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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
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11 IRSHAD AHMAD FAQERI.,

12 Petitioner-Plaintiff,

13 v.

14 BRUCE SCOTT, et al.

15 Respondent-Defendants.
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Case No.: 2:26-cv-00003-JHC

**PETITIONER'S TRAVERSE
SUPPORTING PETITION FOR WRIT
OF HABEAS CORPUS**

1 **1. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)**

2 Contrary to the Respondents' contentions, Petitioner is not lawfully detained under §
3 1225(b)(2)(A) as alleged by Respondents because his detention on this basis violates the plain language of
4 the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. Section 1225(b)(2)(A) does not apply to
5 individuals like Petitioner who previously entered and are now present and residing in the U.S. Instead,
6 such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole
7 or bond. That statute expressly applies to people who, like Petitioner, are detained and charged as
8 removable for being present without admission. Indeed, although Respondents claim Petitioner is subject
9 to § 1225 and not 1226, yet they arrested Petitioner pursuant to a Form I-200 - Warrant of Arrest which,
10 in part, states, "To: Any immigration officer authorized pursuant to section 236 and 287 of the
11 Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of
12 arrest for immigration violations." See, Dkt. 8-2. Respondents also served Petitioner with a Form I-286 -
13 Notice of Custody Determination "pursuant to Section 236 of the INA" (Dkt. 8-4)– a warrant is only
14 issued if one is detained under § 1226. See 8 U.S.C. § 1226(a).

15 Most importantly, however, Petitioner is not subject to mandatory detention because he is neither
16 an "applicant for admission" nor an "arriving in" the U.S. per 8 U.S.C. § 1225. Rather, Petitioner is a
17 noncitizen who had entered the U.S. over four years ago and who has been living within the U.S. since
18 August 2021. Petitioner was not arrested at or near the border arriving in the U.S. – he was arrested at
19 outside his home in Vancouver, Washington which is hundreds of miles from any U.S. border.

20 Respondents claim Petitioner is currently an applicant for admission, yet he has already entered
21 the U.S., was inspected at the border, and has been living here for over four years. The Supreme Court has
22 explained that § 1226 is the "default rule" and "applies to aliens already present in the United States."
23 Jennings, 583 U.S. 281, 288, 301 (2018). § 1225(b) "applies primarily to aliens seeking entry into the
U.S." and authorizes DHS to "detain an alien without a warrant at the border." Jennings, 583 U.S. at 302.

1 In Torres v. Barr, the en banc court held that “the phrase ‘at the time of application for
 2 admission’ . . . refers to the particular point in time when a noncitizen submits an application to physically
 3 enter into the United States.” 976 F.3d at 924. The Ninth Circuit held that “inadmissibility must be
 4 measured at the point in time that an immigrant actually submits an application for entry into the United
 5 States.” 976 F.3d 918, 926 (9th Cir. 2020) (en banc). Under § 212(a)(7), a noncitizen only makes an
 6 application for admission when they seek permission to physically enter the United States. *Id.* at 924. In
 7 short, Torres clarified there is a temporal limitation to a classification of applicant for admission. See
 8 United States v. Gambino-Ruiz, 91 F.4th 981, 989 (9th Cir. 2024) (stating that “Torres merely rejected the
 9 view that an alien remains in a perpetual state of applying for admission”). Someone like Petitioner —
 10 who has been physically present in the United States for over four years – is not an applicant for
 11 admission. Again, an individual “detained near the border shortly after they crossed it” is an applicant for
 12 admission. Gambino-Ruiz, 91 F.4th at 990; see also Matter of Q. Li, 29 I. & N. Dec. 66, 69 (BIA 2025).

13 **2. Petitioner’s parole was terminated in violation of statute and the purpose for which it was**
 14 **authorized was not accomplished, and Respondents have not shown that “neither**
 15 **humanitarian reasons nor public benefits warrants his continued in the United States”**

16 The INA provides that DHS “may . . . in [the Secretary’s] discretion parole” an arriving asylum
 17 seeker into the United States on a “case-by-case basis for urgent humanitarian reasons or significant
 18 public benefit.” 8 U.S.C. § 1182(d)(5)(A). If the Department exercises the option of paroling the
 19 noncitizen into the U.S. under 8 U.S.C. § 1182(d)(5), said parole may only be terminated (prior to the
 20 expiration of time for which the parole was authorized) “upon accomplishment of the purpose for which
 21 parole was authorized or when...neither humanitarian reasons nor public benefit warrants the continued
 22 presence of the alien in the United States....” 8 C.F.R. § 212.5(e)(2)(i).

