).

Mr. Borisov was able to obtain work authorization and engage in legal and gainful employment, participate in a marriage ceremony to civilly marry his religious wife, and have a United States citizen son. He participated in the community of the United States without posing a

1 threat, without evading his responsibilities under the Immigration and Nationality Act, and without  
 2 engaging in any derogatory conduct. These are all markers of his inherent liberty interest which -  
 3 again - Respondents granted to Mr. Borisov. “Petitioner’s detention without due process has  
 4 separated him from his family, including a young nephew for whom Petitioner is the sole provider. .  
 5 . . Petitioner’s private interest in being free from detention—and unlawful detention at that—is at  
 6 stake now. This factor cuts in Petitioner’s favor.” *Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-  
 DHU-JMR, 2025 WL 2676729, at \*7 (D.N.M. Sept. 17, 2025).

7 Respondents violated Mr. Borisov’s fundamental right when they re-detained him without  
 8 any justifiable reason, without properly revoking his parole and without providing any procedure or  
 9 process for Mr. Borisov to contest the validity of his detention. “[E]ven when ICE has the initial  
 10 discretion to detain or release a noncitizen pending removal proceedings, after that individual is  
 11 released from custody she has a protected liberty interest in remaining out of custody.” *Pinchi v.*  
 12 *Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) *citing Romero v. Kaiser*, No. 22-cv-02508,  
 13 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022).

14 Accordingly, Mr. Borisov’s detention erroneously deprives him of his constitutional liberty  
 15 interest.

16 The second *Mathews* factor also favors [Petitioner], because, as above, he has  
 17 been held in mandatory detention through a misapplication of § 1225(b)(2)(A)’s  
 18 mandatory detention provisions against him. . . . immigration officials, vested  
 19 with authority delegated by Congress to the Attorney General and DHS, granted  
 20 [Petitioner] humanitarian parole lawful entry into the United States after  
 21 inspection. . . . But the government may not retroactively choose to revoke the  
 22 lawfulness of his entry in September 2023 and withdraw the discretionary bond  
 procedures provided under 1226(a) to people who have been granted lawful  
 entry. . . . To do so at this stage, without conducting a hearing or providing  
 [Petitioner] other explanation as to his newly applied mandatory detention, places  
 great risk on the erroneous deprivation of Millan’s liberty interest.

23 *Alexander Barros Millan, Petitioner v. Warden Ed Voorhies, et al., Respondents*, No. 4:25-  
 24 CV-02779, 2026 WL 248376, at \*14 (N.D. Ohio Jan. 30, 2026)

25 “[T]he risk of erroneously depriving him of his freedom is high if no IJ has assessed his risk  
 26 of flight or dangerousness.” *Requejo Roman v. Castro*, No. 2:25-CV-01076-DHU-JHR, 2026 WL  
 27 125681, at \*9 (D.N.M. Jan. 12, 2026).

1 Thirdly, Respondents have not alleged any valid Government interest in detaining Mr.  
 2 Borisov in violation of his fundamental due process rights and in violation of the parole that they  
 3 granted to him. *Alexander Barros Millan, Petitioner v. Warden Ed Voorhies, et al., Respondents*, No.  
 4 4:25-CV-02779, 2026 WL 248376, at \*15 (N.D. Ohio Jan. 30, 2026). “[T]he Court finds the  
 5 Government has no interest in detaining Petitioner absent a showing by them that the circumstances  
 6 have changed such that Petitioner's continued detention is justified on flight risk and/or  
 7 dangerousness grounds.” *Requejo Roman v. Castro*, No. 2:25-CV-01076-DHU-JHR, 2026 WL  
 8 125681, at \*9 (D.N.M. Jan. 12, 2026).

9 **D. Respondents’ termination of Mr. Borisov’s parole violated due process and the**  
 10 **Administrative Procedure Act**

11 Mr. Borisov is not subject to mandatory detention because he is not subject to any of the  
 12 mandatory detention provisions in 8 USC §1225 because he remains paroled into the United States.

