THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

YAINIER ARANDA GARCIA, Petitioner vs. PAMELA BONDI, in her official capacity as Attorney General of the United States, KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility, Respondents.	Case No.: 26-cv-00184-DDD Agency File: [redacted]

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO HABEAS PETITION

ARGUMENT

I. This Petition Is Not a Successive Habeas Petition.

Respondents argue that the present habeas petition is barred as a successive petition under 28 U.S.C. § 2244(a). That argument fails because this petition challenges a distinct legal injury that was neither raised nor adjudicated in the prior Florida habeas proceeding.

Respondents rely on *Lee v. Maye*, 667 Fed. App'x 297, 297 (10th Cir. 2016), which involved a duplicative §2241 petition raising the same claims previously dismissed. This case is different. The Florida habeas petition challenged whether Petitioner's detention was governed by §1225 or §1226 and whether he was entitled to a bond hearing. The Florida court resolved that issue and held that §1225 applied.

This petition raises a different claim: whether DHS lawfully terminated the parole or release that resulted in Petitioner's release in 2021 before re-detaining him in 2025. The Florida court did not address: (1) whether DHS complied with 8 C.F.R. § 212.5(e) governing termination of parole, or (2) whether Petitioner received written notice of parole termination. Because these issues were not litigated or decided previously, §2244(a) does not bar review.

II. The Parole-Termination Claim Could Not Have Been Raised Earlier.

Respondents also argue that the claims presented here could have been raised in the Florida petition. That argument fails.

The Tenth Circuit has made clear that repeat §2241 petitions are evaluated under the traditional abuse-of-the-writ doctrine rather than a strict successive-petition bar. *Stanko v. Davis*, 617 F.3d 1262, 1269–71 (10th Cir. 2010). A subsequent habeas petition is barred only when it raises claims that were previously adjudicated or that could have been raised earlier through inexcusable neglect. *Id.*

The present petition does neither. At the time of the Florida habeas filing, the central dispute concerned the statutory basis for detention—whether Petitioner was detained under 8 U.S.C. §1225 or §1226. Only after the Florida court concluded that Petitioner was subject to mandatory detention under §1225(b) did Respondents' detention theory necessarily imply that Petitioner's prior release must have occurred through parole authority under 8 U.S.C. §1182(d)(5)(A). [1] That ruling gave rise to a different legal question: whether DHS lawfully terminated that parole in accordance with 8 C.F.R. §212.5(e).

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[1] Respondents argue that the Florida court did not determine that Petitioner had been released on parole. (Doc. 7, n.5). They cite the court's statement that Petitioner "spent time in the United States after being released on an order of recognizance." But the court immediately cited *Jennings v.*

Before the Florida decision, the issue of parole had already been litigated before the Immigration Judge in Miami, who concluded that Petitioner had not been paroled. (Doc. 7-1 ¶ 12). Because that issue had already been litigated and rejected in the immigration proceedings, raising it again in the earlier habeas proceeding would have been futile, and the petition instead focused on the statutory basis for detention—whether Petitioner was detained under §1225 or §1226. Only after the Florida court accepted Respondents' §1225 theory did the question arise whether Petitioner's release must be treated as parole and whether DHS complied with the procedures required to terminate it.

This case is therefore distinguishable from *Stanko*, where the petitioner relied on legal authority that existed before the earlier petition. *Stanko*, 617 F.3d at 1272. Here, the legal predicate for the claim arose only after the Florida court adopted Respondents' detention theory. Because the claim was not ripe during the earlier proceeding, it is not barred. *See Panetti v. Quarterman*, 551 U.S. 930, 945 (2007).

Even if the Court were to conclude otherwise, dismissal would still be inappropriate because declining to consider this claim would result in a fundamental miscarriage of justice. *Stanko*, 617 F.3d at 1271. Petitioner's continued detention rests on Respondents' assertion that he is subject to mandatory detention under §1225(b). Yet under Respondents' own theory, Petitioner's prior release could only have occurred through parole authority under 8 U.S.C. §1182(d)(5)(A), which requires DHS to follow the regulatory procedures governing termination of parole before

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Rodriguez for the principle that when the purpose of parole is served, the noncitizen must return to custody. By invoking the parole framework under 8 U.S.C. §1182(d)(5)(A), the court's reasoning necessarily assumes Petitioner's release would constitute parole if §1225 governs his detention.

returning a noncitizen to custody. Because Respondents do not dispute that those procedures were never followed, declining to consider this claim would permit detention that may be unlawful under both the INA and DHS's own regulations and would therefore result in a fundamental miscarriage of justice.

For these reasons, the Court should find that the present petition is not successive and should consider the merits of Petitioner's claims.

III. Respondents' Merits Arguments Fail.

Respondents' merits arguments fail for three reasons: (1) their detention theory is internally inconsistent; (2) once parole was granted DHS was required to follow the procedures governing termination of parole before re-detaining Petitioner; and (3) their reliance on *Nielsen v. Preap* and their proposed remedy are misplaced.

