

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

_____)	
JUNIOR FRANCOIS,)	
)	
Petitioner,)	
)	Civil No. 2:26-cv-00013
v.)	
)	
GREG HALE, in his official capacity as)	
Superintendent, Northwest State Correctional)	
Facility; DAVID W. JOHNSTON, in his official)	
capacity as Vermont Sub-Office Director of)	
Immigration and Customs Enforcement,)	
Enforcement and Removal Operations; PATRICIA)	
HYDE, in her official capacity as Acting Boston)	
Field Office Director, Immigration and Customs)	
Enforcement, Enforcement and Removal)	
Operations; TODD M. LYONS, in his official)	
capacity as Acting Director, U.S. Immigration and)	
Customs Enforcement; and PAMELA BONDI, in)	
her official capacity as U.S. Attorney General,)	
)	
Respondents.)	
_____)	

**FEDERAL RESPONDENTS' OPPOSITION TO
EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

Federal Respondents respectfully submit this opposition to the Petition for Writ of Habeas Corpus that Junior Francois filed with this Court on January 27, 2026. ECF No. 1 (the "Petition"). Petitioner is a noncitizen who entered the United States at a point of entry in Tucson, Arizona in 2024. Petitioner was detained, issued a Notice to Appear charging him with removability for lack of documents authorizing entry, and placed in removal proceedings, but he was released on parole. In early 2025, the Department of Homeland Security ("DHS") notified Petitioner that it revoked his parole. Petitioner was subsequently detained pending his removal proceedings at the port of entry in Highgate Springs, Vermont after he was refused entry to Canada. Petitioner alleges the revocation of his parole and resulting re-detention violate the

Immigration and Nationality Act (“INA”), its implementing regulations, the Administrative Procedures Act (“APA”), and the Fifth Amendment. Petitioner does not dispute that absent parole his detention is mandatory pursuant to 8 U.S.C. § 1252(b)(2). Because DHS has broad discretion to revoke parole that is not subject to judicial review, and Petitioner was provided notice of his parole revocation, he has failed to meet his burden to show his detention is unlawful. Therefore, the Petition should be denied.

RELEVANT BACKGROUND

A. Factual History

Petitioner is a citizen of Haiti who entered the United States less than two years ago on or about July 17, 2024. Pet. ¶ 18. Because he lacked documents allowing entry into the United States, Petitioner was inadmissible and was thus issued a Notice to Appear charging him with removability pursuant to 8 U.S.C. ¶ 1182(a)(7)(A)(i)(I) and ordering him to appear before an immigration judge on April 2, 2026. *See* Ex. A (Notice to Appear); *see also* Pet. ¶ 18. Petitioner was granted parole into the United States. *See* Ex. A; *see also* Pet. ¶ 18.

On April 30, 2025, DHS provided written notice to Petitioner that his parole was terminated, noting that Petitioner had previously received written notice seven days before revocation. *See* Ex. B (Notice of Intent to Revoke Employment Authorization). DHS also notified him that DHS intended to revoke his employment authorization as of May 13, 2025. *Id.* This written notice further confirmed: “This notice is an additional reminder that your status in the United States will be unlawful after your parole is terminated unless you have obtained some other status.” *Id.*

On January 11, 2026, Petitioner was detained at the Highgate Springs port of entry after he was refused entry to Canada. Ex. C. Customs and Border Protection (“CBP”) issued Petitioner

a Form I-200 Warrant for Arrest and a Notice of Custody Determination. Exs. D, E.

On January 26, 2026, Petitioner filed a Petition for Writ of Habeas Corpus and Emergency Motion for a Temporary Restraining Order. ECF Nos. 1, 2. Petitioner alleged revocation of his parole without written notice and a hearing and his subsequent re-detention violated: (1) 8 U.S.C. § 1182(d)(5) and 8 C.F.R. § 212.5; (2) his rights under the Fifth Amendment; and (3) the APA. Pet. ¶¶ 44-55.

On January 27, 2026, this Court ordered the Respondents to file an answer or respond to the Petition by January 30, 2026, and further ordered that Petitioner not be removed from the District of Vermont pending further order of the Court. ECF No. 6.

