U.S. Department of Justice
United States Attorney
Eastern District of Pennsylvania

Anthony St. Joseph
Assistant United States Attorney
Direct: (215) 861-8267
anthony.stjoseph@usdoj.gov

615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
(215) 861-8200
Facsimile: (215) 861-8618

January 8, 2026

VIA ECF:
Honorable Chad F. Kenney
Judge, United States District Court
6614 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1744

RE: *Wilmin Vasquez Rosario v. Noem, et al.*,
E.D. Pa. Civ. No. 25-cv-7427 CFK

Dear Judge Kenney:

Respondents submit this letter brief in accordance with this Court's January 2, 2026 Order. [ECF #2]. The Court directed Respondents to file a letter brief if this case contained "meaningfully distinguishable facts" than previous cases that found against Respondents' arguments decided by this Court and in this District. *See e.g., Cantu-Cortes v. O'Neill, et al.*, No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025) (Kenney, J.); Anirudh *v. McShane, et al.*, No. 25-cv-6458 (E.D. Pa. Dec. 8, 2025) (Bartle, J.); *Juarez Velazquez v. O'Neill, et al.*, No. 25-cv-6191 (E.D. Pa. Dec. 3, 2025) (Henry, J.).

This case does present a key factual distinction from the recent habeas petitions such as those cited above. After arriving at the border, Petitioner was granted discretionary parole into the United States, but his parole has ended.

Petitioner is a noncitizen of the United States removable as an "arriving alien" under 8 U.S.C. § 1225(a)(1) and 8 C.F.R. 1.2. As an arriving alien in proceedings, Petitioner is subject to mandatory detention under § 1225(b). *See* 8 C.F.R. 235.3(c)(1). The cases cited above involved aliens who are charged as "applicants for admission," not "arriving aliens" whom the government contended were subject to mandatory detention without a bond hearing under § 1225(b)(2).

Under the INA and its implementing regulations, Petitioner was—and remains—an inadmissible arriving alien under Section 1225. Specifically:

> Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry[ ] .... An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked....

8 C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(a)(1) ("An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival ...) shall be deemed for purposes of this chapter an applicant for admission.").

Custody regulations exclude arriving aliens from receiving a bond hearing. Specifically, 8 C.F.R. § 1003.19(h)(2)(i) states:

> (h) Certain custody determinations—
>
> (2) The following aliens are ineligible for bond:
> (i) Arriving aliens, as defined in 8 CFR 1.2, except as provided in section 235(b)(1)(B) of the Act and 8 CFR 1208.30, who have been placed in removal proceedings, shall not be eligible for a bond hearing before an immigration judge.

Thus, because Petitioner is an "arriving alien," he is ineligible for a bond determination. Courts have similarly held that the statutory language of INA § 235(b) is clear: arriving aliens who are not clearly and beyond a doubt entitled to admission must be detained. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999); *Pierre v. Doll*, 350 F.Supp.3d 327, 330 (M.D.Pa. 2018) ("Decisions under § 1182 are purely discretionary and the regulations prevent an immigration judge from 'redetermin[ing] conditions of custody' with respect to certain classes of aliens, including '[a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act.'")

Here, Petitioner came into the United States at a port-of-entry as an applicant for admission. *See* Pet. ¶¶ 2–3. "Thus, by definition, he is an arriving alien." *Contreras v. Oddo*, 2025 WL 2104428, *4 (W.D. Pa. July 28, 2025). Moreover, "an inadmissible arriving alien, such as Petitioner, is entitled to an asylum interview based on a claim that the alien indicates an intention to apply for asylum or a fear of persecution; *the alien's detention is mandatory absent DHS's discretionary decision to parole the alien, and the alien is not entitled to a bond hearing." Id.* (emphasis added). *But see, A-J-R v. Rokosky*, No. 25-17279 (RMB), 2026 WL 25056, at *5 (D.N.J. Jan. 5, 2026) ("Because § 1225(b)(1) is not a lawful basis for Petitioner's detention, and Petitioner was not detained under the parole revocation procedures described under 8 C.F.R. § 212.5(e), the Court concludes he can only be properly detained under 8 U.S.C. § 1226(a)...")

That is, "applicants for admission may be temporarily released on parole 'in a case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Contreas,* 2025 WL 2104428 at *5 (quoting 8 U.S.C. § 1182(d)(5)(A)) (citing *Pierre v. Doll*, 350 F. Supp. 3d 327, 330 (M.D. Pa. 2018) ("Decisions under § 1182 are purely discretionary.")); 8 C.F.R. § 212.5(b) (setting forth general considerations for parole from custody)). However,

> "[P]arole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of [DHS], have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

Contreas, 2025 WL 2104428 at *5 (quoting 8 U.S.C. § 1182(d)(5)(A)); citing *Chi Thon Ngo v. INS*, 192 F.3d 390, 392 n.1 (3d Cir. 1999) ("When parole is revoked, the alien reverts to the status of an applicant for admission.")). "In short, the decision to grant and revoke parole to an inadmissible arriving alien is discretionary." *Id.*

Although Petitioner may previously have been paroled into the United States, a later decision to revoke that parole "is left to the discretion of the Executive Branch." *Id.* And "without Petitioner's grant of parole, his detention is mandatory as an inadmissible arriving alien." *Id.* (citing 8 U.S.C. § 1225(b)(1)). "Thus, under the applicable law, Petitioner's detention is lawful." *Id.* Respondents concede that this matter is otherwise legally similar to other cases in this District, including the cases cited by this Court. The Federal Respondents in this case respectfully remain of the view that their positions on detention of arriving aliens pursuant to 1225(b)(2) are correct and therefore—despite the weight of contrary decisions in this District related to applicants for admission not charged as removable as arriving aliens—incorporate the arguments made in those cases into this letter brief in order to preserve them for appeal (if ultimately authorized by the Solicitor General).

Should this Court enter judgment against Respondents, in accordance with the Court's January 2 Order, Respondents will arrange to conduct Petitioner's bond hearing under 8 U.S.C. § 1226(a).

Thank you for your consideration.

Respectfully,

DAVID METCALF
United States Attorney

/s/ Anthony St. Joseph
ANTHONY ST. JOSEPH
Assistant United States Attorney

cc: Dean Vassor (Dean@vassorlaw.com)
Counsel for Petitioner