UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Serhat Gunes
Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; Department of Homeland Security, in her official capacity;

Todd M. LYONS, Acting Director of Immigration and Customs Enforcement; Immigration and Customs Enforcement, in his official capacity;

Robert HAGAN, Field Office Director, Denver Field Office, Immigration and Customs Enforcement, in his official capacity; and

Juan BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility.

Respondents.

Case No._____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Respondents are detaining Petitioner, Mr. Serhat Gunes ("Petitioner"), in violation of law.

2. Petitioner entered the United States on November 9, 2024. In his Notice to Appear (NTA), Respondents classified him as a noncitizen 'present in the United States who [has] not been admitted or paroled,' rather than an 'arriving alien.' Subsequently, on January 3, 2025, Petitioner was granted a one-year term of parole pursuant to 8 U.S.C. § 1182(d)(5)(A).

3. Respondents have since detained Petitioner without legally terminating this parole. Because the purpose of his parole has not been served and no valid termination notice has been issued, Petitioner's parole remains in effect, rendering his current detention unlawful.

4. The continued detention of Petitioner serves no legitimate purpose.

5. The risk of erroneous deprivation of liberty here is substantial.

6. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release.

7. Pending the adjudication of his petition, Petitioner seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to-day operations of U.S. Customs and Immigration's ("ICE") Denver Office of Enforcement and Removal Operations in the State of Colorado.

8. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

9. Petitioner requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours notice prior to any removal or movement of him away from the State of Colorado.

PARTIES

10. Petitioner, Serhat Gunes, is a 28-year-old Turkish national who is seeking asylum in the United States. He is not an arriving alien, nor is he seeking admission. for Respondents to justify re-detaining Petitioner.

11. Petitioner Gunes is currently in Immigration and Customs Enforcement ("ICE") custody at the Denver Contract Detention Facility.

12. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Petitioner.

13. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). He is sued in his official capacity. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner.

14. Robert Hagan is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division. As such, Robert Guadian is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

15. Petitioner Juan Baltazar is the Warden of the Denver Contract Detention Facility He is sued in his official capacity. In that capacity, he is the custodian of detained non-citizens, including Petitioner, housed at the Denver Contract Detention Facility.

JURISDICTION AND VENUE

16. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.

17. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

18. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Petitioner is in Respondents' custody in the District of Colorado. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is now in Respondent's custody. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

EXHAUSTION OF REMEDIES

19. No statutory requirement of administrative exhaustion applies to Petitioner's challenge to the unlawfulness of her detention. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

20. DHS has taken the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. Further, in a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, regardless of her prior release and placement in standard removal proceedings, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief.

21. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

FACTUAL BACKGROUND

22. Petitioner, Serhat Gunes, is a 28-year-old Turkish national who is seeking asylum in the United States. Petitioner arrived in the United States on or about November 9, 2024. Petitioner was issued a NTA and placed in full removal proceedings under 8 U.S.C. § 1229a on December 7, 2024. *See* Ex. A, NTA.

23. On the NTA, the Government's specifically checked the box identifying Petitioner as an "alien present in the United States who has not been admitted or paroled," rather than checking the box for "arriving alien." *Id.*

24. Respondents then released Petitioner on parole on January 3, 2025. *See* Ex. B, Parole Document.

25. Petitioner has been under compliance with his parole condition.

26. Petitioner timely filed an I-589 Application for Asylum and Withholding of Removal with the Immigration Court on March 24, 2025. *See* Ex. C, Initial I-589 Filing. Petitioner has a valid Employment Authorization Document (EAD) based upon his pending asylum application which is valid through September 23, 2030. *See* Ex. D, EAD Approval Notice. Petitioner has never missed

a court hearing, or otherwise violated the conditions of his release from custody. Petitioner has no criminal history, either in the United States or elsewhere.

27. Prior Petitioner's unlawful detention, he resided in Chicago, IL.

28. Respondents, for what appears to be no reason, detained Petitioner on December 31, 2025, while he was driving in Wyoming.