13 *1. This Court has Jurisdiction to consider Mr. Borisov’s claim under the APA*

14 Respondents incorrectly argue that this Court lacks jurisdiction to consider Mr. Borisov’s  
 15 claim pursuant to the Administrative Procedure Act. Mr. Borisov is not challenging Respondents’  
 16 *discretionary* decision to revoke his parole. Mr. Borisov challenge is Respondents did not make any  
 17 discretionary decisions: they ignored the law and the relevant regulations. They simply unilaterally  
 18 decided that they would detain him at his December 4, 2025, check-in with Immigration and  
 19 Customs Enforcement without any individualized determination, which the statute and regulations  
 20 require.

21 “[O]nly upon a showing of clear and convincing evidence of a contrary legislative intent  
 22 should the courts restrict access to judicial review. Further, the Supreme Court has read the  
 23 committed to agency discretion exception quite narrowly, restricting it to those rare circumstances  
 24 where the relevant statute is drawn so that a court would have no meaningful standard against which  
 25 to judge the agency's exercise of discretion.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1137 (D.  
 26 Or. 2025), *quoting Abbott Lab'ys v. Gardner*, 387 U.S. 136, 141, 87 S.Ct. 1507, 18 L.Ed.2d 681  
 27 (1967) and *Dep't of Com. v. New York*, 588 U.S. 752, 772, 139 S.Ct. 2551, 204 L.Ed.2d 978 (2019)  
 28 [internal quotations removed for clarity].

1 This Court has jurisdiction to review Respondents' actions. "Agency action made reviewable  
2 by statute and final agency action for which there is no other adequate remedy in a court are subject  
3 to judicial review." 5 U.S.C. § 704, *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL  
4 2800149, at \*12 (S.D. Cal. Oct. 1, 2025).

5 Mr. Borisov challenges Respondents' final action against him to revoke his §1182(d)(5)  
6 parole and subject him to mandatory detention under §1225. This action denied him his rights as a  
7 consummation of the administrative process and imposes practical obligations on him and has legal  
8 consequences. *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at \*12 (S.D. Cal.  
9 Oct. 1, 2025).

10 *2. Respondents did not follow the requirements of 8 USC 1182(d)(5) and 8 CFR 212.5(e)*

11 The provisions of §1182(d)(5) "authorizes the Secretary to grant parole 'on a case-by-case  
12 basis for urgent humanitarian reasons or significant public benefit.'" *Y-Z-L-H v. Bostock*, 792 F.  
13 Supp. 3d 1123, 1144 (D. Or. 2025) *citing* 8 USC §1182(d)(5). And the Congressional historical  
14 record for the provision emphasizes that parole is meant to be an individualized process, "The text  
15 of section 212(d)(5) is clear that the parole authority was intended to be used on a case-by-case  
16 basis to meet specific needs . . ." H.R. Rep. No. 104-469, pt. 1, at 140 (1996).

17 On February 6, 2023, Respondents conducted an individualized assessment of Mr. Borisov  
18 and authorized parole pursuant to 8 USC §1182(d)(5) due to "humanitarian reasons." Although  
19 Respondents granted Mr. Borisov discretionary parole, that discretionary grant, and its subsequent  
20 termination, are not without regulatory guidelines and procedures. The applicable regulations - 8  
21 C.F.R. §212.5(e)(2) - provide that parole is authorized until the purpose of parole is accomplished or  
22 until the parole no longer serves humanitarian reasons or the public benefit.

23 Respondents argue that Mr. Borisov's parole expired. (Doc. 11, page 17). But the statute and  
24 regulatory provisions do not provide for parole to expire upon a given date. 8 USC §1182(d)(5) and  
25 8 CFR 212.5(e). The only circumstances in which parole terminates automatically is if Mr. Borisov  
26 had left the United States. 8 CFR §212.5(e)(1). Otherwise, as §212.5(e)(1)(ii) provides, "at the  
27 expiration of the time for which parole was authorized . . . the alien shall be processed in  
28 accordance with paragraph (e)(2) of this section, except that no writer notice shall be required." 8  
CFR 212.5(e)(1)(ii). Meaning, even if there is an expiration date, Respondents cannot revoke the

