



## ARGUMENT

### **I. Petitioner is Being Detained Pursuant to 8 USC § 1226 Following the Expiry of his Parole.**

As Respondents explained in their initial Response, even if a noncitizen is initially placed in expedited removal, they can be removed and placed in full removal proceedings pursuant to INA §240; 8 U.S.C. §1229a by undergoing to credible fear process. *See* Respondents' Brief at 4. As Respondents further explained, Mr. Moreira underwent the credible fear process and was placed in full removal proceedings pursuant to INA §240; 8 U.S.C. §1229a. *See Id.* at 3. Once placed in full removal proceedings, following a positive credible fear determination, a noncitizen is eligible for a bond hearing, so long as they are not otherwise excluded from bond hearings, such as those convicted of certain crimes. *See In Re XK*, 23 I&N 731 (BIA 2005).

The Department of Homeland Security issued a Notice to Appear initiating these full removal proceedings and marking Mr. Moreira as "an alien present in the United States" rather than an arriving alien. *See* Respondents' Exhibit F. Thus, there is no dispute that Mr. Moreira is currently in full removal proceedings pursuant to INA §240; 8 U.S.C. §1229a. Noncitizens classified as "arriving aliens" are subject to mandatory detention and can be detained without a bond hearing, however, that is not the case here, because Mr. Moreira was marked as "an alien present in the United States" rather than "arriving alien". *See* Not. of Supp. Authority, p. 3.

Further, Petitioner's parole being expired at the time of his detention further supports the claim that Petitioner is detained pursuant to §1226, because upon expiry "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". *See* 8 U.S.C. § 1182(d)(5)(A). "The Supreme Court has confirmed that 'nothing in this text [of Section 1182(d)(5)(A)] ... affirmatively authorizes detention,' so the statute is not an independent

authority to detain parolees following the expiration of parole.” *Rodriguez-Acurio v. Almodovar*, — F.Supp.3d —, —, 2025 WL 3314420, at \*18 (E.D.N.Y. Nov. 28, 2025) (quoting *Clark v. Martinez*, 543 U.S. 371, 385(2005)). Custody as a “restraints on a man's liberty, restraints not shared by the public generally”, in this context means the loss of the freedoms Mr. Moreira once had when he was paroled, such as the right to a work authorization document or the ability to apply for public benefits. See *Qasemi v. Francis*, No. 25-CV-10029, 2025 WL 3654098, at \*10, 11. (S.D.N.Y. Dec. 17, 2025). Once parole is terminated or expires, a noncitizen may accrue unlawful presence, which could prevent their ability to adjust in the future. Following this return to custody, Mr. Moriera’s “case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States”. See 8 U.S.C. § 1182(d)(5)(A). “Thus, Section 1182(d)(5)(A) suggests that rather than reverting to any prior status, a noncitizen whose parole has expired is treated like the vast majority of undocumented immigrants currently living in this country who are not subjected to expedited removal.” *Rodriguez-Acurio*, 2025 WL 3314420, at \*17.

## **II. Petitioner’s detention is a violation of his right to procedural due process.**

To determine whether administrative procedures are constitutionally sufficient, the Court must weigh three factors (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that interest through the available procedures, and (3) the Government’s interest. See *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976). All of these factors weigh in Petitioner’s favor.

Freedom from imprisonment, including government detention, is central to the liberty protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has

a substantial personal interest given that his interest is his freedom from government detention, the liberty that “lies at the heart of the [Due Process] Clause protects”. *See id.*

The risk of erroneous deprivation of Petitioner’s liberty interest is extremely high, given that Respondents had already determined that Petitioner does not pose a danger to society and is not a flight risk when he entered the United States and was subsequently paroled. *See* Respondents’ Exhibit G. Petitioner has complied with immigration laws and reported regularly with Immigration and Customs Enforcement, underscoring that he poses no meaningful risk of flight. Respondents do not allege that Mr. Moreira presented any danger or flight risk to justify his re-detention. Given that Mr. Moreira has no criminal history outside of traffic violations, and there has been no change in circumstances from when Respondents initially released and issued his parole, the risk of an erroneous deprivation of her liberty is extremely high.

Respondents have a “generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live”. *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at \*4 (W.D. Tex. Nov. 20, 2025). That interest is not advanced by automatically re-detaining noncitizens whom the government has already determined pose neither a flight risk nor a danger to the community, absent any showing of changed circumstances. *See Alvarez-Rico v. Noem, et al*, 4:26-CV-00729, 2026 WL 522322, at \*6 (S.D. Tex. Feb. 25, 2026). Considering the substantial financial costs of detention, the fiscal and administrative burden of affording such individuals some form of hearing is minimal compared to the burden of re-detaining thousands of noncitizens who were previously released on recognizance, or in the case of Petitioner, paroled. *See id.*

Given Petitioner’s weighty interest in his liberty, the high risk of erroneous deprivation of that liberty, and the minimal weight of the Government’s interest, it is evident that Petitioner has

raised a substantial claim that her continued confinement without violates her procedural due process rights.

**III. Petitioner's detention is a violation of her right to substantive due process.**

Given that Petitioner has only ever been in civil proceedings, there is no punitive purpose; instead, the goals of civil detention are to ensure attendance at future immigration proceedings and to prevent danger to the community. *See Zadvydas*, 533 U.S. at 690.

Respondents have already determined that Petitioner does not pose a danger to society and is not a flight risk when they released and issued him parole, rendering her re-detention is unnecessary. *See* Exh A. 8 C.F.R §1236.1(c)(8) also requires that the alien demonstrate to the satisfaction of the Immigration Judge or officer that the alien would not pose a danger to society

Preventing flight, which refers to avoiding removal in immigration cases, is a minimal concern in this case given that Petitioner has complied with immigration requirements of him, and reported to ICE regularly, and he has familial ties to the U.S., which incentivizes him to regulate his status. With respect to danger to the community, Mr. Moreira has no contacts with law enforcement outside of traffic infractions. Respondents had already made these determinations when he was previously detained at the border and subsequently released and paroled. *See* Respondents' Exhibit G.

Given that Petitioner has no criminal history outside of traffic infractions, and there has been no change in circumstances from when Respondents initially released and issued his parole, Petitioner's continued detention is for an improper purpose, which violates his substantive due process rights.

**CONCLUSION**

For the foregoing reasons and those expressed in the Petition for Habeas Corpus and Request for Order to Show Cause, and his Reply, this Court should grant the petition.

Respectfully submitted,

*/s/ Kenia Garcia*

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Dated: March 2, 2026

**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Respectfully submitted,

*/s/ Kenia Garcia*

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