29. Respondents confiscated Petitioner's essential identification and authorization documents—specifically his driver's license and EAD—along with his car keys. His vehicle was subsequently towed to an unknown location, further exacerbating the unlawful nature of his sudden re-detention.

30. Petitioner is currently detained at the Denver Contract Detention Facility in Aurora, Colorado.

LEGAL BACKGROUND

Custody Determination Under INA

31. As relevant here, the Immigration and Naturalization Act, 8 U.S.C. §1101-1524, describes two means of handling the custody and potential removal of noncitizens.

32. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the Rodriguez Vazquez court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*

Vazquez v. Bostock, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

33. In addition, while on release, the noncitizen may apply for asylum or other relief in the United States. 8 U.S.C. § 1158. While a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act, codified in various sections of the INA, broadly affords a right to apply for asylum to any noncitizen, like Petitioner, "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1); Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

34. The INA guarantees to noncitizens in standard removal proceedings who apply for asylum and other relief valuable procedural rights that reduce the risk of an erroneous decision. These include the rights to legal counsel, 8 U.S.C. § 1229a(b)(4)(A) and § 1362; to present supporting evidence (both documentary and through lay and expert witness testimony) and to challenge through cross-examination adverse evidence during a full adversarial hearing before an immigration judge (IJ), 8 U.S.C. § 1148(b)(1)(B); to seek reconsideration or reopening of an adverse decision, 8 U.S.C. § 1229a(c)(6)-(7), to appeal an adverse decision of an IJ to the Board of Immigration Appeals based on the full evidentiary record, 8 U.S.C. § 1229a(c)(5), and to appeal an adverse decision of the Board to a federal circuit court of appeals, 8 U.S.C. § 1252(b).

35. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the *U.S. Constitution. Reno v. Flores*, 507 U.S. 292, 306 (1993).

36. The second relevant means of detention is governed by 8 U.S.C. § 1225, which provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission under 8 U.S.C. § 1225(b)(2). Respondents treat noncitizens subject to mandatory detention under § 1225 as ineligible for bond.

37. The mandatory detention scheme under 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at U.S. ports of entry who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, 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." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added).

38. As to 8 U.S.C. § 1225(b)(1), this subsection provides for mandatory detention of noncitizens subject to expedited removal. Because expedited removal provides very few procedural protections, it applies narrowly to only those noncitizens who are inadmissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). As relevant here, the government may not subject any other person to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

39. For noncitizens in expedited removal, the INA does not grant them the rights enshrined in standard removal proceedings. To begin, an immigration officer may order them removed "without further hearing or review," 8 U.S.C. § 1225(b)(1)(A)(i), unless the noncitizen has expressed an intent to apply for asylum or a fear of persecution. But even then, the noncitizens' rights are truncated. Although the immigration officer "shall refer the [noncitizen] for an interview by an asylum officer," 8 U.S.C § 1225(b)(1)(A)(i)-(ii), a "credible fear" interview differs from an asylum application. First, the INA does not, as it does during standard removal proceedings, guarantee the noncitizen with the rights to counsel, to present documents or witness testimony, or to cross-examine adverse evidence. See id. § 1225(b)(1)(B)(iv). Second if the asylum officer decides that the noncitizen does not have a credible fear of persecution, the noncitizen may seek review before

an IJ, but review is limited to the record of the interview. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Finally, if the IJ concurs with the asylum officer, the noncitizen is removed without any further review by the Board of Immigration Appeals or a federal court. Only if a noncitizen passes a credible fear interview may they apply for asylum and related relief in full removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

40. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C.§ 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

41. These two processes have governed removal proceedings for nearly three decades. The release provisions for noncitizens placed in standard removal proceedings under § 1226 and the mandatory detention provisions for noncitizens recently arriving in the United States under § 1225(b)(1) and (b)(2) were enacted in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

42. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a

different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system ") (citing *Jennings v. Rodriguez*, 583 U.S. at 289) (cleaned up)).