1 parole without demonstrating what is required in §212.5(e)(2). “Respondents also argue that  
 2 [Petitioner]’s parole ‘was terminated and, in any event, has expired.’ . . . The Respondents  
 3 misinterpret the requirements of the parole framework. . . [T]he Respondents still failed to  
 4 demonstrate that the purpose of [Petitioner]’s parole was served or that humanitarian reasons and  
 5 public benefit do not warrant parole. *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL  
 6 3295385, at \*4 (S.D. Cal. Nov. 25, 2025). “Federal regulations . . . state that the only basis for an  
 7 automatic termination of parole without written notice is based upon a departure from the United  
 8 States, where ‘the expiration of the time for which parole was authorized.’ In all other instances,  
 9 written notice is specifically required. By failing to provide written notice of revocation of parole  
 10 and a hearing to justify the basis for re-detention or explain why Petitioner is a flight risk or danger  
 11 to the community, Respondents have violated 8 C.F.R. § 212.5(e) and Petitioner’s constitutional  
 12 right to due process.” *Dadfar v. Arnott*, No. 6:25-CV-3329-MDH, 2025 WL 3452372, at \*2–3 (W.D.  
 Mo. Dec. 1, 2025)[emphasis added].

13 Although arguably Mr. Borisov was provided a new Notice to Appear in December of 2024,  
 14 “written notice is a necessary but not a sufficient condition for compliance with [8 CFR §212.  
 15 (e)]. . . . Respondents offer no evidence that any authorized official found Petitioner to be a flight  
 16 risk or a danger to the public. Nor is there evidence that such an official found that humanitarian  
 17 reasons do not warrant Petitioner’s presence in the United States. Thus, Respondents fail to show  
 18 that they complied with either clause of 8 C.F.R. § 212.5(e)(2)(i).” *Y-Z-L-H v. Bostock*, 792 F. Supp.  
 19 3d 1123, 1145-1146 (D. Or. 2025), citing 8 C.F.R. § 212.5(e)(2)(i).

20 Because an individualized assessment was made to grant Mr. Borisov parole, an equally  
 21 individualized assessment must be made to terminate that parole if the purpose of parole has not  
 22 been served. “District courts that have addressed the termination of § 1182(d)(5)(A) parole ‘have  
 23 found that just as a grant of parole requires an individualized review, revocation of parole requires a  
 24 case-by-case assessment to comply with the statute. . . .” *Quintero-Martinez v. Raycraft*, No. 1:25-  
 25 CV-1507, 2025 WL 3649515, at \*5 (W.D. Mich. Dec. 17, 2025) quoting *Mata Velasquez v.*  
*Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025).

26 There is no evidence of such an individualized determination was made when Mr. Borisov  
 27 was detained December 4, 2025. Form I-213 provides that Mr. Borisov was paroled for  
 28

humanitarian reasons. (Doc 11, Exhibit 1).<sup>1</sup> There is no evidence in the record of these proceedings, or in Mr. Borisov's removal proceedings, that there was an individualized determination that the humanitarian reasons which existed at the time of Mr. Borisov's parole were no longer served or that public benefit was no longer served by Mr. Borisov's parole.

With all due respect, Respondents allegation that the individualized determination regarding Mr. Borisov's parole eligibility consisted in a finding that "bed space is available" and that this justified revocation of his parole and his detention is laughable. How is DHS's assessment regarding its availability of bed space for Mr. Borisov the equivalent of an individualized assessment regarding whether the humanitarian reasons for Mr. Borisov's parole are no longer serve or are no longer served or that the public benefit is no longer served by Mr. Borisov's parole? It cannot. "If Respondents were not required to make such a determination to effect termination of parole, then there would be no reason for this language to have been included in the statute." *Gabriel v. Bondi*, No. 25-CV-4298 (KMM/EMB), 2025 WL 3443584, at \*7 (D. Minn. Dec. 1, 2025)

Mr. Borisov has consistently maintained that his parole was terminated in violation of the statutory and regulatory procedures that apply to Respondents and United States Citizenship and Immigration Services.

The District Court of Colorado has clearly stated "that '[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.' *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 944 (D. Colo. 2025), *quoting Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Where "there is no indication that Respondents followed the applicable statutory and regulatory requirements to revoke Petitioner's parole. . . then they did not have the authority to arrest and detain Petitioner, 'unless there [wa]s some other valid reason to arrest him.'" *Quintero-Martinez v. Raycraft*, No. 1:25-CV-1507, 2025 WL 3649515, at \*6 (W.D. Mich. Dec. 17, 2025) *quoting Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 145 (W.D.N.Y. 2025).