23 By regulation, a noncitizen may only be released pursuant to § 1182(d)(5)(A) “provided the
 [noncitizen] present[s] neither a security risk nor risk of absconding.” Fernández López v. Wofford, 2025
 WL 2959319, *2 (E.D. Cal. 2025) (quoting 8 C.F.R. § 212.5(b)). Release under this provision therefore

1 “reflects a determination by the government that the noncitizen is not a danger to the community or a
 2 flight risk.” Id. “Such parole, however, shall not be regarded as an admission of the alien.” Jennings, 583
 3 U.S. at 288, 138 S.Ct. at 837 (internal quotation marks omitted). Instead, such parole “permits a
 4 noncitizen to physically enter the country . . . subject to a reservation of rights by the Government that it
 5 may continue to treat the noncitizen as if stopped at the border.” Lopez Benitez v. Francis, 2025 WL
 6 2371588, *3 (S.D.N.Y. 2025) (citation omitted).

7 DHS may terminate this parole when, in the opinion of the DHS Secretary, “the purposes of such
 8 parole . . . have been served,” and upon termination “the alien shall forthwith return or be returned to the
 9 custody from which he was paroled and thereafter his case shall continue to be dealt with in the same
 10 manner as that of any other applicant for admission[.]” 8 U.S.C. § 1182(d)(5)(A). Critically, however, the
 11 implementing regulation requires that “DHS must provide ‘written notice to the [noncitizen]’” prior to
 12 revocation of parole. Mata Velasquez, 2025 WL 1953796, at *5 (quoting 8 C.F.R. § 212.5(e)(2)(i)).
 13 Moreover, a written notification that does not attend to the individualized reasons for the revocation is
 14 insufficient. Instead, “both common sense and the words of the statute require parole revocation to be
 15 analyzed on a case-by-case basis and that a decision to revoke parole must attend to the reasons an
 16 individual [noncitizen] received parole.” Mata Velasquez, 2025 WL 1953796, at *10 (internal quotation
 17 marks omitted); see, e.g., Bostock, 792 F.Supp.3d at 1146 (finding that the government’s “mass
 18 distribution, standard-form email” purporting to revoke petitioner’s § 1182(d)(5)(A) parole provided
 19 insufficient written notice because it lacked individualized reasons for the revocation); id. (“[W]ritten
 20 notice is a necessary but not a sufficient condition for compliance with [8 C.F.R. § 212.5(e)(2)(i)]”).

21 Release on parole is an “express exception” to detention and is a “specific provision authorizing
 22 release.” Jennings v. Rodriguez, 583 U.S. 231, 300 (2018). The plain language of the statute establishes
 23 that parole must be both granted and revoked on an individual, case-by-case basis: § 1182(d)(5)(A) directs
 that parole may be granted “only on a case-by-case basis” and may be terminated “when the purposes of

1 such parole shall . . . have been served.” See also Doe v. Noem, 2025 WL 1505688, at *1 (1st Cir. May 5,
2 2025) (observing that “[c]ommon sense suggests . . . that parole given only on a case-by-case basis is to
3 be terminated only on such a basis” and pointing to individualized statutory language of § 1182(d)(5)).
4 Petitioner was evacuated from Afghanistan based on his status as being an American ally and in danger of
5 harm by the Taliban and paroled into the U.S. for the purpose of applying for asylum. That purpose has
6 not yet been met as his asylum application is still pending before the immigration court.

7 In Y-Z-H-L v Bostock, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) the court explained the
8 parole process in immigration cases and noted that before parole may be revoked, the parolee must be
9 given written notice of the impending revocation, which must include a cogent description of the reasons
10 therefore. Under the Administrative Procedure Act, immigration parolees are entitled to determinations
11 related to their parole revocations that are not arbitrary, capricious or an abuse of discretion. *Id.* at *10.
12 See also Mendez Los Santos v. Larose et al, 3:25-cv-02216-TWR-MSB (S.D. Cal. Sept. 4, 2025) (granted
13 a petition in a case where the petitioner was paroled pursuant to a CBPONE appointment and later
14 retained, holding, “The record before the Court establishes that Petitioner was not provided with written
15 notice that her parole had been terminated, as required by 8 C.F.R. § 212.5(e)(2)(i).”; Navarro Sanchez v.
16 LaRose et al., 3:25-cv-02396-JES-MMP (S.D. Cal. Sept. 30, 2025) (granted a similar petition on due
17 process grounds based on Respondents’ failure to provide a constitutionally sufficient notice and a
18 hearing regarding the revocation of Petitioner’s parole, and Respondents’ lack of an individualized
19 justification to revoke the same).

