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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VINOD KUMAR, Petitioner, v. PATRICK DIVVER, et al., Respondents.	**TRAVERSE** Case No. 26-cv-502-RBM-MMP

INTRODUCTION

Petitioner submits this traverse in reply to Respondents' Return (Doc. 6).

As an initial matter, undersigned counsel has spoken with Mr. Kumar's direct contact, who has inquired with Mr. Kumar about the *pro se* petition filed in 26-cv-00337-RBM-MMP. Mr. Kumar has clearly stated that he did not file that petition, and is unaware of how it was filed. Shortly after his detention, Mr. Kumar hired another attorney, and undersigned counsel has attempted unsuccessfully to call that attorney to inquire about the 26-cv-00337-RBM-MMP matter; however, the docket appears to show a *pro se* filing, so it is unclear what role, if any, that prior attorney played in the filing of the petition. Nevertheless, both petitions are now before the same Judge, and so Petitioner would request, through counsel, that this Court adjudicate the underlying Petition.

ARGUMENT

Respondents incorrectly state that "Petitioner applied for entry into the United States at the Lukeville, Arizona Port of Entry. Doc. 6-1 at 1. Petitioner actually entered without inspection, seven miles west of the Lukeville, Arizona Port of Entry, and was thereafter apprehended by Customs and Border Protection (CBP). *See* Exh. A, attached; *see also*, Doc. 6-1, Exh. 1, at 1 [Date, Place, Time and Manner of Last Entry: 05/07/2023 Unknown Time, LUK, WI-without inspection]; Doc. 6-1, Exh. 1, at 2 [Current Administrative Charges: ... 212a6Ai – Alien Present Without Admission or Parole – (PWAs)]; Doc. 6-1, Exh. 2, at 1 ["You entered the United States at or near Lukeville, AZ … "You were not then admitted or paroled …"]. It is not until nearly two months after his most-recent arrest on November 30, 2025, that Respondents now claim he "applied for admission at Lukeville, AZ Port of Entry" and that he is an "arriving alien." *See* Doc. 6-1, Exh. 3.

I. Jurisdiction

As a preliminary matter, courts in this District have consistently rejected Respondents' argument that similarly situated petitioners' claims are jurisdictionally barred under 8 U.S.C. § 1252(g). *See Velasquez-Chinga v. Noem*, No. 3:26-CV-00105-RBM-KSC, 2026 WL 311507, at *2 (S.D. Cal. Feb. 5, 2026), citing *Noori v. LaRose*, 2025 WL 2800149, at *7 (S.D. Cal. Oct. 1, 2025); *Araujo v. LaRose*, No. 25cv2942-BTM-MMP, 2025 WL 3278016, at *1 (S.D. Cal. Nov. 24, 2025) ("There will be jurisdiction if DHS failed to follow the law when revoking parole.").

II. Petitioner's re-detention & Revocation of Parole is Unlawful and Unconstitutional

Petitioner avers that this court should follow its holding in *Velasquez-Chinga v. Noem*, No. 3:26-CV-00105-RBM-KSC, 2026 WL 311507, at *2 (S.D. Cal. Feb. 5, 2026) and *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *6 (S.D. Cal. Nov. 13, 2025).

Petitioner entered the United States without inspection and was subsequently paroled into the United States under 8 U.S.C. § 1182(d)(5)(A).

"Applicants for admission may be temporarily released on parole [into the United States] 'for urgent humanitarian reasons or significant public benefit,'" as set forth in 8 U.S.C. § 1182(d)(5)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined "on a case-by-case basis." 8 U.S.C. § 1182(d)(5)(A). Then, **"when the purpose of the parole has been served,"** § 1182(d)(5)(A) provides that "the alien 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." *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

To terminate the previously granted parole, the agency must comply with the applicable regulatory and statutory requirements. As set forth in 8 C.F.R. § 212.5(e)(2)(i), which governs the "[t]ermination of parole":

> "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."

8 C.F.R. § 212.5(e)(2)(i). That is, "[u]nder the governing regulation, [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is accomplished, or humanitarian reasons and the public benefit no longer warrant parole." *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)); *see also, Sadykov v. Rose, et al.,* 2:26-cv-00086-JMY, Dkt. 10 (E.D. Pa. Jan. 16, 2026). As explained below, Respondents have failed to follow the applicable statutory and regulatory provisions to terminate Petitioner's parole.

a. *Revocation of Parole*

"Under the governing regulation, [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is accomplished, or humanitarian reasons and the public benefit no longer warrant parole." *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal.

Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)). The purpose of Petitioner's parole – to apply for asylum – was not accomplished and has not been completed – in other words, the purpose of his parole has not been served; and Respondents can point to no other reason for the revocation of Petitioner's parole.

Additionally, the revocation of parole is not discretionary – to come to this conclusion one would need to make the illogical leap that "opinion" is equivalent to "discretion." Congress gave the Secretary of Homeland Security authority to terminate parole grants when, "in [her] opinion," the purpose of parole has been served. 8 U.S.C. § 1182(d)(5)(A) The entire text of 8 U.S.C. § 1182 uses the word "discretion" approximately 25 times; Congress certainly *could have* written section 1182(d)(5)(A) to state "in the [*discretion*] of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody" … but it did not do so. We "presume that Congress expressed its legislative intent through the ordinary meaning of the words it chose to use." *United States v. Knox*, 32 F.3d 733, 744 (3d Cir. 1994). Congress did not use "discretion" in lieu of "opinion", likely because an "opinion" is significantly distinct from a discretionary determination. An opinion is a judgment, belief, or evaluation; a discretionary decision, on the other hand, is one where the decision-maker is free to choose among multiple acceptable options without being strictly bound by rules or criteria. But here, based on the statute and the regulations, *there are rules and criteria* for the revocation of Petitioner's parole and his related re-detention.

It is worth repeating, the purpose of Petitioner's parole – to apply for asylum – was not accomplished and has not been completed – in other words, the purpose of his parole has not been served; and Respondents can point to no other reason for the revocation of Petitioner's parole.

b. ***Revocation of parole requires a case-by-case analysis***

Parole revocations in the context of the INA must occur on a case-by-case basis and may occur "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled."

Y-Z-H-L v. Bostock, 2025 WL 1898025, at *12 (quoting 8 C.F.R. § 212.5(e)). 8 C.F.R. § 212.5(e) requires written notice of the termination of parole except where the immigrant has departed or when the specified period of parole has expired.

Applying *Y-Z-H-L* and § 212.5(e), in *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025), the court found that the INA requires a case-by-case analysis as to the decision to revoke humanitarian parole:

> "This Court agrees that both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole "must attend to the reasons an individual [noncitizen] received parole." *See id.* There is no indication in the record that the government conducted any such analysis here. On the contrary, the letter Mata Velasquez received merely stated summarily that DHS had "revoked [his] parole." Docket Item 62-1 at 5. Thus, there is no indication that—as required by the statute and regulations—an official with authority made a determination specific to Mata Velasquez that either "the purpose for which [his] parole was authorized" has been "accomplish[ed]" or that "neither humanitarian reasons nor public benefit warrants [his] continued presence...in the United States." *See* 8 C.F.R. § 212.5(e)(2)(i). As a result, DHS's revocation of Mata Velasquez's parole violated his rights under the statute and regulations. *See Y-Z-L-H, 2025* WL 1898025, at *13."

In *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025), the court reached a similar conclusion relying on the Due Process Clause:

> "... **even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.** *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.")."

Id. (emphasis added). Other courts have held similarly. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-

punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.").

Again, purpose of Petitioner's parole – to apply for asylum – was not accomplished and has not been completed – in other words, the purpose of his parole has not been served; and Respondents can point to no other reason for the revocation of Petitioner's parole.

III. Due Process

Petitioner has lived freely in the United States for nearly three years – establishing himself as law-abiding members of the community. Their presence in the United States was birthed by Respondents themselves, who on May 11, 2023, analyzed Petitioner's individualized facts and circumstances, and thereafter granted him permission to lawfully enter the United States while Petitioner pursued his application for asylum. Then, abruptly, and without *any* reason proffered by Respondents, and certainly without any notice to Petitioner, that freedom was ripped away from Petitioner on November 30, 2025, when Petitioner, while continuing to follow Respondents' orders in lock-step, was arrested because he was working for Uber and was called to a military base to pick up a customer.