Respondents have provided no justification for terminating Mr. Borisov's parole and re-detaining him. They have demonstrated no meaningful, sincere individualized assessment. And they

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<sup>1</sup> Mr. Borisov points out and argues that the Governments form I-213 continues to be utterly inconsistent and confusing. Mr. Borisov received an I-94 document which states he was paroled - "DT." (Doc. 11, Exhibit 2) But the narrative on page three of Form I-231 says he was "released on his own recognizance." That is a different basis for release and does not usually result in a form I-94.

1 have provided no explanation for why such an individualized assessment did not take place. Mr.  
2 Borisov's detention is therefore, illegal, and he should be released immediately.

3 *3. Respondents' actions are reviewable and counter to the Administrative Procedure Act*

4 Respondents unjustified, unilateral termination of Mr. Borisov's parole and his subsequent  
5 detention, violated the applicable regulations and were thus "arbitrary, capricious, an abuse of  
6 discretion, [and] otherwise not in accordance with law." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,  
7 1144 (D. Or. 2025), *citing* 5 U.S.C. § 706(2). Because Respondent's failed to comply with the  
8 requirements of 8 CFR §212.5(e), their actions violated the relevant requirements of the  
9 Administrative Procedure Act. This Court should find Respondents' actions invalid and order Mr.  
10 Borisov's immediate release. *5 USC §702*.

11 **E. Respondents incorrectly argue that Mr. Borisov is lawfully detained under INA §1225**

12 It is utterly unclear from Respondents Motion to Dismiss under which subsection of 8 USC  
13 §1225 they allege Mr. Borisov is detained. Respondents Motion to Dismiss refers to §1225  
14 generally; although on page 13 they do make one cite to 8 USC §1225(b)(2)(A). (Doc. 11, page  
15 13).

16 None of the provisions of §1225 apply to Mr. Borisov, and he cannot be detained under any  
17 provisions of 8 USC §1225. He is not in expedited removal proceedings, he is not present in the  
18 United States without admission or parole, and he is not an alien *seeking* admission at a United  
19 States Port of Entry.

20 Respondents state that "at least seven district Courts" have held that Petitioners similarly  
21 situated to Mr. Borisov are properly detained under 8 USC §1225. But Respondents citations are to  
22 Federal District Courts in Texas, one in Montana and one in Ohio. The singular decision from the  
23 Federal District Court in the Southern District of Ohio is regarding a noncitizen who entered the  
24 United States without inspection. *Coronado v. Secretary of Homeland Security*, No. 1:25-  
25 cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025).

26 Respondents ignore that this Federal District Court for New Mexico has already decided  
27 this issue and has ruled that 8 USC §1225 does not apply to Petitioners like Mr. Borisov, who were  
28 paroled into the United States pursuant to 8 USC §1182(d)(5), who were not placed in expedited  
removal proceedings, and who continue to seek asylum in the United States.

1 The Federal District Court of New Mexico went to great pains to analyze in detail the  
 2 provisions of 8 USC §1225, to determine which provisions apply to Petitioners similarly situated to  
 3 Mr. Borisov. The Court ultimately concludes that none of the provisions apply to Petitioners like  
 4 Mr. Borisov:

5 §1225 is in a distinct procedural posture [in the Immigration and Nationality Act], --  
 6 [implying] often face-to-face inspection and examination at the threshold of  
 7 entry. . . . Section 1225(b)(2) “serves as a catchall provision that applies to all applicants  
 8 for admission not covered by § 1225(b)(1).” Congress entitles this provision “Inspection  
 9 of other aliens” and labels § 1225(b)(2)(A) the rule “In general.” Like § 1225(b)(1), it  
 10 applies only to applicants for admission, but it governs a broader universe of aliens.  
 11 Section 1225(b)(2) addresses the inspection of “other aliens” that § 1225(b)(1) does not  
 12 cover. Congress is mindful, however, to distinguish this group of “other aliens” in §  
 13 1225(b)(2) from the “certain other aliens” in § 1225(b)(1)(A)(iii).

