UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCIS JAVIER VASQUEZ DIAZ,

Petitioner,

v.

MICHAEL ROSE ET AL.,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

Case No. 2:26-cv-342

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

In light of ECF 5, submitted by the government on February 9, 2026 after Petitioner had already submitted his response, Petitioner provides additional arguments related to the expiration of his parole.

a. ***Even if Petitioner's parole did terminate automatically, he would still not be subject to mandatory detention***

In the event that this Court finds that Petitioner's parole terminated automatically, this would not change the Court's analysis related to mandatory detention, because the INA requires parolees to be treated the same as any noncitizens previously granted parole who no longer has parole status. *Sadykov v. Rose, et al.* 2:26-cv-00086-JMY, Dkt 10 (E.D. Pa. Jan. 16, 2026); *Talabadze v. Rose, et al.*, 2:26-cv-360-MRP, Dkt 10 (E.D. Pa. Jan. 30, 2026); *Qasemi v. Francis*, No. 25-cv-10029-LJL, 2025 WL 3654098 (S.D.N.Y. Dec. 17, 2025); *Singh v. Albarran*, 2025 WL 3640678, at *2 (E.D. Cal. Dec. 16, 2025); *Walizada*, 2025 WL 3551972, at *11; *Rodriguez v. Rokosky*, 2025 WL 3485628, at *2 (D.N.J. Dec. 3, 2025); *Salgado Bustos v. Raycraft*, 2025 WL 3022294, at *6 (E.D. Mich. Oct. 29, 2025); *E.V. v. Raycraft*, 2025 WL 2938594, at *3 (N.D. Ohio Oct. 16,

2025); *Espinoza v. Kaiser*, 2025 WL 2675785, at *5 (E.D. Cal. Sept. 18, 2025); *Munoz Materano v. Arteta*, 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025); *Aviles-Mena v. Kaiser*, 2025 WL 2578215, at *4 (N.D. Cal. Sept. 5, 2025); *Make the Road N.Y. v. Noem*, 2025 WL 2494908, at *4 (D.D.C. Aug. 29, 2025). Respondents ignore the part of 8 C.F.R. § 212.5(e)(1)(ii) that states that the termination should occur "**in accordance with 8 C.F.R. § 212.5(e)(2)**, except that no written notice shall be required." (emphasis added). 8 C.F.R. § 212.5(e)(2) provides that after a Petitioner is returned to custody, his case "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 C.F.R. § 212.5(e)(2). Notably, it does not say that it should continue to be dealt with in the same manner as that of any "arriving alien" or "alien arriving to the United States." Respondents argue that this section means that Petitioner must be treated as if he were never paroled and that his detention is now mandatory. However, this is an incorrect interpretation of the statute.

The court in *Qasemi v. Francis* dealt with this exact situation of an automatically terminated parole. *Qasemi v. Francis*, No. 25-cv-10029-LJL, 2025 WL 3654098 (S.D.N.Y. Dec. 17, 2025). There, the Petitioner had also been released on a humanitarian parole and was given a similar Interim Notice Authorizing Parole. *Id.* He was detained after more than one year had passed. *Id.* The Court found that although the Petitioner in that case was " an 'applicant for admission' within the meaning of Section 1182(d)(5)(A), he [was] not a noncitizen 'arriving in the United States' within the meaning of Section 1225(b)(1)(A)(i)." *Id.* In order to be subject to mandatory detention, the Petitioner must either be 1) an alien arriving in the United States, or 2) described in clause (iii) of Section 1225(b)(1). *Id.* Section 1225(b)(1) requires that an alien must be arriving in the United States. 8 U.S.C. 1225(b)(1). *Id.* The Court applied the plain meaning of "arriving into the United States" to find that because the Petitioner had been paroled into the United

States and had lived in the interior of the United States for years, he was no longer a noncitizen arriving into the United States. *Qasemi v. Francis*, No. 25-cv-10029-LJL, 2025 WL 3654098 (S.D.N.Y. Dec. 17, 2025). The Court held that the plain meaning also was confirmed by the statutory context, because Section 1225(b)(1)'s title is "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled," which contemplates those who are arriving to the United States who have not been screened or inspected. *Id.* Although the government was right to hold the Petitioner in that case under mandatory detention when he arrived into the United States and was detained, they lost the ability to do so again after they released him on humanitarian parole and he resided in the United States for years. *Id.* Similar to in *Qasemi*, the Petitioner in this case was already within the United States and was not arriving into the United States at the time of his recent re-detention. He also is not described in clause (iii) of Section 1225(b)(1) because he has been paroled into the United States and he has been in the United States for more than two years. Several courts, including courts in the Eastern District of Pennsylvania, have also found that after an individual is granted parole and spends time within the United States, the person is no longer subject to the mandatory detention provisions of Section 1225(b)(1) and instead is subject to discretionary detention under Section 1226 just like other applicants for admission. *See e.g., Sadykov v. Rose, et al.* 2:26-cv-00086-JMY, Dkt 10 (E.D. Pa. Jan. 16, 2026) [providing long string cite of similar cases within the Eastern District of Pennsylvania and outside]; *Bustos v. Raycraft*, No. 25-cv-13202, 2025 WL 3022294, at *6 (E.D. Mich. Oct. 29, 2025); *Coalition for Humane Immigrant Rights v. Noem*, 2025 WL 2192986, at *27 (D.D.C. Aug. 1, 2025); *Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025); *Aviles-Mena v. Kaiser*, No. 25-cv-6783, 2025 WL 2578215, at *4 (N.D. Cal. Sept. 5, 2025).