A. Respondents' Detention Theory Necessarily Treats Petitioner's Release as Parole.

Respondents maintain that Petitioner was detained under §1225 but released through an Order of Release on Recognizance (OREC) rather than parole. (Doc. 7 at *9). Those positions cannot be reconciled.

Under the statutory scheme governing applicants for admission, individuals detained under § 1225(b) may be released only through parole authority provided in 8 U.S.C. § 1182(d)(5)(A). *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). If Respondents are correct that Petitioner is subject to detention under § 1225(b), his release from custody in 2021 necessarily reflects the exercise of parole authority, regardless of how DHS labeled the document effectuating that release. Respondents cannot invoke §1225 mandatory detention while denying the only statutory mechanism that could have authorized Petitioner's release.

B. DHS Failed to Comply with the Procedures Governing Termination of Parole.

Once parole was granted, DHS was required to comply with the governing statutory and regulatory procedures before terminating that parole and re-detaining Petitioner. The applicable regulation provides that parole may terminate either automatically upon expiration of the authorized parole period or upon written notice to the noncitizen when the purpose of parole has been served or when parole is no longer warranted. 8 C.F.R. § 212.5(e).

None of those procedures occurred here. Petitioner did not depart the United States, DHS did not specify an expiration date for parole, and Respondents have identified no written notice informing Petitioner that his parole had been terminated. Nor is there any evidence that DHS made the individualized determination required by the regulation.

Because DHS failed to follow the procedures governing termination of parole, Petitioner's re-detention was unlawful.

C. Nielsen v. Preap Does Not Permit DHS to Bypass the Parole-Termination Regulations.

Respondents contend that even if Petitioner's earlier release must be treated as parole, DHS was free to simply "rectify" its prior decision by re-detaining him because §1225(b) provides for mandatory detention. That argument misunderstands both the statutory framework and the case law on which Respondents rely.

First, DHS has implemented that statutory directive through binding regulations requiring that parole termination occur through specified procedures. *See* 8 C.F.R. §212.5(e). Those procedures include notice and an individualized determination that the purpose of parole has been served. Respondents do not dispute that no such procedures were followed here.

Respondents' reliance on *Nielsen v. Preap,* 586 U.S. 392 (2019) is misplaced. *Preap* addressed whether the government loses its authority to detain certain noncitizens under 8 U.S.C. §1226(c) if it fails to take them into custody immediately upon release from criminal confinement. *Id.* at 392. The Supreme Court held that a delay in taking custody does not extinguish the government's statutory authority to detain. *Id.* at 411. But *Preap* did not hold that the government may disregard the statutory and regulatory procedures governing parole once a noncitizen has already been released from custody. Nor did it authorize the government to bypass procedural safeguards established by regulation.

Even if DHS could have avoided releasing Petitioner in the first instance, once it exercised its authority to release him, the agency was required to follow the governing procedures before terminating that release and re-detaining him. Agencies are bound by their own regulations, and a failure to follow those regulations renders the resulting detention unlawful. *See, e.g., United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954).

Respondents' theory would allow the government to bypass those procedures entirely by labeling any re-detention a mere "correction" of a prior mistake. Nothing in the INA, the implementing regulations, or *Preap* supports such a result. The relevant question is not whether DHS could have detained Petitioner earlier, but whether it complied with the procedures required to terminate the parole that enabled his release. Because the record reflects no written termination of parole and no individualized determination that the purpose of parole had been served, Petitioner's re-detention was unlawful.

D. Habeas Relief Is The Appropriate Remedy.

Respondents alternatively argue that even if DHS failed to comply with the procedures governing termination of parole, the appropriate remedy would be to provide the missing process rather than release. That argument mischaracterizes the nature of Petitioner's claim and the cases on which Respondents rely.

The cases cited by Respondents arise in materially different circumstances. In *Olmedo v. United States Immigr. & Customs Enf't*, No. 25-cv-3159-JWL, 2025 WL 2821860 (D. Kan. Oct. 3, 2025), there was no dispute that petitioner had been removed from the United States several times and that he had been arrested on state forgery charges; there was also no allegation that his due process rights had been violated, and the court merely concluded that petitioner had been effectively denied custody review within the requisite timeframe before stating, as cited by Respondents, that "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation." *Id.* at *3. "The present circumstances are entirely different and do not necessarily justify reaching the same conclusion or applying a similar remedy." *See Ekenge v. Baltazar*, No. 1:26-cv-00630-SBP (Dist. Col. Mar. 5, 2026).

Similarly, in *Bahadorani v. Bondi*, No. 25-cv-1091-PRW, 2025 WL 3048932 (W.D. Okla. Oct. 31, 2025), the court found that the government had substantially complied with the relevant regulations governing post-order custody review and that any procedural deficiency was harmless. *Id.* at *5. The court further emphasized that "[h]abeas relief is reserved for errors constitutional in scale" and that there was no dispute that the petitioner was "still removable and could promptly be served with a notice of revocation, detained, and provided a brief interview" before inevitably being removed. *Id.* at *4. "This is far from the case here, particularly because there remains a

question as to whether Petitioner's re-detention was justified." *See Ekenge v. Baltazar*, No. 1:26-cv-00630-SBP (Dist. Col. Mar. 5, 2026).

This case presents a fundamentally different issue. Petitioner does not merely challenge the timing of an administrative custody review. Rather, he challenges the legality of the government's decision to return him to custody in the first place. Under Respondents' own theory, Petitioner's earlier release must be treated as parole under 8 U.S.C. §1182(d)(5)(A). DHS regulations require that parole be terminated either upon expiration of the authorized parole period or through written notice accompanied by an individualized determination that the purpose of parole has been served. 8 C.F.R. §212.5(e). Respondents do not contend that any of those procedures were followed here.

The same conclusion follows whether Petitioner's release is characterized as parole or as release pursuant to an Order of Release on Recognizance ("OREC"). Courts addressing revocations of OREC or similar release mechanisms have likewise required the government to comply with the governing procedures before returning a noncitizen to custody. Where those procedures were not followed and there is no evidence that the noncitizen violated the conditions of release, courts have frequently ordered immediate release, and if not, bond hearings. *See, e.g.*, *Yaman*, 2026 WL 323060 at *5 (ordering petitioner's immediate release where there was "no evidence in the record that he violated any term of his release or that he has any criminal record"); *Abdulahi A.M.*, 2026 WL 323523 at *2 (ordering petitioner's immediate release while noting that the typical remedy in a habeas action is release); *Pineda-Berrios*, 2026 WL 384159 at *8 (ordering petitioner's immediate release); *Rojas*, 2025 WL 3034183 at *9 (same); *see also Pinchi*, 792 F. Supp. 3d at 1030 (upholding temporary restraining order under which the petitioner had already been released); *Martinez Hernandez v. Andrews*, No. 25-cv-1035-JLT-HBK, 2025 WL

2495767, at *12 (E.D. Cal. Aug. 28, 2025) (ordering petitioner's continued detention pending a "timely" bond hearing where "there is a dispute of fact as to whether Petitioner repeatedly violated the terms of his parole") (collecting cases); *Chicoze-Ezechi*, 2026 WL 265733 at *2-3 (stating that "a post- deprivation bond hearing is an inadequate procedural safeguard because it would occur only after detention and thus fails to address an erroneous deprivation of liberty."); *E.A. T.B.*, 795 F. Supp. 3d at 1322.

Here, Respondents' own evidence confirms that the required procedures were never followed. The declaration of Deportation Officer John Mansur states only that "[o]n November 13, 2025, DHS officers encountered Petitioner at or near Key West, Florida. Petitioner was arrested and detained pending resolution of removal proceedings, and his release on OREC was terminated." (Doc. 7-1 ¶ 9, n 1). The declaration does not assert that Petitioner violated any condition of release, that DHS issued written notice terminating parole or release, or that DHS made an individualized determination that the purpose of parole had been served. *Id.*

Respondents' theory would allow DHS to bypass the mandatory procedures governing termination of parole or revocation of release and later attempt to cure the violation by providing process after the fact. Nothing in the INA or the governing regulations authorizes such retroactive compliance. Once DHS released Petitioner, it was required to follow the procedures prescribed by regulation before returning him to custody. Because DHS failed to comply with the procedures required to revoke parole or release, Petitioner's re-detention is unlawful.

IV. Respondents' APA Jurisdiction Argument Fails.

Respondents argue that the Court lacks jurisdiction over Petitioner's APA claim because habeas provides an alternative remedy. That argument mischaracterizes Petitioner's claim. The

APA claim is pled in the alternative and challenges the agency action that produced Petitioner's detention—namely DHS's failure to comply with the regulations governing termination of parole or revocation of release. Claims that an agency acted "not in accordance with law" or failed to follow binding regulations fall squarely within the scope of the APA. 5 U.S.C. § 706(2)(A).

Moreover, Respondents' reliance on *J.G.G. v. Trump* is misplaced. That case involved direct challenges to detention itself; here Petitioner challenges unlawful agency action.

Even if the Court concludes that the APA claim is unnecessary, the Court may simply resolve the case through habeas.

CONCLUSION

For the foregoing reasons, the Court should reject Respondents' successive petition argument, grant the petition for habeas corpus, and order Petitioner's immediate release.

Respectfully submitted,

/s *Deliane Quiles*
Deliane Quiles, Esq.
Florida Bar No. 1044089
Liliana Y. Gomez, P.A.
5000 SW 75th Ave., Suite 400
Miami, FL 33155
786.502.7615 Tel
Deliane@gomezquileslaw.com
Counsel for Petitioner

Dated: March 12, 2026

LENGTH LIMITATION CERTIFICATION

I hereby certify that the foregoing paper complies with the length limitation set forth in DDD Civ. P.S. III(A)(1).

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

/s *Deliane Quiles*
Deliane Quiles, Esq.
Florida Bar No. 1044089
Liliana Y. Gomez, P.A.
5000 SW 75th Ave., Suite 400
Miami, FL 33155
786.502.7615 Tel
Deliane@gomezquileslaw.com
Counsel for Petitioner

Dated: March 12, 2026