20 By categorically revoking Petitioner’s parole without any description of the reasons therefore and
21 detaining the Petitioner without consideration of his individualized facts and circumstances, Respondents
22 have violated the APA. Respondents have made no finding that Petitioner is a danger to the community.
23 Respondents have made no finding that Petitioner is a flight risk. By detaining Petitioner categorically,
Respondents have further abused their discretion because there have been no showing of any changes to

1 Petitioner's facts or circumstances that support detention since the agency made its initial determination to
2 parole him into the U.S. after a very extensive and comprehensive vetting process that all evacuees were
3 subjected to before being flown into the United States from military bases abroad where they were
4 temporarily held for that purpose prior to being flown to and paroled into the U.S.

5 Moreover, under the Administrative Procedures Act ("APA"), an agency must act in a manner that
6 is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside
7 agency action" that is arbitrary and capricious); Dep't of Com. v. New York, 139 S. Ct. 2551, 2569
8 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational
9 connection between the facts found and the choice made").

10 Furthermore, by choosing to parole Petitioner when he was brought to the port of entry instead of
11 commencing expedited proceedings against him as an "arriving alien," Respondents already exercised
12 their discretion to forego that option and therefore abandoned that endeavor, which they cannot reclaim
13 months or years later after a noncitizen has been allowed to enter and live in the U.S. As the Supreme
14 Court stated in Reno v. Am.-Arab Anti-Discrimination Comm., "There was good reason for Congress to
15 focus special attention upon, and make special provision for, judicial review of the Attorney General's
16 discrete acts of commenc[ing] proceedings, adjudicating cases, [and] execut[ing] removal orders' – which
17 represent the initiation or prosecution of various stages in the deportation process. At each stage the
18 Executive has discretion to abandon the endeavor, and at the time IIRIRA was enacted the INS had been
19 engaging in a regular practice (which had come to be known as "deferred action") of exercising that
20 discretion for humanitarian reasons or simply for its own convenience." 525 U.S. 471, 484 (1999).

21 **B. The Court has subject matter jurisdiction to hear Petitioner's APA claims**

22 Respondents that causes of action under the Administrative Procedure Act ("APA") may not be
23 brought in a habeas petition. In the cases that Respondents cite to, the Ninth Circuit did not state that
causes of action concerning violations of the APA are improperly brought in a habeas action. This is

1 especially the case given the APA causes of action here challenge the basis for Petitioner's unlawful
 2 detention. Respondents contend he is subject to mandatory detention because his parole was terminated
 3 and that he reverts to his prior status which Respondents erroneously claim was mandatory detention. The
 4 petition alleges that Petitioner's parole was terminated arbitrarily and capriciously in violation of the APA
 5 and her detention is therefore unlawful. A habeas action properly challenges detentions that are unlawful
 6 not only under the Constitution but also under a statute. See 28 U.S.C. § 2241(c)(3) (habeas applies to
 7 someone "in custody in violation of the Constitution or laws or treaties of the United States"). Here,
 8 Petitioner alleges violations of the Constitution (due process) but also violations of the INA and APA as
 9 these statutes concern his unlawful detention. As such, Petitioner's claim is properly brought in this
 10 habeas petition and Respondents' arguments fail.

11 **C. Respondents' re-detention of petitioner absent a pre-deprivation bond hearing**
 12 **violated his procedural due process rights**

13 "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens,
 14 whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas, 533 U.S. at 693,
 15 121 S.Ct. at 2500. Accordingly, "[i]t is well established that the Fifth Amendment entitles aliens to due
 16 process of law in the context of removal proceedings." Trump v. J. G. G., 604 U.S. 670, 673, 145 S.Ct.
 17 1003, 1006 (2025) (internal quotation marks omitted). There is no question that "detention during
 18 deportation proceedings [is] a constitutionally valid aspect of the deportation process." Demore v. Kim,
 19 538 U.S. 510, 523, 123 S.Ct. 1708, 1717 (2003). But due process "requires some kind of a hearing before
 20 the State deprives a person of liberty or property." Zinermon v. Burch, 494 U.S. 113, 127, 110 S.Ct. 975,
 21 984 (1990). Petitioner's procedural due process claims involve two steps: "the first asks whether there
 22 exists a protected liberty interest under the Due Process Clause, and the second examines the procedures
 23 necessary to ensure any deprivation of that protected liberty interest accords with the Constitution."
Fernandez Lopez v. Wofford, 2025 WL 2959319, *3 (E.D. Cal. 2025) (internal quotation marks omitted).
 "(D)ue process is flexible and calls for such procedural protections as the particular situation demands."