43. 8 U.S.C. 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

44. 8 U.S.C. 1226(a) applies not just to persons who are deportable, but also to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the general right to seek release, § 1226(c) carves out discrete categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects those limited classes of inadmissible aliens instead to mandatory detention. *See, e.g.*, 8 U.S.C. § 1226(c)(1)(A), (C).

45. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LRA, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).

46. This legislative amendment would be entirely unnecessary if all entrants without inspection were already subject to mandatory detention under Section 1225. *See Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 71 (D.N.H. 2025). Because Petitioner has no criminal history, the LRA does not apply, and he remains under the default discretionary authority of Section 1226(a).

47. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents, who have been

lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g.*, *Barton v. Barr*, 590 U.S. 222, 234 (2020) ("specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

48. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) to prioritize civil immigration enforcement procedures including through the use of mass detention.

49. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for public inspection and effective immediately a designation expanding the scope of expedited removal to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the application of expedited removal. Office of the Secretary, Dep't of Homeland Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 ("January 2025 Designation"). The designation was "effective on" January 21, 2025.

50. The January 2025 Designation expands the pool of noncitizens who can be subjected to the summary removal process substantially to include noncitizens who are apprehended anywhere in the United States and who have not been in the United States continuously for more than two years. *Id.* at 8140.

51. The January 2025 Designation does not state that it applies to noncitizens who were in the United States before its effective date.

52. On July 8, 2025, without congressional authorization, the Executive Branch announced a new policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The policy asserts that all undocumented noncitizens deemed "applicants for admission" are subject to mandatory detention under § 1225(b)(2)(A). The policy purports to apply even to those, like Petitioner, whom at the time of the policy shift, the government had already placed in standard removal proceedings, released from custody, and allowed to apply for asylum. The policy shift also violates the government's own regulations. These regulations limit the government from seeking dismissal of full removal proceedings unless it can show that the "[c]ircumstances of the case have changed". See 8 C.F.R. § 239.2(a)(7) (emphasis added). But the government's new policy purports to allow it to seek dismissal based on changed circumstances independent of the noncitizen's case.

53. Adopting this same position, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bonds. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

54. ICE and EOIR have adopted this policy even though numerous federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239; *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D.

Mass. July 7, 2025) (granting habeas petition based on same conclusion). Accordingly, federal courts have roundly rejected Respondent's erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. See *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025*); Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA (D. Nev. Sep. 5, 2025); *Eliseo A.A. v. Olson*, No. 25-CV-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), Doc. No. 226 (D. Minn. Oct. 20, 2025); *Khalid B.Q. v Noem*, No. 0:25-cv-04584 (JWB-DJF), Doc. No 10. (D. Minn. December 18, 2025).

55. While not binding precedent, the decision in *Mohammed v. Olson*, 2025 WL 3541819 (S.D. Ind. Dec. 10, 2025), is a dispositive factual and legal roadmap for the relief sought here.

56. In *Mohammed*, as in the present case, the petitioner entered without inspection, was released on parole following a credible fear finding, lived and worked in the interior for a year, and was suddenly re-arrested by ICE during a routine check-in. *Id.* at 1.

57. The Court held that treating a long-term interior resident as "seeking admission" under § 1225(b) would render the Laken Riley Act (8 U.S.C. § 1226(c)(1)(E)) "superfluous" and "illogical." *Id.* at 4.

58. The *Mohammed* Court found it highly persuasive that the Government's own NTA identified the petitioner as "present in the United States without being admitted or paroled" and left the "arriving alien" checkbox unmarked. *Id.* The Court held this choice constitutes an affirmative decision by DHS to treat the individual as "present" in the interior, governed by the discretionary framework of 8 U.S.C. § 1226(a). *Id.* at 3.