14 The statute’s language reflects an inspection-centered posture. An immigration officer’s  
 15 inspection of an alien in the posture of seeking admission triggers both § 1225(b)’s  
 16 removal pathways -- expedited removal under § 1225(b)(1) and the usual removal under  
 17 § 1225(b)(2) -- and the pathways operate as alternative outcomes of the inspection  
 18 process. . . . From this statutory pairing, i.e. the relationship between § 1225(b)(1) and  
 19 § 1225(b)(2), *the Court sees Congress’ intent as tying the concept of an “applicant for*  
 20 *admission” to inspection rather than to a freestanding status untethered from the*  
 21 *inspection context . . . .*

22 Congress’ words matter. Section 1225 establishes an inspection-based regime governing  
 23 the treatment of arriving aliens and aliens present in the country. Within that framework,  
 24 § 1225(b)(2) operates as an exception to the “expedited” removal under § 1225(b)(1),  
 25 providing aliens the usual removal proceeding, under § 1229a, only when three  
 26 conditions are met: (i) the alien is an applicant for admission; (ii) the alien is “seeking  
 27 admission”; and (iii) the examining immigration officer determines that the alien is not  
 28 clearly and beyond doubt entitled to be admitted. *Section 1225(b)(2)(A) distinguishes*  
 29 *between the legal status of being an applicant for admission and the act of seeking*  
 30 *admission.* Congress uses the phrase “seeking admission” only sparingly in § 1225 and  
 31 always with precision. . . . In the inspection clause, Congress’ use of “or” confirms that  
 32 being an applicant for admission is *not coterminous with seeking admission*; the section  
 33 treats them as related but distinct concepts. In the statement clause, Congress uses  
 34 “seeking admission” to describe purposeful acts by the applicant for admission, *linking*  
 35 *the phrase to conduct rather than status.* When Congress then employs the same phrase  
 36 again in § 1225(b)(2)(A), it again does so such that the phrase helps readers understand  
 37 applicants for admission. The Court sees no reason to treat the insertion as accidental or  
 38 redundant. . . .

39 With those definitions in mind, “seeking admission” naturally refers to the act of “asking  
 40 for” or “requesting” lawful entry through inspection or authorization. The phrase  
 41 therefore narrows the broader universe of “applicants for admission,” which  
 42 encompasses everyone present in the United States, who has not been admitted, and

1 arriving aliens. 8 U.S.C. § 1225(a)(1). Although the phrase “seeking admission” narrows  
2 the class of aliens to whom § 1225(b)(2) applies, it would be mistaken to read the  
3 provision as limited exclusively to physical border encounters. An alien may seek lawful  
4 entry at a port of entry, but an alien may also seek lawful admission from within the  
5 United States through statutory mechanisms such as an application for adjustment of  
6 status on Form I-485 or other congressionally authorized procedures for obtaining lawful  
7 admission.

8 *Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005, at \*20-21 (D.N.M. Jan. 20, 2026)  
9 quoting 8 U.S.C. § 1225 and *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

10 In short, Mr. Borisov was not engaged in the conduct of seeking admission when he was  
11 detained by Respondents on December 4, 2025. This Federal District Court establishes that 8 USC  
12 §1225(b)(2) is not a status that perpetually follows someone like Mr. Borisov indefinitely  
13 throughout his residence in the United States. Respondents can subject someone like Mr. Borisov to  
14 mandatory detention pursuant to §1225(b)(2) when the three conditions described in the statute are  
15 met. Although Mr. Borisov is an applicant for admission until his asylum is approved, but must also  
16 be seeking admission in order to be subject to mandatory detention.

17 *Singh v. Noem* is not the only decision from the Federal District Court of New Mexico to  
18 reach this conclusion. “Petitioner is seeking to remain in the country despite being ‘inadmissible’ at  
19 the time of his entry for lack of documentation, but he is no longer ‘seeking admission’ as he was  
20 already inspected and granted entry.” *Francisco v. Dedos*, No. 1:25-CV-1229 MIS-GJF, 2026 WL  
21 145456, at \*9 (D.N.M. Jan. 20, 2026). See also *Yamile Diaz, as next friend of Manuel Alejandro*  
22 *Vazquez Paredes, Petitioner, v. Warden, Otero Cnty. Processing Ctr., et. al. Respondents*, No. 26-6  
23 MIS/SCY, 2026 WL 222317, at \*5 (D.N.M. Jan. 28, 2026).