B. Relevant Legal Framework

Under Section 1225(b)(2), an individual “who is an applicant for admission” “shall be detained” for full (*i.e.*, non-expedited) removal proceedings under 8 U.S.C. § 1229a “if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The mandatory detention required by Section 1225(b)(2) extends throughout the applicant’s removal proceeding. *See Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

While Section 1225(b)(2) does not allow for individuals to be released on bond, the INA grants DHS discretion to exercise parole authority to temporarily release an applicant for admission, but only for urgent humanitarian reasons or significant public benefit. 8 U.S.C. § 1182(d)(5)(A). However, “such parole of such [noncitizen] shall not be regarded as an admission of the [noncitizen] and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the [noncitizen] shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the

same manner as that of any other applicant for admission to the United States.” *Id.*; *see also* 8 C.F.R. § 212.5(e)(2)(i). When DHS exercises its discretion to terminate parole, it may do so upon “written notice to the [noncitizen].” 8 C.F.R. § 212.5(e)(2)(i).

STANDARD OF REVIEW

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress has separately stripped the court of jurisdiction to hear the claim. *Zadvydas*, 533 U.S. 678, 687-88 (2001). The Supreme Court has been explicit that a habeas petitioner bears the burden of proving that his custody violates the Constitution, laws, or treatises of the United States such that a writ of habeas corpus should be granted. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) (“it is the petitioner who bears the burden of proving that he is being held contrary to law”).

ARGUMENT

A. The Court Lacks Subject Matter Jurisdiction to Review DHS’s Decision to Revoke Petitioner’s Parole.

Petitioner suggests DHS’s decision to revoke his parole was in violation of the INA and the APA. Pet. ¶ 31 (“DHS’s decision to revoke [Petitioner’s] parole . . . is arbitrary and capricious.”). Any such claims by Petitioner must be dismissed because the INA precludes judicial review of the discretionary decision to revoke Petitioner’s parole. Section 1252(a)(2)(B)(ii) provides that “[n]otwithstanding any . . . habeas corpus provision . . . no court shall have jurisdiction to review— . . . any [] decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is . . . in the discretion of the Attorney

General or the Secretary of Homeland Security.” The Second Circuit has held that district courts lack subject matter jurisdiction to review an indirect challenge to immigration officials’ discretionary decisions, including those with respect to parole. *See Giammarco v. Kerlikowske*, 665 F. App’x 24, 26 (2d Cir. 2016) (jurisdictional bar precludes review of habeas corpus petition seeking authorization for temporary reentry because it was an indirect challenge to denial of parole). Petitioner’s claims are each based on the revocation of his parole, *see, e.g.*, Pet. ¶¶ 45, 47, 55, which “is an exercise of discretionary authority by the immigration authorities,” *Samirah v. Holder*, 627 F.3d 652, 656 (7th Cir. 2010); *see also Ofosu v. McElry*, 98 F.3d. 694, 700 (2d Cir. 1996) (“The INS may demand at any time that the [noncitizen] return to custody.”). Therefore, to the extent Petitioner challenges the decision to revoke his parole, this Court lacks jurisdiction to hear those claims.

B. Revocation of Petitioner’s Parole Was Lawful.

As an initial matter, Petitioner acknowledges he is subject to mandatory detention under Section 1225(b)(2). *See* Pet. ¶¶ 24-26 (explaining that “[i]ndividuals like [Petitioner] who are, based on information and belief, detained under 1225(b)(2)” may only seek release through humanitarian parole); *id.* ¶ 13 (arguing jurisdiction exists to challenge detention without bond under Section 1225(b)); *id.* ¶ 17 (arguing that exhaustion is not required because individuals detained under Section 1225(b) are subject to detention without bond). This case thus is not governed by this Court’s prior decisions addressing the applicability of Section 1225(b)(2). *See Piedrahita-Sanchez v. Turek et al*, No. 2:25-cv-875 (D. Vt. Nov. 14, 2025); *Reynoso De Luis v. Trump et al*, No. 2:25-cv-921, 2025 WL 3763397 (D. Vt. Dec. 30, 2025).

1. Petitioner Received the Process He Is Due Under the INA and Implementing Regulations.

Petitioner’s first and third counts must be dismissed because he received written notice of

revocation of his parole. DHS may in its discretion terminate parole “when the purposes of such parole shall . . . have been served[.]” 8 U.S.C. § 1182(d)(5); *see also* 8 C.F.R. § 212.5(e)(2)(i) (authorizing termination of parole “upon accomplishment of the purpose for which parole was authorized or when in the opinion of [certain immigration officials], neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States.”). As for termination of parole, the regulations state only that “parole shall be terminated upon written notice to the [noncitizen],” and no additional process is required before revocation of parole. 8 C.F.R. § 212.5(e)(2)(i). Here, consistent with the INA and its implementing regulations, Petitioner received written notice of termination of his parole. *See* Ex. B.