"The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it." *Matthews v. Eldridge*, 424 U.S. 319, 348 (1976). Respondents neglect the fact that Petitioner's constitutional rights were solidified when he was, on June 13, 2024, permitted to "pass through our gates." An alien who is "on the threshold of initial entry" stands on a footing different from those who have "passed through our gates." *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999), amended (Dec. 30, 1999), quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544, 70 S.Ct. 309, 94 L.Ed. 317 (1950)).

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. The Due Process Clause extends to all "persons"

regardless of status, including non-citizens, whether here lawfully, unlawfully, temporarily, or permanently. *Zadvydas* at 693. To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. Further, government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances "where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas* at 690.

a. *Petitioner's Private Interest*

First, Petitioner's "private interest ... affected by the official action is the most elemental of liberty interests—the interest in being free from physical detention." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, (2004). Respondent's reliance on *Demore* and the Congress's interest in regulating immigration does little to tip the scales. "It is clear that commitment for *any* purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States,* 463 U.S. 354, 361, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (emphasis added; internal quotation marks omitted). At this stage in the *Mathews* calculus, the Court must consider the interest of the *erroneously* detained individual. *Carey v. Piphus,* 435 U.S. 247, 259 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Hamdi* at 2646–47.

b. *The Risk of an Erroneous Deprivation*

As to the second prong of the *Mathews v. Eldridge* balancing test, the Court should find that the risk of erroneous deprivation is particularly high here. The purpose of requiring an opinion regarding the completion of purpose of parole (8 U.S.C. § 1182(d)(5)(A)) and written notice prior to the decision to detain a noncitizen (8 C.F.R. § 212.5(e)) who was previously paroled into the United States is to prevent an erroneous deprivation of liberty. This purpose is illustrated clearly here, as Petitioner has raised significant and supported legal arguments against Respondents' detention of Petitioner under §1225(b). Further, Respondents have presented no evidence in the record suggesting that Petitioner's purpose for parole has been accomplished, that there was any analysis or thought put into his detention, that he is a flight risk or a danger to his community; only that he is subject to mandatory detention. *See id.*

Petitioner was granted parole based on his individualized facts and circumstances; he was was granted permission to lawfully enter the United States on a temporary basis and given humanitarian parole while the pursued his applications for asylum. Respondents, *at that time*, had the right to detain Petitioner under 8 U.S.C. § 1225(b), but chose not to based on Petitioner's specific circumstances. And, "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Ent.*, 603 U.S. at 413.

In Petitioner's case, immigration officials, vested with authority delegated by Congress to the Attorney General and DHS, first determined that Petitioner should be paroled into the United States, not subject to mandatory detention, and placed into standard removal proceedings. *See* Exhibit A, attached. The unilateral decision by the ICE on January 13, 2026, and without notice to Petitioner, chose to apply a different statutory framework to Petitioner's circumstances despite earlier determining otherwise now leaves his liberty interest at risk. Petitioner contends that the Respondents

may not now extend the bounds of their authority to apply § 1225(b) against him, and this Court must ensure proper application of the laws against Petitioner.

c. *The Government's Interest*

The final *Mathews* factor concerns the United States' interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. *Mathews*, 424 U.S. at 335. Petitioner recognizes that the United States has an interest in meaningful immigration laws that advance its stated policies. However, the United States has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means. It is not appropriate to utilize the "wrong" statute against any person to ensure their continued detention. Respondents may not choose unilaterally when and how to apply duly enacted laws.

The Government's interests in detaining noncitizens are (1) ensuring that noncitizens do not abscond and (2) ensuring they do not commit crimes. *Zadvydas,* 533 U.S. at 690, 121 S.Ct. 2491. Respondents have provided no evidence or argument that Petitioner is either a flight risk or a danger, and the record would indicate that he is neither: he has no criminal record whatsoever, and he has attended his ICE and Immigration Court appointments when required. Respondents cannot show that their interest in detaining Petitioner without a bond hearing outweighs Petitioner's liberty interests; nor can they show that the effort and cost of providing Petitioner with procedural safeguards is burdensome.

Accordingly, all *Mathews* factors weigh heavily in support of Petitioner.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant this petition for writ of habeas corpus because he is detained in violation of federal law and/or the Constitution. Petitioner further requests this court order his immediate release from custody.

Respectfully Submitted,

Date: February 13, 2026

s/Christopher M. Casazza

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