24 The circumstances in which Courts in the Federal District of New Mexico found that 8 USC  
25 §1225 was the correct statute under which Petitioners were detained were in circumstances which  
26 are meaningfully distinguishable from Mr. Borisov’s. In *Mursalin v. Dedos*, that Petitioner had been  
27 issued an expedited removal order. *Mursalin v. Dedos*, No. 1:25-CV-00681-MIS-JMR, 2025 WL  
28 3140824, at \*6 (D.N.M. Nov. 10, 2025). Mr. Borisov has never received an expedited removal  
order.

In *Valera-Marin v. Lyons*, the Federal District Court of New Mexico found that Mr. Valera-  
Marin was properly detained pursuant to 8 USC §1225 because his parole had been properly  
revoked, because he had been “arrested . . . on the grounds that [he] was engaged in criminal  
activity and a member of Tren de Aragua.” *Valera-Marin v. Lyons*, No. 2:25-CV-00914-KG-GBW,

2025 WL 3687978, at \*3 (D.N.M. Dec. 19, 2025). No such valid revocation has occurred in Mr. Borisov's case. Mr. Borisov's parole was not correctly revoked in accordance with the regulations provided in 8 CFR §212.5(e). There are no allegations that Mr. Borisov now poses a danger to the United States or that he is a flight risk.

Other Federal District Courts in the Tenth Circuit have made similar findings that the specific circumstances of Mr. Borisov's case warrant detention pursuant to 8 USC §1226, not any of the provisions of 8 USC §1225. In *Victor Garcia Abanil v. Juan Baltazar, et al.*, the Federal District Court of Colorado also went to great pain laid out in meticulous detail the argument why Mr. Borisov is detained pursuant to §1226. *Victor Garcia Abanil v. Juan Baltazar, et al.* No. 25-CV-4029-WJM-STV, 2026 WL 100587, at \*4–5 (D. Colo. Jan. 14, 2026), quoting *Loa Caballero v. Baltazar*, 2025 WL 2977650, at \*6 (D. Colo. Oct. 22, 2025); See also *Rico v. Baltazar*, No. 1:25-CV-03943-CNS, 2025 WL 3640366, at \*2 (D. Colo. Dec. 16, 2025) (“Respondents’ arguments do nothing to persuade the Court to deviate from its prior determination that § 1225(b)(2)(A) and its mandatory detention requirement do not apply to noncitizens, like Petitioner, who have been present in the United States for over two years.”) *Enderson Enrique Chavez Armenta, Petitioner, v. Kristi Noem, Sec’y, U.S. Dep’t of Homeland Sec., et. al. Defendants.*, No. 26-CV-00236-PAB, 2026 WL 274634, at \*3 (D. Colo. Feb. 3, 2026).

Mr. Borsiov is therefore detained pursuant to §1226 and was entitled to the procedures and protections provided by this statute.

**F. Mr. Borisov is not obligated to Exhaust administrative remedies in order to seek release from this Court**

The Immigration Court does not have jurisdiction to address Mr. Borisov's claim that he is being illegally and unconstitutionally detained by Respondents. Therefore, there are no administrative remedies of which Mr. Borisov could avail himself in order to exhaust those remedies.