59. Finding the Government's recent shift in policy "Kafkaesque," the *Mohammed* Court concluded that the petitioner could only be lawfully detained under § 1226(a) and ordered his immediate release or a bond hearing. *Id.* at 5.

60. Petitioner's detention under § 1225(b)(2) is likewise invalid. As numerous federal courts have now found, § 1225(b)(2) applies to noncitizens *seeking admission* into the United States. It does not apply to noncitizens, like Petitioner, who were paroled, and placed in standard removal proceedings, and allowed to apply for asylum.

61. Significantly, Petitioner's parole remained valid through January 3, 2026. Respondents' decision to take him into custody prior to that date constitutes an unlawful detention.

INA Parole and Termination of Parole

62. The Immigration and Nationality Act ("INA") provides that the Department of Homeland Security "may . . . in [the Secretary's] discretion parole" a noncitizen into the United States on a "***case-by-case basis*** for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

63. Release on parole is an "express exception" to detention and is a "specific provision authorizing release." *Jennings v. Rodriguez*, 583 U.S. 231, 300 (2018).

64. The authority to exercise parole authority is limited to certain actors by regulation:

> The authority of the Secretary to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Assistant Commissioner, Office of Field Operations; Director, Detention and Removal; directors of field operations; port directors; special agents in charge; deputy special agents in charge; associate special agents in charge; assistant special agents in charge; resident agents in charge; field office directors; deputy field office directors; chief patrol agents; district directors for services; and those other officials as may be designated in writing, subject to the parole and detention authority of the Secretary or his designees. The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

8 C.F.R. § 212.5(a).

65. If the Department paroles a noncitizen into the United States under 8 U.S.C. § 1182(d)(5), the Congress and the Department have delineated authority to terminate parole granted under § 1182(d)(5) by statute and regulation, respectively.

66. The plain language of 8 U.S.C. § 1182(d)(5) establishes that Respondents may grant or terminate parole under this section *only upon* conducting an individual, case-by-case basis review. *Ocanto v. Lynch*, No. 1:25-CV-1447, 2025 WL 3522113, at *6 (W.D. Mich. Dec. 9, 2025) (quoting *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (citations omitted) (addressing this issue, and granting the petitioner's motion for preliminary injunction and ordering that the petitioner be released); *see, e.g.*, *Y-Z-L-H*, 792 F. Supp. 3d at 1137–47 (addressing this issue, and granting the petitioner's habeas petition and ordering that the petitioner be released from custody); *Loaiza Arias*, 2025 WL 3295385, at *2–4 (same); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *10–13 (S.D. Cal. Oct. 1, 2025) (same); *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), —— F. Supp. 3d ——, 2025 WL 2630826, at *14–17 (S.D.N.Y. Sept. 12, 2025) (same); *Gabriel B.M. v. Bondi*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7 (D. Minn. Dec. 1, 2025) (addressing this issue, and granting the petitioner's request for a preliminary injunction and ordering the petitioner's release from custody); *Orellana v. Francis*, No. 25-cv-

04212 (OEM), 2025 WL 2822640, at *2–3 (E.D.N.Y. Oct. 3, 2025) (addressing the issue in the context of a motion for reconsideration filed by the respondents, and affirming the court's grant of habeas relief to the petitioner and the court's order to release the petitioner)).

67. 8 U.S.C. § 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 such parole shall ... have been served." *See also Doe v. Noem*, No. 25-1384, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (observing that "[c]ommon sense suggests . . . that parole given only on a case-by-case basis is to be terminated only on such a basis" and pointing to individualized statutory language of § 1182(d)(5)).

68. "Termination of parole" is also government by regulation. 8 C.F.R. § 212.5(e).

69. By regulation, "Parole shall be automatically terminated without written notice (i) upon the departure from the United States of the alien, or, (ii) if not departed, at the expiration of the time for which parole was authorized …." 8 C.F.R. § 212.5(e)(1).