The Respondents also erroneously argues that the Petitioner should be returned to mandatory detention due to the language in 8 U.S.C. § 212.5(e)(2)(i). However, as the Court in *Qasemi* held, the language of Section 1182(d)(5)(A) does not state that a noncitizen is returned to the statute that they held upon their parole, that they revert to status as an "arriving alien," or that they must be detained. *Qasemi v. Francis*, No. 25-cv-10029-LJL, 2025 WL 3654098 (S.D.N.Y. Dec. 17, 2025). The Court held that "custody" does not mean a return to physical custody, as there is a distinction between "detention" and "custody." *Id.* Congress frequently uses the word "detention" and yet did not choose to use it here. *Id.* "When 'custody' is intended to denote detention, it is preceded by the modifier 'physical,' or 'in.'" *Id.* Rather, the noncitizen who is returned to the custody from which he was paroled loses the freedoms associated with parole status and is subject to the same constraints on liberty that apply to any noncitizen in removal proceedings without parole. *Id.* "A noncitizen is not reverted by operation of law to status as an arriving alien—they remain a noncitizen living in the United States who used to be paroled and must be treated by the INA accordingly." *Id.* This conclusion is also necessary by reference to the statute as a whole, because Section 1225(b)(1)(A)(iii)(II) expressly exempts people who have been paroled from the ambit of mandatory detention. *Id.* When an individual who has been paroled shall continue to be dealt with in the same manner as an applicant for admission, he is therefore treated like the vast majority of undocumented immigrants currently in the United States who are not subject to expedited removal. *Id.* These applicants for admission who are within the United States at the time of detention are necessarily detained under the discretionary basis of Section 1226(a). *Id.* This reading of the statute is also supported by the fact that Section 1225(b)(1)(B)(iii)(IV) which states that an "alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution…" Here, Petitioner has already been found to have a

credible fear of persecution- this is the reason Respondents granted him parole in the first place. Nowhere in the statute does it say that upon expiration of the parole he shall be subject to mandatory detention while awaiting a final decision on his asylum application.

Respondents' own actions towards Petitioner are consistent with the textual analysis of Sections 1182(d)(5)(A) and 1225(b)(1)(A)(iii) set forth above, and the resulting conclusion that the grant of humanitarian parole to Petitioner moved him out of expedited removal proceedings and related mandatory detention. The record does not include any facts showing that Respondents made any effort to return Petitioner to ICE detention at any time between the expiration of his parole until now. Although Respondents argue that Section 1183(d)(5)(A) required Petitioner to be returned to custody after the expiration of the parole, they offer no explanation for why they waited until 2026 to arrest and detain him, although they allege the grant of parole expired in 2024. Petitioner attended ICE check-ins regularly but was not arrested and placed into mandatory detention until January 13, 2026. He had attended ICE check-ins between 2024 and his most recent check-in where he was re-detained, but Respondents did not detain him at those check-ins. If he were subject to mandatory detention as a result of his parole's expiration, then Respondents should have detained him following the expiration. Respondents did not designate Respondent as an arriving alien on *either* of the two NTAs that have been issued against him. ECF 1-3; ECF 2-3. The record plainly shows that after Respondents paroled Petitioner into the United States under Section 1182(d)(5)(A), they treated him as a noncitizen subject to Section 1226 and not as a noncitizen subject to mandatory detention under any of the applicable provisions of Section 1225(b). Accordingly, because Petitioner is subject to detention under Section 1226, his detention should only occur after a discretionary decision is made, and it violates his rights to detain him

without an opportunity for a bond hearings, as a deluge of cases in the Eastern District (and the rest of the United States) have shown.

In the event that the Court disagrees with the requirement for notice and completion of the purpose of parole, there still is a high risk of erroneous deprivation of liberty as Petitioner has been detained under the mandatory detention provisions and there is no evidence Respondents have exercised discretion in their arrest of Petitioner. The Respondents have argued that they have detained Petitioner subject to mandatory detention principles, therefore making it impossible for them to have exercised discretion in their arrest. Because an exercise of discretion is required by Section 1226, his detention violated his due process rights. *Tumba v. Francis*, 2025 WL 3079014 (S.D.N.Y. Nov. 4, 2025). "The 'suggestion that government agents may sweep up any person they wish, for [no] reason [whatsoever] … so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment.'" *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025). Even if Respondents had a reason to detain Petitioner, they also are still erroneously detaining Petitioner without providing him an opportunity for a bond hearing. As has been found in countless opinions in the Eastern District recently, the government cannot detain an individual under 1226 without providing an opportunity for a bond hearing. And as already argued in Petitioner's initial response, this violation requires immediate release to remedy the violation.

CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Response to ECF 5 via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: February 9, 2026

/s/ Lina Ruth Duiker

LINA RUTH DUIKER

Attorney for Petitioner