There is no mandate by Congress to exhaust remedies related to custody determinations by Immigration and Customs Enforcement, so this Court exercises discretion to determine whether to require Mr. Borisov to exhaust administrative remedies. *Jimenez Chacon v. Lyons*, No. 2:25-CV-977-DHU-KBM, 2025 WL 3496702, at \*8 (D.N.M. Dec. 4, 2025). This Court should exercise it

1 discretion consistent with other decisions issued by the Federal District of New Mexico, to waive  
 2 any exhaustion requirements which may apply to Mr. Borisov. The exercise of discretion “requires  
 3 the Court to ‘balance the interest of the individual in retaining prompt access to a federal judicial  
 4 forum against countervailing institutional interests favoring exhaustion.’” *Jimenez Chacon v. Lyons*,  
 5 No. 2:25-CV-977-DHU-KBM, 2025 WL 3496702, at \*8 (D.N.M. Dec. 4, 2025) *quoting McCarthy*  
 6 *v. Madigan*, 503 U.S. 140, 145-46, 112 S. Ct. 1081 (1992). Mr. Borisov has argued several interests  
 7 that favor prompt access to his habeas proceeding and which outweigh Respondents interest in  
 8 being able to unilaterally subject Mr. Borisov to mandatory detention, without any due process and  
 without judicial review.

9 “The INA mandates exhaustion as to final orders of removal, but it contains no exhaustion  
 10 provision regarding challenges to preliminary custody or bond determinations . . . A narrow  
 11 exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is  
 12 futile.” *Francisco v. Dedos*, No. 1:25-CV-1229 MIS-GJF, 2026 WL 145456, at \*7 (D.N.M. Jan. 20,  
 13 2026). It would be futile for Mr. Borisov to request bond from an Immigration Judge because he has  
 14 been designated an “arriving alien” and is barred from receiving bond from an Immigration Judge  
 15 by regulation. 8 *CFR* §1003.19(h)(2)(i)(B). “To the extent Respondents intend to argue that  
 16 [Petitioner] failed to exhaust his request for custody redetermination (the issue presently before the  
 17 Court), I find that such exhaustion would be futile.” *Yamile Diaz, as next friend of Manuel*  
 18 *Alejandro Vazquez Paredes, Petitioner, v. Warden, Otero Cnty. Processing Ctr., et. al. Respondents*,  
 19 No. 26-6 MIS/SCY, 2026 WL 222317, at \*4 (D.N.M. Jan. 28, 2026).

20 Requiring Mr. Borisov to file a meritless request for a custody redetermination with the  
 21 Immigration Court, where he will be denied because the Court lacks jurisdiction to issue him a bond  
 22 pursuant to the regulations, and then file a baseless appeal of that decision, would cruelly prolong  
 23 Mr. Borisov’s irreparable harm that he is suffering while he continues to be illegally and  
 24 unconstitutionally detained by Respondents. Other district courts have “waived prudential  
 25 exhaustion requirements for noncitizens . . . facing [the irreparable harm of] prolonged detention  
 26 while awaiting administrative appeals.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253–54 (W.D.  
 Wash. 2025).

27 Also, Mr. Borisov’s principal claim is that his detention is unconstitutional. This is  
 28 consistent with other circuit courts who have “previously held that a due process challenge

generally does not require exhaustion since the BIA lacks authority to review constitutional challenges.” *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771, 779 (E.D. Mich. 2025). The Federal District Court of New Mexico has indirectly agreed with both of these arguments as they apply to Petitioners similarly situated as Mr. Borisov. “[O]ther district courts addressing this same issue have found administrative exhaustion is not required.” *Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at \*3 (D.N.M. Sept. 17, 2025) citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1252-53 (W.D. Wash. 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F. Supp. 3d —, —, 2025 WL 2496379, at \*5 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271, 277-82 (D. Mass. 2025).

The Tenth Circuit has excused the administrative exhaustion requirement in other cases where there is a “colorable constitutional claim” presented. “If Plaintiff has not exhausted his administrative remedies, then this Court ‘does not have jurisdiction to review the [Respondents’] decision’—unless Plaintiff is excused from this jurisdictional exhaustion requirement, i.e., by presenting a ‘colorable constitutional claim.’” *Greenhalgh v. Berryhill*, No. CV 19-404 GJF, 2019 WL 2106381, at \*3 (D.N.M. May 14, 2019).