70. It may also be terminated "On notice."

> In cases not covered by paragraph (e)(1) of this section, **upon accomplishment of the purpose for which parole was authorized** or when **in the opinion of one of the officials listed in paragraph (a)** of this section, **neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice** to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed.

8 C.F.R. § 212.5(e)(2)(i) (emphasis added).

71. Respondents must observe the rules, regulations or procedures which it has established.

See United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

72. The failure of Respondents to follow their own established procedures is a violation of due process. *See Service v. Dulles*, 354 U.S. 363 (1959); *Vitarelli v. Seaton*, 359 U.S. 535 (1950).

73. Respondents simply detained Petitioner without any notice or reason at all.

74. No actor endowed with regulatory authority to revoke parole acted to terminate Petitioner's parole, as he was simply detained by field agents.

75. No written notice of parole termination was provided.

76. This is a violation of 8 C.F.R. § 212.5(e)(2)(i).

77.

Administrative Procedures Act

78. Respondent's detention of Petitioner under 8 U.S.C. § 1225(b)(2) is patently unlawful, violates due process, and violates the Administrative Procedure Act. *See Noori v. Larose*, 2025 WL 2800149, *13 (S.D. Ca. Oct. 1, 2025) (noting that a paroled non-citizen should not be returned to custody unless the purposes of the parole have been served); *Orellana v. Francis*, 2025 WL 2402780, *5 (E.D.N.Y. Aug, 19, 2025) (noting that the purpose of parole was not satisfied when an asylum seeker had not completed the asylum process and granting the petitioner release because his re-detention violated the Administrative Procedure Act).

79. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

80. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." Nat'l Ass'n of Home *Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

81. To avoid an abuse of discretion, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

82. Re-detention Petitioner, without consideration of any individualized facts and circumstances applicable to him, and without finding that he is a danger to the community or a flight risk, and while his standard removal proceedings are still pending, Respondents have violated the APA.

83. When Respondents paroled Petitioner into the United States, they considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. No changes to the facts have occurred that might justify this revocation of his release.

84. The fact that Respondents have already released Petitioner under the same facts and circumstances shows that Respondents do not consider him to be a danger to the community or a flight risk.

85. Respondents here have acted in a manner that is arbitrary and capricious by detaining Petitioner without explaining why his parole was terminated, failing to provide written notice, and failing to act through any of the regulatorily authorized actors empowered to terminate parole

Due Process

86. By detaining Petitioner without articulating a rationale based on her individualized circumstances, and by detaining her in contradiction of her individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA. Noori, 2025 WL 2800149 at * 10 (parolee developed a private interest in remaining free in the one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, F.Supp.3d, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with

his parole agreement); *see also Y-Z-L-H- v. Bostock*, F.Supp.3d, 2025 WL 1898025, * 14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

87. Because the private interest in freedom from immigration detention is substantial, due process requires the government to bear the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community before re-detaining him. See e.g., *Fernandez Lopez v. Wofford*, 2025 WL 2959319 at *8; *J.S.H.M v. Wofford*, 2025 WL 2938808, *16 (E.D. Ca. Oct. 16, 2025) (unpub); *Mata Velasquez v. Kurzdorfer*, F.Supp.3d, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process).

88. To the extent that Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), his detention under that statute is unlawful the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and were explicitly released under 8 U.S.C. 1226. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

89. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

90. The Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies to the noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

91. Petitioner has a fundamental interest in liberty and being free from official restraint.

92. Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be. . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

93. Due Process requires that detention "bear a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Ethiopiana*, 406 U.S. 715, 738 (1972)).

94. Petitioner seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him.

95. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

96. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody."). "[B]eing free from physical detention is 'the most elemental of liberty interests.'" *Günaydın*, 2025 WL 1459154, at *7 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004)). Petitioner has been detained for weeks. As a parolee, Petitioner has a protected liberty interest in remaining out of custody pursuant to his parole. *See, e.g.*, *Pinchi*, 2025 WL 2084921, at *4 ("[Petitioner's] release from ICE custody after her initial apprehension reflected a determination

by the government that she was neither a flight risk nor a danger to the community, and [Petitioner] has a strong interest in remaining at liberty unless she no longer meets those criteria.")

97. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, "habeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts "[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters 'as law and justice require.'" *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), quoting 28 U.S.C. § 2243. An order of release falls under court's broad discretion to fashion relief. *See, e.g.*, *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) ("Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien's release.").

CAUSE OF ACTION

COUNT ONE: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1225(b)(2)

98. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

99. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because he is not an "arriving alien." As confirmed by Petitioner's NTA, the Government checked the box identifying Petitioner as an "alien present in the United States who has not been admitted or paroled," rather than checking the box for "arriving alien." *See Hernandez-Parrilla v. De Anda-Ybarra*, 2025 WL 3632769, at 4 (D.N.M. Dec. 15, 2025) (holding that when the NTA fails to check the "arriving alien" box, the petitioner is substantially likely to establish he is not subject to mandatory detention under Section 1225).

100. Section 1225 of Title 8 of the U.S. Code governs aliens arriving at the border and seeking admission from outside the country. *See* 8 U.S.C. § 1225.

101. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those "applicants for admission" who are "seeking admission" at the time of the detention and Petitioner was not "seeking admission" at the time he was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).

102. The plain language of 8 U.S.C. § 1225(b)(2)(A) limits its application to an alien who is "seeking admission." Petitioner is not "seeking admission"; he is already physically present in the United States and has been since his entry in November 2024. *See Jimenez v. FCI Berlin*, 799 F. Supp. 3d 59, 70-71 (D.N.H. 2025). As held in *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. 2025), the term "seeking admission" implies a present-tense action—something currently occurring at the border—which cannot apply to a noncitizen who has established a residence in the interior. *Id.*

103. Treating "applicant for admission" as synonymous with "seeking admission" renders the latter phrase mere surplusage, violating the cardinal rule of statutory construction. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Petitioner is "seeking to remain," which is distinct from "seeking admission." *Jimenez Reyes v. Olson*, 2025 WL 3765963, at 4 (S.D. Ind. Dec. 30, 2025). Classifying Petitioner as 'seeking admission' after a year of residency renders the statutory phrasing redundant, thereby violating the canon against surplusage.

104. Respondents' attempt to apply Section 1225(b)(2)(A) to Petitioner improperly strikes the phrase "seeking admission" from the statute. This interpretation violates the fundamental canon against surplusage, which prohibits a construction that renders statutory terms meaningless. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025). Because Petitioner is an asylum seeker pursuing a legal right to remain, he is not seeking "initial entry" or "admission" as contemplated by the mandatory detention scheme.

105. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT – 8 U.S.C. § 1226(a)

106. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

107. The Government's own internal categorization on the NTA constitutes a determination that Petitioner is "present" in the interior of the country rather than "arriving" at a port of entry. *See Patel v. Crowley*, 2025 WL 2996787, at 5 (N.D. Ill. Oct. 24, 2025). As the court noted in *Patel*, "Section 1225(b)(2)(A) would correspond to those 'arriving' while Section 1226(a) would correspond to those 'present.'" Consequently, because the Government's own agent designated Petitioner as "present," Petitioner must be governed by the discretionary detention framework of Section 1226(a).

108. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.

109. Such an alien "may [be] release[d] … on bond of at least $1,500." 8 U.S.C. § 1226(a)(2)(A).

110. The denial of Petitioner's bond eligibility is in violation of 8 U.S.C. § 1226(a)(2)(A), which specifically makes him eligible for bond.

111. If Respondents do not release Petitioner without any conditions, he requests that he be afforded the opportunity to present his case for release in a bond hearing pursuant to 8 U.S.C. § 1226(a)(2)(A).

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

112. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

113. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

114. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community.