The INA and its implementing regulations require no more. The First Circuit recently held noncitizens were unlikely to succeed on the merits of their claim that Section 1182(d)(5) requires DHS to make case-by-case determinations on parole revocations. *See Doe v. Noem*, 152 F.4th 272, 285-287 (1st Cir. 2025); *see also Noem v. Doe*, 605 U.S. --, 145 S.Ct. 1524, 1524 (May 30, 2025) (in same case, granting stay pending outcome of appeal of district court decision that held case-by-case determination of parole revocation is required). While district courts within the Second Circuit have held otherwise, those decisions largely appear to originate from a district court opinion that relied on the reasoning in *Doe* that has since been rejected by the First Circuit. *See, e.g., Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (relying on district court decision in *Doe* to construe Section 1182(d)(5) as requiring parole revocation decisions to be made on a case-by-case basis that accounts for the reasons an individual received parole). Therefore, Petitioner’s claim that Federal Respondents violated the INA, its implementing regulations, and the APA must be dismissed because he has received the process that is required under the applicable statute and regulations.

2. Revocation of Petitioner's Parole Comports With the Fifth Amendment.

Similarly, the Fifth Amendment does not afford a right to a hearing regarding revocation of a noncitizen's parole. While “[i]t is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings,” *Reno v. Flores*, 507 U.S. 292, 306 (1993), it is also well established that “Congress may make rules as to the [noncitizens] that would be unacceptable if applied to citizen,” *Demore v. Kim*, 538 U.S. 522 (2003); *see also Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (“Congress is entitled to set the conditions for [a noncitizen's] lawful entry into this country and that, as a result, an [noncitizen] at the threshold of initial entry . . . has no entitlement to procedural rights other than those afforded by statute.”). The Second Circuit has recognized that “[t]here is no basis for [the] contention that due process requires a hearing on revocation of parole, [when] Congress did not provide one.” *Wong Hing Fun v. Esperdy*, 335 F.2d 656, 657 (2d Cir. 1964); *see Ofosu v. McElroy*, 98 F.3d 694, 700 (2d Cir. 1996) (“There is simply no basis for [the petitioner's] insistence that the INS leap procedural hurdles to terminate parole . . . [P]arole is a matter of the Attorney General's discretion (and of the opinion of those she appoints) and may be ended without hearings or special forms”).

In *Bermudez Paiz v. Decker*, No. 18CV4759GHWBCM, (S.D.N.Y. Dec. 27, 2018), the court rejected a petitioner's argument that the Fifth Amendment required additional protections beyond written notice when the government revokes a noncitizen's parole. The court explained that “[b]ecause the statute ‘makes clear that whether and for how long temporary parole is granted are matters entirely within the discretion of the Attorney General,’ it ‘does not create any liberty interest in temporary parole that is protected by the Fifth Amendment.’” *Id.* at *17 (quoting *Kwai Fun Wong v. United States*, 373 F.3d 952, 968 (9th Cir. 2004)). Moreover, the court explicitly noted that the “regulatory language does not specify that the notice must be

provided in advance, and there are obvious reasons why, at least in certain circumstances, advance notice of DHS's intent to revoke parole would be ill-advised." *Id.* at *17 n.21. Here, Petitioner received written notice of his parole revocation. Despite receiving notice of his revocation at least nine months ago, Petitioner apparently has made no effort to challenge that revocation. Therefore, Petitioner has failed to meet his burden to establish that revocation of his parole and subsequent re-detention violate the Fifth Amendment.

C. Any Potential Relief Should Be Limited to a Hearing in Immigration Court.

Should this Court disagree and determine additional process is required for parole revocation or Petitioner's detention (notwithstanding Petitioner's acknowledgement that he falls within Section 1225(b) and its mandatory detention provision), immediate release is not the proper remedy. Rather, the appropriate remedy would be to order that Petitioner receive a hearing in immigration court, as this Court has done when granting habeas petitions that address similar (though distinct) issues. *See, e.g., Piedrahita-Sanchez*, No. 2:25-cv-875, at *18.

For the foregoing reasons, intervention by this Court is unwarranted at this juncture, and the Petition should be denied. However, even if the Court were to find that Petitioner has met his burden to justify judicial intervention, the Court should not order his immediate release. Instead, the Court should in such instance order that Petitioner be afforded a hearing in immigration court.

Dated at Burlington, in the District of Vermont, January 30, 2026.

Respectfully submitted,

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