1 Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600 (1972). To determine what protections due
 2 process demands in a given situation, courts consider three factors: (1) the private interest that will be
 3 affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures
 4 used, and the probable value of additional safeguards; and (3) the government’s interest, including the
 5 function involved and the burdens that would be imposed by additional process. See Mathews v. Eldridge,
 6 424 U.S. 319, 335, 96 S.Ct. 893, 903 (1976).

7 A. Petitioners Possess a Protected Liberty Interest in Remaining Out of Custody.

8 Petitioner invokes “the most significant liberty interest there is – the interest in being free
 9 from imprisonment.” Velasco Lopez v. Decker, 978 F.3d 842, 851 (2d Cir. 2020). While “the initial
 10 decision to detain or release an individual may be within the government’s discretion, the government’s
 11 decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual
 12 may rely, that their liberty ‘will be revoked only if they fail to live up to the . . . conditions of release.’”
 13 Pinchi v. Noem, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) (alteration marks omitted). Accordingly,
 14 “[w]hen an immigrant is placed into parole status after having been detained, a protected liberty interest
 15 may arise,” and the “Due Process Clause may protect this liberty interest even where a statute allows the
 16 immigrant’s arrest and detention and does not provide for procedural protections.” Espinoza v. Kaiser,
 17 2025 WL 2675785, *9 (E.D. Cal. 2025). The government’s decision to grant parole to petitioner in 2021
 18 “reflect[ed] a determination by the government that the noncitizen is not a danger to the community or a
 19 flight risk.” Fernández López v. Wofford, 2025 WL 2959319, *2 (E.D. Cal. 2025). Moreover, his “release
 20 from ICE custody constituted an implied promise that [their] liberty would not be revoked unless [they]
 21 failed to live up to the conditions of [their] release.” Pinchi, 792 F.Supp.3d at 1034 (internal quotation
 22 marks omitted). In other words, petitioners gained a protected liberty interest in remaining out of custody
 23 absent a showing that they pose a risk of flight or danger. See, e.g., Fernández López, 2025 WL 2959319
 at *4-5 (finding that petitioner released from immigration detention on parole had protected liberty

1 interest in remaining out of custody, including if the authority for petitioner’s parole was §
 2 1182(d)(5)(A)); Noori v. Larose, 2025 WL 2800149, *4, 9-10 (S.D. Cal. 2025) (finding that petitioner
 3 who was paroled from immigration detention under § 1182(d)(5)(A) had protected liberty interest in
 4 remaining out of custody). See also, Sharif, et al. v. F. Semaia, et. al. 5:25-cv-02834-FMO-KES (S.C.D.
 5 Cal. Nov. 26, 2025) (finding that petitioners who were evacuated from Afghanistan and paroled and later
 6 re-detained had protected liberty interest in remaining out of custody and ordering their immediate
 7 release).

8 Respondents contention that “Petitioner had no liberty interest in remaining out of custody once
 9 his parole automatically terminated when it expired in August 2025. [.]” (Dkt. 6, at 6), is irrelevant
 10 because “petitioner’s liberty interest did not expire along with his parole.” Omer G.G. v. Kaiser, et al.,
 11 2025 WL 3254999, *5 (E.D. Cal. 2025); see, e.g., Ramirez Tesara v. Wamsley, 2025 WL 2637663, *3
 12 (W.D. Wash. 2025) (finding, on similar facts, that “[c]ontrary to Respondents’ arguments, this private
 13 interest did not expire along with Petitioner’s parole agreement.”). Indeed, Majed’s “liberty interest is
 14 particularly strong given his initial release from detention in 202[1], and the fact that Respondents did not
 15 seek his return to custody upon the expiration of his parole in [August 2023], or in the [two] years since.”
 16 Rodriguez Cabrera v. Mattos, 2025 WL 3072687, *11 (D. Nev. 2025). “This conclusion is bolstered by
 17 the fact that the applicable regulations provide that if a non-citizen is re-detained after parole expires, they
 18 ‘shall again be released on parole’ if their ‘exclusion, deportation, or removal order cannot be executed
 19 within a reasonable time[.]’” Omer G.G., 2025 WL 3254999, *5 (quoting 8 C.F.R. 212.5(e)(1), (e)(2)(i))
 20 (emphasis added); See also, Sharif et al v. F. Semaia, Dkt. No. 8. at 8.

21 Here, no removal order even exists for the government to attempt to execute within a reasonable
 22 period of time, thereby undermining respondents’ regulatory argument for his detention. Indeed,
 23 Petitioner’s immigration proceedings are ongoing and he has a pending asylum application. In short, the
 fact “[t]hat the express terms of Petitioner’s parole allowed for discretionary termination or expiration

1 does not somehow obviate the need for the government to” comport with due process “prior to re-
2 detaining [him] given the significance of [his] liberty interest.” Rodriguez Cabrera, 2025 WL 3072687, at
3 *11. The first Mathews factor therefore weighs strongly in favor of petitioner.