115. Petitioner has a substantial liberty interest in remaining free from physical detention, having been lawfully released on INA § 212(d)(5) parole in January 2025. *See Fernandez*, 2025 WL 2959319, at 4. Having determined that Petitioner was neither a flight risk nor a danger at the time of his initial release, the Government cannot re-detain him on December 31, 2025, without a reasoned explanation or evidence of changed circumstances.

116. The "purpose" of Petitioner's parole was to allow him to remain in the United States while pursuing his applications for asylum and withholding of removal. Because Petitioner's asylum claim remains pending and he is still in removal proceedings under 8 U.S.C. § 1229a, the purpose of his parole has not been served. *See Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1145 (D. Or. 2025). Consequently, any attempt to return Petitioner to physical custody before the adjudication of his asylum claim violates the express terms of the Parole Statute.

117. Because of Petitioner's profound legal interest in his liberty as a noncitizen with valid parole, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S.

319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

118. Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment.

COUNT FOUR: VIOLATION OF THE APA – FAILURE TO COMPLY WITH REGULATORY MANDATE AND *ACCARDI* DOCTRINE

119. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

120. Respondents have not complied with 8 C.F.R. § 212.5(e)(2)(i).

121. Petitioner's parole can only be terminated, beyond the authorized time expiring, "upon accomplishment of the purpose for which parole was authorized or ... [if] neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." 8 C.F.R. § 212.5(e)(2)(i).

122. Petitioner's parole can only be "terminated upon written notice." *Id.*

123. Petitioners parole is terminated because "neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States," such a decision must be based on "the opinion of" either "the Assistant Commissioner, Office of Field Operations; Director, Detention and Removal; directors of field operations; port directors; special agents in charge; deputy special agents in charge; associate special agents in charge; assistant special agents in charge; resident agents in charge; field office directors; deputy field office directors; chief patrol agents; district directors for services; [or] those other officials" so designated. 8 C.F.R. § 212.5(e)(2)(i) (cross referencing 8 C.F.R. § 212.5(a)).

124. Here, Respondents detained Petitioner without any written notice or any reason as to why his parole was terminated.

125. Respondents made no individualized, case-by-case assessment in terminating Petitioner's parole.

126. The individuals who arrested and detained Petitioner were not authorized to terminate his parole.

127. These are all violations of 8 C.F.R. § 212.5(e)(2)(i).

128. Respondents' action also violates the mandate of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

129. Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

130. Respondents acted in excess of their regulatory authority or limitation.

131. Respondents' action constitutes a final agency decision.

132. Petitioner has no administrative remedy available to him.

133. Respondents' action violates the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Issue an order restraining Respondents from attempting to move Petitioner from the District of Colorado during the pendency of this Petition;
3. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153;
4. Declare that Petitioner's current detention without an individualized determination is unlawful;
5. Order Petitioner's immediate release, or, alternatively, order Respondents to hold a bond hearing pursuant to 8 U.S.C. § 1226(a) within three days;

6. Enjoin Respondents from re-detaining Petitioner based on the same factual or legal grounds asserted in these proceedings, unless a significant and material change in circumstances occurs that warrants such action under the law;

7. In the event of Petitioner's release, order Respondents to immediately return all of Petitioner's seized personal property, including but not limited to his state-issued driver's license and Employment Authorization Document card;

8. Grant such other and further relief as the Court may deem just and proper, including any equitable relief necessary to restore Petitioner to his status prior to the unlawful detention.

9. Declare that Respondents' action is arbitrary and capricious.

10. Declare that Respondents failed to adhere to its regulations.

11. Declare that Petitioner's detention absent a bond hearing violates the Due.

12. Process Clause of the Fifth Amendment.

13. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

14. Grant any further relief this court deems just and proper.

Dated: January 9, 2025

/s/ Mehmet Y. Turkoglu

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Verification by Petitioner's Legal Counsel
Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Attorney for the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status are true and correct to the best of my knowledge.

/s/ Mehmet Y. Turkoglu Date: January 9, 2026
Mehmet Y. Turkoglu, Esq