The Federal District Court of New Mexico has also outlined the following elements that, when met, merit judicial waiver of the exhaustion requirement: “three elements of judicial waiver: (i) asserting a colorable Constitutional claim that is collateral to the underlying administrative proceedings; (ii) showing that exhaustion results in irreparable harm; and (iii) showing that exhaustion is futile.” *Gallegos v. Fed. Emergency Mgmt. Agency*, No. CIV 24-0170 JB/JFR, 2025 WL 961665, at \*8 (D.N.M. Mar. 31, 2025), citing *Blue Valley Hosp., Inc. v. Azar*, 919 F.3d 1278, 1284-85 (10th Cir. 2019) and *Vigil v. Fed. Emergency Mgmt. Agency*, No. CIV 23-0941 JB/JFR, 2024 WL 2404487 (D.N.M. May 23, 2024).

Mr. Borisov’s claims are based on violations which cannot be remedied by the administrative processes available in the Immigration and Nationality Act. Therefore this Court should exercise discretion to waive the exhaustion requirement.

#### **G. Immediate release is the only remedy available in habeas proceedings**

Mr. Borisov requests that the Court grant his Motion for Temporary Restraining Order and order Respondents to immediately release him. “[B]ecause the Court has determined that Petitioner’s continued detention violates the INA under *Zadvydas*, [Petitioner] is entitled to

1 immediate release. The *Zadvydas Court* explicitly contemplated release as the appropriate remedy  
 2 for that sort of violation.” *Jimenez Chacon v. Lyons*, No. 2:25-CV-977-DHU-KBM, 2025 WL  
 3 3496702, at \*10 (D.N.M. Dec. 4, 2025)

4 “It is clear, not only from the language of §§2241(c)(3) and 2254(a), but also from the  
 5 common-law history of the writ, that the essence of habeas corpus is an attack by a person in  
 6 custody upon the legality of that custody, and that the traditional function of the writ is to secure  
 7 release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S. Ct. 1827, 1833, 36 L.  
 8 Ed. 2d 439 (1973). Other forms of relief are not available in habeas proceedings. “Though the  
 9 Supreme Court has not set the precise boundaries of habeas actions, it has distinguished between  
 10 habeas actions and those challenging conditions of confinement.” *Rael v. Williams*, 223 F.3d 1153,  
 11 1154 (10th Cir. 2000)

12 Mr. Borisov maintains that the only available relief from his illegal and unconstitutional  
 13 confinement is his immediate release.

14 **H. If the Court orders a bond hearing the burden must be on Respondents to prove by**  
 15 **clear and convincing evidence that Mr. Borisov met continue to be detained**

16 If the Court determines that a bond hearing is the appropriate relief to Mr. Borisov’s claims,  
 17 he requests that the Court order Respondents to conduct a constitutionally adequate bond hearing,  
 18 requiring Respondents to prove by clear and convincing evidence that no amount of bond or  
 19 conditions placed on him upon release would prevent Mr. Borisov from posing a danger to the  
 20 community or from fleeing his removal proceedings.

21 Mr. Borisov requests that if such a hearing is ordered that it be ordered to be held no longer  
 22 than 7-10 days from the date of the Court’s order.

23 It is appropriate for the Court to shift the burden on Respondents to prove that Mr. Borisov  
 24 should be detained. “[S]hifting the burden to the Government at a subsequent bond hearing likely  
 25 will reduce the risk of the continuing erroneous deprivation of Petitioner’s liberty interests.”  
 26 *Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at \*7 (D.N.M.  
 27 Sept. 17, 2025).

28 Furthermore, such a burden shift is consistent with what is required by 8 CFR §212.5(e).

1 The Government's interest in continuing to detain Petitioner is minimal unless they  
2 can show that Petitioner is at risk of flight and/or a danger to the community.  
3 Petitioner's interest in liberty, on the other hand, is particularly strong after nearly  
4 three months of detention, separated from his family and community, without the  
5 opportunity for a meaningful bond hearing. Given the Government's conduct thus far  
6 and the information that Petitioner has already provided to demonstrate his eligibility  
7 for bond, requiring Petitioner to bear the burden of proof at a future bond hearing  
8 does not "adequately balance[ ] and protect[ ]" Petitioner's interests against the  
9 Government's. Shifting the burden to the Government is thus appropriate under this  
10 framework to ensure the protection of Petitioner's liberty interests.

11 *Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at \*8 (D.N.M.  
12 Sept. 17, 2025), citing *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at \*9  
13 (D. Colo. July 2, 2019).

14 Date: February 8, 2026

Respectfully Submitted,

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