4 B. Petitioner was Entitled to a Pre-Deprivation Bond Hearing Prior to his Re-detention.

5 Under the circumstances, due process requires that respondents provide petitioner with a pre-
6 deprivation bond hearing prior to their re-detention. See Valdez v. Joyce, 2025 WL 1707737, *4
7 (S.D.N.Y. 2025) (“In the context of revocation of civil release, an individual whose release is sought to be
8 revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the
9 right to testify at such a hearing.”) (internal quotation marks omitted). This is true for Petitioner, even
10 though his parole was no longer valid when he was arrested. See, e.g., Ramirez Tesara, 2025 WL
11 2637663, at *4 (granting TRO under similar circumstances and ordering that petitioner, who had been re-
12 detained months after the expiration of his parole, “should be released and only re-detained after a hearing
13 in front of an immigration judge”); Rodriguez Cabrera, 2025 WL 3072687, at *15 (granting habeas
14 petition where petitioner was re-detained three years after the expiration of his parole, and enjoining the
15 government “from re-detaining Petitioner in connection with his current removal proceedings without an
individualized bond hearing”).

16 Respondents contend that petitioner received the notice of parole termination to which they were
17 entitled under the applicable regulation. (See Dkt. 6, at 1 (“[Likewise, due process did not require a
18 hearing prior to Petitioner’s detention after his parole had expired and, even if it had not expired, was
19 automatically terminated upon the issuance of a notice to appear.”) But determining whether respondents
20 provided petitioner with sufficient notice of a pending parole termination would not resolve the question
21 before the court, i.e., whether respondents provided petitioners with sufficient due process prior to their
22 re-detention. See Rodriguez Cabrera, 2025 WL 3072687, at *10 (“The Court finds, however, that it need
23 not decide this statutory question to resolve Petitioner’s due process challenge to his ongoing detention.

1 The central inquiry for the Court is whether Petitioner’s rearrest and detention without the opportunity for
 2 release on bond satisfies due process.”). Because 8 U.S.C. § 1182(d)(5)(A)’s “enacting regulations [do
 3 not] provide any procedure for a noncitizen to challenge the revocation or expiration of parole as based on
 4 an erroneous factual or legal predicate, as unreasonable, or as otherwise in violation of statutory and
 5 regulatory requirements[,]” Rodriguez Cabera, 2025 WL 3072687, at *13, there is, in effect, no
 6 procedural safeguards to determine if re-detention is justified. In other words, absent a bond hearing, the
 7 process afforded to petitioners was insufficient to guard against the risk of erroneous deprivation of
 8 liberty because petitioner could not contest whether his re-detention was justified. See, e.g., Pinchi, 792
 9 F.Supp.3d at 1035 (“[I]t is clear that there is a significant risk that the government will erroneously
 10 deprive Ms. Garro of that liberty interest if it does not provide her with a pre-detention hearing.”);
 11 Fernández López, 2025 WL 2959319, at *6 (“[T]he risk of an erroneous deprivation [of liberty] is high
 12 where, as here, [the petitioner] has not received any bond or custody redetermination hearing.”) (internal
 13 quotation marks omitted). The value of providing petitioners with additional process in the form of a pre-
 14 deprivation bond hearing is therefore high, see Fernández López, 2025 WL 2959319 at *6 (“Given the
 15 absence of any procedural safeguards to determine if her redetention was justified, the probable value of
 16 additional procedural safeguards, i.e., a bond hearing, is high.”), and the second Mathews factor thus
 17 weighs in favor of providing petitioners with a pre-deprivation bond hearing.

18 C. Respondents’ Interest Does Not Outweigh the First Two Factors.

19 “As to the third and final Mathews prong, the Attorney General’s discretion to detain individuals .
 20 . . is valid where it advances a legitimate governmental purpose, such as ensuring the appearance of aliens
 21 at future immigration proceedings and preventing danger to the community.” J.U. v. Maldonado, 2025
 22 WL 2772765, *10 (E.D.N.Y. 2025) (internal quotation marks and alterations omitted). But respondents do
 23 not contend that petitioner was detained for such purposes. Nor do they argue that petitioners failed to
 comply with the conditions of his parole.

1 Dated: January 23, 2026,

LAW OFFICES OF BASHIR GHAZIALAM, PC

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Western District of Washington by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: January 23, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam