The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONIA MOHAMMADI, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	No. C26-420-MLP RESPONDENTS' RETURN AND MOTION TO DISMISS NOTE ON MOTION CALENDAR: FEBRUARY 20, 2026 ORAL ARGUMENT REQUESTED

Respondents Pamela Bondi, United States Attorney General; Kristi Noem, Secretary of U.S. Department of Homeland Security ("DHS"); Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement ("ICE"); and Laura Hermosillo, Field Office Director, ICE Seattle Field Office, in their official capacities, hereby file this return and motion to dismiss the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition"), as directed by the Court in its order entered on February 9, 2026. *See* ECF No. 10.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

TABLE OF CONTENTS

INTRODUCTION 1
BACKGROUND 1
I. Relevant Statutory Framework 1
A. Parole Authority Under 8 U.S.C. § 1182(d)(5)(A) 1
B. Detention Authority Pursuant to 8 U.S.C. § 1225(b) 3
C. Administrative Procedure Act 3
II. Relevant Factual and Procedural Background 4
STANDARD OF REVIEW 6
III. Writ of Habeas Corpus (Count III) 6
IV. Dismissal for Lack of Subject Matter Jurisdiction Under Rule 12(b)(1) 6
V. Dismissal for Failure to State a Claim for Relief Under Rule 12(b)(6) 7
ARGUMENT 7
I. The Civil Claims Should be Dismissed (Counts I & II) 7
D. Civil Claims Are Not Appropriately Combined with a Habeas Petition 7
E. Counts I and II are Moot: Petitioner Does Not Show How Expired Parole Redresses the Purported Injury of Revoked Parole. 9
F. The Court Lacks Jurisdiction to Review the Revocation of Her Discretionary, Temporary, Now-Expired Parole. 10
G. Petitioner Fails to State a Claim That The Parole Revocation Was Unlawful. 13
H. Counts I and II Fail on the Merits Because Petitioner Pleads Facts Indicating She Is Ineligible for Further Parole. 17
I. Count I Fails As There Is No Due Process Interest in Discretionary Benefits 18
II. Petitioner's Habeas Petition Fails and Should Be Denied (Count III) 19
A. Petitioner's Detention Complies with Statute 19
B. Petitioner's Detention Comports with Due Process 22
CONCLUSION 25

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

TABLE OF AUTHORITIES

Cases **Page(s)**

Amanullah v. Nelson,
811 F.2d 1 (1st Cir. 1987) 16

Ashemuke v. ICE Field Off. Dir.,
2024 U.S. Dist. LEXIS 73224 (W.D. Wash. Feb. 29, 2024) 22–23

Baaghil v. Miller,
1 F.4th 427 (6th Cir. 2021) 17

Banda v. McAleenan,
385 F. Supp. 3d 1099 (W.D. Wash. 2019) 21–22

Bennett v. Spear,
520 U.S. 154 (1997) 4

Biden v. Texas,
597 U.S. 785 (2022) 3

Bolante v. Keisler,
506 F.3d 618 (7th Cir. 2007) 13

Bouarfa v. Mayorkas,
604 U.S. 6 (2024) 11

Burnam v. Marberry,
313 F. App'x 455 (3d Cir. 2009) 8

Bustamante v. Mukasey,
531 F.3d 1059 (9th Cir. 2008) 17

Camden Cnty. Beverage Co. v. Blair,
46 F.2d 655 (3d Cir. 1931) 9

Canada v. Olmsted Cty. Cmty. of Corr.,
2022 U.S. Dist. LEXIS 35863 (D. Minn. Mar. 1, 2022) 8

Chiang v. Skeirik,
582 F.3d 238 (1st Cir. 2009) 17

Demore v. Kim,
538 U.S. 510 (2003) 24

Dep't of Homeland Sec. v. Thuraissigiam,
591 U.S. 103 (2020) 8, 19, 20

Dep't of State v. Muñoz,
602 U.S. 899 (2024) 16, 17

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

Doan v. INS,
160 F.3d 508 (8th Cir. 1998) 17

Doe v. Noem,
152 F.4th 272 (1st Cir. 2025) 14

Duvine v. Hermosillo,
2026 U.S. Dist. LEXIS 13720 (W.D. Wash. Jan. 9, 2026) 22, 23, 24

Ferreira v. Mayorkas,
767 F. Supp. 3d 929 (N.D. Cal. 2025) 15

Garcia-Jimenez v. ICE Field Office Dir.,
2015 U.S. Dist. LEXIS 130442 (W.D. Wash. Aug. 27, 2015) 13

Gerhart v. Lake Cnty., Mont.,
637 F.3d 1013 (9th Cir. 2011) 18

Gisbert v. U.S. Att'y Gen.,
988 F.2d 1437 (5th Cir. 1993) 14

Gonzales-Gandini v. Holder,
384 F. App'x 658 (9th Cir. 2010) 2

Guerra v. VA,
2026 U.S. Dist. LEXIS 23499 (W.D. Wash. Feb. 4, 2026) 6, 7

Guerrier v. Garland,
18 F.4th 304 (9th Cir. 2021) 20

Hassan v. Chertoff,
593 F.3d 785 (9th Cir. 2010) 11

J. E. F.M. v. Lynch,
837 F.3d 1026 (9th Cir. 2016) 12

Janjua v. Neufeld,
933 F.3d 1061 (9th Cir. 2019) 21

Jennings v. Rodriguez,
583 U.S. 287 (2018) 3, 19

Kerry v. Din,
576 U.S. 86 (2015) 16

Kleindienst v. Mandel,
408 U.S. 753 (1972) 17

Kucana v. Holder,
558 U.S. 233 (2010) 10

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

Kwai Fun Wong v. United States INS,
373 F.3d 952 (9th Cir. 2004) 18

L.M. v. Noem,
2026 U.S. Dist. LEXIS 6869 (D. Nev. Jan. 14, 2026) 2, 21

Lorenzo v. Taylor,
2018 U.S. Dist. LEXIS 32803 (D.N.J. Feb. 28, 2018) 18

Martinez v. LaRose,
980 F.3d 551 (6th Cir. 2020) 20

Mason v. Brooks,
862 F.2d 190 (9th Cir. 1988) 16

Matter of M-S-,
27 I. & N. Dec. 509 3

Mendoza-Linares v. Garland,
51 F.4th 1146 (9th Cir. 2022) 20

Mendoza-Linares v. Garland,
2024 U.S. Dist. LEXIS 103006 (S.D. Cal. June 10, 2024) 20

Monroy v. DHS,
396 F. Supp. 3d 1206 (S.D. Fla. 2019) 15-16

Montero-Martinez v. Ashcroft,
277 F.3d 1137 (9th Cir. 2002) 10

Morales de Soto v. Lynch,
824 F.3d 822 (9th Cir. 2016) 15

Northwest Res. Info. Ctr. v. Nat'l Marines Fisheries Serv.,
56 F. 3d 1060 (9th Cir. 1995) 9

Odimara v. Bostock,
2024 U.S. Dist. LEXIS 149107 (W.D. Wash. July 12, 2024) 22, 23–24, 24

Olim v. Wakinekona,
461 U.S. 238 (1983) 19

Parzenn Partners, LLC v. Baran,
2020 U.S. Dist. LEXIS 178633 (D. Mass. Sep. 29, 2020) 16

Petitfrere v. Austin,
2023 U.S. Dist. LEXIS 146547 (D.D.C. Aug. 21, 2023) 15

Pinson v. Carvajal,
69 F.4th 1059 (9th Cir. 2023) 8

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

Poursina v. U.S.C.I.S.,
936 F.3d 868 (9th Cir. 2019) 10–11

Prieto-Romero v. Clark,
534 F.3d 1053 (9th Cir. 2008) 3, 24

Rahayel v. McCampbell,
55 F.2d 221 (2d Cir. 1932) 9

Rauda v. Jennings,
8 F.4th 1050 (9th Cir. 2021) 20

Rodriguez Diaz v. Garland,
53 F.4th 1189 (9th Cir. 2022) 20

S.A. v. Trump,
363 F. Supp. 3d 1048 (N.D. Cal. 2018) 18

Saavedra Bruno v. Albright,
197 F.3d 1153 (D.C. Cir. 1999) 17

Seila Law LLC v. CFPB,
591 U.S. 197 (2020) 15

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953) 19, 22

Spencer v. Kemna,
523 U.S. 1 (1998) 9

Spencer Enters., Inc. v. United States,
345 F.3d 683 (9th Cir. 2003) 10

Tazu v. Att'y Gen. U.S.,
975 F.3d 292 (3d Cir. 2020) 20

Trump v. Hawaii,
585 U.S. 667 (2018) 14–15, 16

United States v. Bernard,
625 F.2d 854 (9th Cir. 1980) 23

United States v. Chem. Found., Inc.,
272 U.S. 1 (1926) 14

United States v. Edwards,
154 F.3d 915 (9th Cir. 1998) 23

United States v. Guzman,
998 F.3d 562 (4th Cir. 2021) 20

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

United States v. Howard,
962 F.3d 1013 (8th Cir. 2020) 15

United States v. Leal-Del Carmen,
697 F.3d 964 (9th Cir. 2012) 13

Vazquez Romero v. Garland,
999 F.3d 656 (9th Cir. 2021) 11

Zadvydas v. Davis,
533 U.S. 678 (2001) 22

Zelaya-Gonzalez v. Matuszewski,
2023 U.S. Dist. LEXIS 72761 (S.D. Cal. Apr. 25, 2024) 20

Zia v. Garland,
112 F.4th 1194 (9th Cir. 2024) 11–12

Statutes

5 U.S.C. § 701 ..... *passim*
5 U.S.C. § 702 ..... 3, 10
5 U.S.C. § 706 8
8 U.S.C. § 1101 17
8 U.S.C. § 1182 ..... *passim*
8 U.S.C. § 1225 ..... *passim*
8 U.S.C. § 1252 ..... 10, 12, 13
28 U.S.C. § 2241 ..... 1, 6

Other

8 C.F.R. § 212.5 ..... *passim*
8 C.F.R. § 1001.1 3
Fed. R. Civ. P. 12 ..... 6, 7

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 532-4523

INTRODUCTION

Petitioner, Ronia Mohammadi, is a native and citizen of Afghanistan whom DHS believes to be [redacted] Petitioner was improvidently granted temporary, discretionary "humanitarian parole" into the country from abroad on September 1, 2021, just two days after the U.S. withdrawal from Afghanistan, and resettled in Washington State. But unlike Lakanwal, in July 2025—a few short weeks before her parole was to expire anyway in August 2025—Petitioner's parole was revoked and she was placed into removal proceedings, and detained by ICE pending the conclusion of those removal proceedings. *See* Declaration of Deportation Officer Joseph Carnevale ("Decl."), Exhibit ("Ex.") A, ¶¶ 4–7, Ex. 1, 2.

In her Petition ("Pet."), Petitioner claims she has a due process right to remain at large in this country, as well as due process and statutory rights to temporary, discretionary immigration benefits. She is wrong. Her civil claims must be dismissed and her Petition denied.

BACKGROUND

I. Relevant Statutory Framework

A. Parole Authority Under 8 U.S.C. § 1182(d)(5)(A)

Humanitarian parole is a colloquial term for the parole authority vested with the Secretary of DHS under 8 U.S.C. § 1182(d)(5)(A), which provides that "[t]he Secretary of Homeland

---

[1] *About Us – The Global Coalition to Defeat ISIS*, U.S. Dept. of State, https://www.state.gov/about-us-the-global-coalition-to-defeat-isis/ (accessed Feb. 16, 2026).

[2] Camilo Montoya-Galvez, *What we know about the vetting and immigration process of National Guard shooting suspect Rahmanullah Lakanwal*, CBS News (Dec. 1, 2025, at 4:12 PM EST), https://www.cbsnews.com/news/rahmanullah-lakanwal-national-guard-shooting-suspect-vetting-immigration/

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

Security may . . . *in [her] discretion* parole into the United States temporarily *under such conditions* as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States." 8 U.S.C. § 1182(d)(5)(A) (emphasis added); *see also* 8 C.F.R. § 212.5. Parole allows a beneficiary to physically enter and remain in the U.S. for a limited time but confers no immigration status. *Id.* § 1182(d)(5)(A) ("such parole of such alien shall not be regarded as an admission of the alien").

Parole may be terminated either automatically or with notice to the beneficiary. *See* 8 C.F.R. 212.5(e). Parole terminates automatically when it expires or the beneficiary departs from the United States. *See id.* § 212.5(e)(1). If either circumstance occurs, "no written notice shall be required." *Id.* Parole may also be terminated with notice to the beneficiary "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[.]" *Id.* § 212.5(e)(2)(i); *see also Gonzales-Gandini v. Holder*, 384 F. App'x 658, 659 n.4 (9th Cir. 2010) (§ 212.5(e)(2) "permits termination of parole on notice even if the purpose for which the advance parole was granted . . . has not been fulfilled."). Upon "written notice" to the beneficiary, parole is terminated, and "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). Critically, "written notice" procedural requirement is satisfied "[w]hen a charging document is served on the alien[.]" *See id.* ("the charging document will constitute written notice of termination of parole[.]"). Under § 1182(d)(5)(A), no additional notice or explanation of the reasons why parole is terminated are required. *See L.M. v. Noem*, No. 2:25-cv-2194-RFB-BNW, 2026 U.S. Dist. LEXIS 6869, at *9–10 (D. Nev. Jan. 14, 2026) ("The requirement of written notice is the *only* safeguard, for both the alien and the United States government, that parole status is administered in an orderly manner.") (quoting *United States v. Lagarda-Aguilar*, 617 F.2d 527 (9th Cir. 1980) (emphasis added)). Accordingly, the decision to terminate parole is discretionary and can be done via service of written notice; no explanation of the termination is required by statute.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

B. Detention Authority Pursuant to 8 U.S.C. § 1225(b)

Upon termination, the applicant's status at the time parole was granted (i.e., an applicant for admission) is restored. *See* 8 U.S.C. § 1225(a)(1) (defining an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated point of arrival.)."); *see also Jennings v. Rodriguez*, 583 U.S. 287 (2018). An "arriving alien" includes a person who is "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q); *see Matter of M-S-*, 27 I. & N. Dec. 509, 510 (A.G. 2019).

Notably, the INA mandates the detention of applicants for admission. 8 U.S.C. §§ 1225(b)(1), (b)(2); *see also Jennings*, 583 U.S. at 287 (applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)."). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). If an alien "indicates an intention to apply for asylum," the alien proceeds through the credible fear process and is subject to mandatory detention "for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).[3] Mandatory detention under Section 1225(b)(1)(B)(ii) continues "for so long as that review is ongoing" and "until removal proceedings conclude." *Matter of M-S-*, 27 I. & N. Dec. at 516. While § 1225 does not provide for aliens to be released on bond, DHS has the sole and unreviewable discretion to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA"), "authorizes suit by [a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by

[3] Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. The Supreme Court recognized that 1225(b)(2) "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.*

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

agency action within the meaning of a relevant statute." 5 U.S.C. § 702. However, the APA is inapplicable where: (1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law. 5 U.S.C. § 701(a); *Bennett v. Spear*, 520 U.S. 154, 175 (1997).

II. Relevant Factual and Procedural Background

Petitioner is a native and citizen of Afghanistan. Pet. ¶¶ 6, 17; Decl. ¶ 3. On September 1, 2021, Petitioner entered the United States at the Philadelphia International Port of Entry as an arriving alien and was granted temporary authorization to physically remain in the United States until August 31, 2025,[4] as part of Operation Allies Welcome ("OAW"),[5] formerly known as Operation Allies Refuge ("OAR").[6] Pet. ¶¶ 2, 17; Decl. ¶ 4. On November 21, 2022, Petitioner filed an application for asylum. Pet. ¶¶ 18, 21; Decl., Ex. 3. Per ICE record checks for criminal history, Petitioner returns a result of 4th Degree Assault/Domestic Violence[7] dated May 11, 2025. *See* Decl., Ex. 1.

On July 14, 2025, U.S. Customs and Border Patrol ("CBP") was informed that Petitioner did not possess documentation that would allow her to remain in the United States legally. Decl. ¶ 5. On July 25, 2025, after confirming her identity, CBP took Petitioner into custody and served Petitioner with a Notice to Appear ("NTA") informing her that she was being charged under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an immigrant who lacked documentation authorizing her presence in the United States. Pet. ¶¶ 19, 20; Decl. ¶¶ 6, 7, 22, Ex. 1. The NTA also cited 8 C.F.R. § 212.5(e) in explaining that Petitioner's parole was terminated. *See* Decl., Ex. 1.

---

[4] For many Afghan arrivals (including Petitioner), the initial parole period was two years, followed by a streamlined "re-parole" process administered by U.S. Citizenship & Immigration Services ("USCIS"). Afghans were eligible for re-parole if they had been paroled under OAW or OAR previously. *Re-Parole Process for Certain Afghans Nationals*, U.S. Citizenship & Immigration Services (updated Apr. 25, 2025), https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans-nationals

[5] Most Afghans who arrived through OAR were paroled by Border Patrol at a port-of-entry under § 1182(d)(5)(A) without a prior adjudication by another DHS agency.

[6] The difference between OAR and OAW is in name only. *Information for SAVE Users: Afghan Arrival Categories, Documentation, and SAVE Responses*, U.S. Citizenship & Immigration Services (May 6, 2024) https://www.uscis.gov/save/information-for-save-users-afghan-arrival-categories-documentation-and-save-responses#_ftnref1

[7] *See* Revised Code of Washington 9A.36.041.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

On July 31, 2025, Petitioner filed a Bond Redetermination Request with the Executive Office of Immigration Review ("EOIR"). Decl. ¶ 8. On August 7, 2025, a Bond Hearing was held before an Immigration Judge ("IJ"), who informed Petitioner's counsel that there was no jurisdiction because Petitioner is an arriving alien, prompting Petitioner to withdraw her request. Decl. ¶ 9, Ex. 3. On September 16, 2025, a Tacoma IJ sustained the charge of removability and set an individual hearing for October 10, 2025. Decl. ¶ 10, Ex. 4. The DHS filed a motion to continue the hearing on October 7, 2025, which was granted on October 10, 2025, prompting the hearing to be rescheduled to November 5, 2025. Decl. ¶ 12. On October 22, 2025, Petitioner filed a second Bond Redetermination Request with EOIR. Decl. ¶¶ 13, 24, Ex. 3. On October 27, 2025, a second Bond Hearing was held before an IJ, who denied the request due to a lack of jurisdiction, prompting Petitioner to withdraw the request. Decl. ¶¶ 14, 24, Ex. 3.

On November 4, 2025, DHS filed evidence that Petitioner is [redacted] Decl. ¶¶ 15, 27, Ex. 6. On November 4, 2025, Petitioner's counsel filed a motion to withdraw and to continue, which was granted on November 5, 2025, resetting the individual hearing for December 2, 2025. Decl. ¶¶ 16, 17. On December 1, 2025, Petitioner filed a motion to suppress the DHS's evidence, which was denied on December 2, 2025. Decl. ¶¶ 18, 19. On December 2, 2025, Petitioner's individual calendar hearing was held, and the matter was set to issue a written decision. Pet. ¶ 22; Decl. ¶ 19. On December 23, 2025, the IJ issued a written decision granting Petitioner's asylum request. Pet. ¶ 22, Ex. 3; Decl. ¶¶ 20, 25, Ex. 4. On January 22, 2026, DHS appealed the December 23 written decision to the Board of Immigration Appeals. Pet. ¶ 23, Ex.4; Decl. ¶¶ 21, 26, Ex. 5.

Petitioner is detained at the Northwest ICE Processing Center ("NWIPC") pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) pending the appeal of her asylum request. On February 6, 2026, Petitioner filed her Petition, challenging her continued detention at the NWIPC. Petitioner seeks a writ of habeas corpus ordering her immediate release from custody. *See* Pet., Prayer for Relief ¶ b. In the alternative, Petitioner seeks a bond hearing within seven days, and an order requiring

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

her immediate release "without bond, ankle monitor, or other conditions" if the government does not establish Petitioner's "dangerousness or flight risk." *See id.* ¶¶ c, d.

To warrant such relief, Petitioner asserts three claims. In her first claim, Petitioner alleges that her detention violates the Due Process Clause of the Fifth Amendment because "she did not receive notice of the reasons for the revocation of her parole prior to its expiration." Pet. ¶ 35. In the second, Petitioner alleges that Respondents violated the APA because "there was never any written explanation as to why her humanitarian parole was revoked or cancelled upon her arrest" and that the categorial revocation of Petitioner's parole and detainment "without consideration of her individualized facts" amounted to account that "was arbitrary, capricious, an abuse of discretion, and not in accordance with the law." Pet. ¶¶ 40–43. In her third claim, Petitioner alleges that "due process requires" she "be afforded a bond hearing" such that an IJ can determine if she is dangerous or poses a flight risk in light of her "prolonged" detention. *Id.* ¶¶ 45–46. Petitioner further alleges that "she can no longer be considered an arriving alien" because of her time in the United States. *Id.* ¶ 47.

After denying Petitioner's motion for temporary restraining order, the Court ordered Respondents to file a response to the Petition. *See generally* ECF Nos. 8, 10.

STANDARD OF REVIEW

III. Writ of Habeas Corpus (Count III)

Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. A petitioner bears the burden to prove she is entitled to the granting of the writ of habeas corpus by demonstrating that her *custody* violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

IV. Dismissal for Lack of Subject Matter Jurisdiction Under Rule 12(b)(1)

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) challenges a court's subject matter jurisdiction over a dispute. In evaluating a Rule 12(b)(1) motion, the Court may consider evidence extrinsic to the allegations in a pleading and is not required to accept the allegations as true. *See Guerra v. VA*, No. C25-693-JCC, 2026 U.S. Dist. LEXIS 23499, *4 n.4 (W.D. Wash.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

Feb. 4, 2026). The party asserting the existence of subject matter jurisdiction bears the burden of proving that jurisdiction exists to survive a Rule 12(b)(1) challenge. *See id.*

V. Dismissal for Failure to State a Claim for Relief Under Rule 12(b)(6)

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) challenges the legal sufficiency of the well-pled allegations in a pleading, which are taken as true and construed in a light most favorable to the nonmovant. *See Guerra*, 2026 U.S. Dist. LEXIS 23499, *4. "However, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion." *Id.* "Thus, to avoid dismissal, a plaintiff must point to factual allegations that 'state a claim to relief that is plausible on its face.'" *Guerra*, 2026 U.S. Dist. LEXIS 23499, *4 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)).

ARGUMENT

In the Petition, Petitioner first improperly asserts two civil claims, which should not have been combined in a habeas petition. If not dismissed, these claims should be severed. In Counts I and II, Petitioner demands that the Court set aside DHS's revocation of her discretionary "humanitarian parole" in July 2025, claiming that this revocation violated the Due Process clause of the Fifth Amendment and the APA, respectively. These claims fail because the Immigration & Nationality Act ("INA") precludes review and, in any event, the claims are moot because her parole—even if not revoked—expired in August 2025. Claim III is a habeas claim, which seeks immediate release from detention in civil immigration custody or, alternatively, a bond hearing on the allegation that her detention is unconstitutional. For the following reasons, both of Petitioner's civil claims must be dismissed, and her habeas petition must be denied.

I. The Civil Claims Should be Dismissed (Counts I & II)

D. Civil Claims Are Not Appropriately Combined with a Habeas Petition.

As a threshold matter, Petitioner does not articulate how the alleged lack of "notice of the reasons for the revocation of her parole" or the lack of "any written explanation as to why her humanitarian parole was revoked" are challenges to the lawfulness her *current detention* or

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

mandate her immediate release. *See id.* ¶¶ 35, 41. In any event, the requested relief pertaining to her discretionary parole claims—an order setting aside the discretionary "revocation of Petitioner's humanitarian parole prior to its expiration"—would not result in her release, nor would her release result in a discretionary extension of her expired (and revoked) § 1182(d)(5)(A) parole. Pet. ¶ 17.

As explained by the Supreme Court, "the essence of habeas corpus is an attack by a person in custody *upon the legality of that custody*, and that the traditional function of the writ is to secure release from *illegal custody*." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (emphasis added) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)) (citing *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005); *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). Because Counts I and II seek review of the legality of a discretionary agency action to revoke her temporary parole and do not challenge the legality of her current detention, they are not the appropriate subject of a writ of habeas corpus and must be dismissed without prejudice. *See Thuraissigiam*, 591 U.S. at 120 (habeas has not been "used to obtain anything like what is sought here, namely, authorization for an alien to remain in a country other than his own or to obtain administrative or judicial review leading to that result."); *Pinson v. Carvajal*, 69 F.4th 1059, 1071 (9th Cir. 2023) (". . . claims that if successful would not necessarily lead to the invalidity of the custody are not at the core of habeas corpus.").

In addition to straying from the core of habeas, there are also practical reasons why APA claims and habeas petitions cannot be combined into a single action. An APA claim is ordinarily resolved on an administrative record (5 U.S.C. § 706), whereas a habeas claim is restricted to the fact and duration of confinement and resolved on the papers. As a result, habeas claims are often adjudicated much more quickly than APA or other civil claims. *Burnam v. Marberry*, 313 F. App'x 455, 456 n.2 (3d Cir. 2009); *cf.* Local Rules W.D. Wash. LCR 100. Unsurprisingly, as many courts have held, combining non-habeas claims into a habeas petition is improper. *Id.* (explaining that the district court "should not have combined the habeas action and the claims under the Privacy Act and APA into a single case"); *Canada v. Olmsted Cty. Cmty. of Corr.*, No.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

21-CV-2120 (NEB/DTS), 2022 U.S. Dist. LEXIS 35863, at *18 (D. Minn. Mar. 1, 2022), *summarily aff'd*, 2022 U.S. App. LEXIS 28125 (8th Cir. July 27, 2022).

E. Counts I and II are Moot: Petitioner Does Not Show How Expired Parole Redresses the Purported Injury of Revoked Parole.

Petitioner's parole expired on August 31, 2025. *See* Pet. ¶¶ 2 ("Petitioner . . . received humanitarian parole that allowed her to remain in the United States for a period *not to exceed August 31, 2025*.") (emphasis added), 17. Because "time for which parole was authorized" has elapsed, Petitioner's parole "automatically terminated without written notice" and "no written notice [was] required." 8 C.F.R. 212.5(e)(1)(ii). Thus, at this point, Petitioner's challenge to the revocation of her now-expired parole does not present a live controversy. She lacks standing to challenge the revocation of parole when, on its terms, it is expired regardless.

It is well-established that when a litigant challenges an allegedly wrongful act on a time-limited matter, the expiration of the time limit on its own accord moots the challenge. *Northwest Res. Info. Ctr. v. Nat'l Marines Fisheries Serv.*, 56 F. 3d 1060, 1069 (9th Cir. 1995) (claim that agency violated the Endangered Species Act in issuing a permit was moot: "NRIC [the plaintiff] challenges an agency action that began and ended in 1993. The section 10 permit at issue expired on December 31, 1993, and the transportation program is now operating under a new section 10 permit valid from April 1, 1994 to December 31, 1998. Clearly, NRIC can no longer obtain any relief with regard to the transportation program for operational year 1993"); *Rahayel v. McCampbell*, 55 F.2d 221, 221 (2d Cir. 1932) (dismissing case as moot where appeal from decree denying review of revocation of alcohol withdrawal permit was argued over a year after revocation: "By its terms the permit would have expired . . . though we should decide the revocation to have been invalid, we could give no relief"); *Camden Cnty. Beverage Co. v. Blair*, 46 F.2d 655, 655 (3d Cir. 1931) (right to enjoin revocation of permit was moot question on expiration of permit pending appeal). Claims I and II are no different, and Petitioner does not allege how she is in a better position if her parole were to be deemed ended as of August 31, 2025 versus July 25, 2025. *Spencer v. Kemna*, 523 U.S. 1, 14 (1998) (finding no standing to

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

challenge the wrongful revocation of parole after completing the underlying sentence). Either way, her status would remain the same even if the revocation is set aside: she still lacks parole and she is considered an applicant for admission.

F. The Court Lacks Jurisdiction to Review the Revocation of Her Discretionary, Temporary, Now-Expired Parole.

At base, the second claim for relief challenges the legality of the revocation of Petitioner's parole under the APA, not the legality of her current detention. Section 702 of Title 5 of the U.S. Code confers a general cause of action upon persons "adversely affected or aggrieved by agency action within the meaning of a relevant statute." That cause of action is withdrawn where "statutes preclude judicial review" or "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(1)–(2). Parole decisions are both precluded from judicial review by statute and are committed to agency discretion by statute. Thus, this Court cannot review the revocation of Petitioner's parole on jurisdictional grounds. Specifically, § 1252(a)(2)(B)(ii) states that,

> Notwithstanding any other provision of law (statutory or nonstatutory)..., and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review... (ii) any other decision [than those listed in § 1252(a)(2)(B)(i)] or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security....

8 U.S.C. § 1252(a)(2)(B)(ii). As the Supreme Court has recognized, 8 U.S.C. § 1252(a)(2)(B)(ii) is a "catchall provision" which, when read together with subclause 8 U.S.C. § 1252(a)(2)(B)(i), "convey[s] that Congress barred court review of discretionary decisions only when Congress itself set out the Attorney General's discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010); *see also Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1143 (9th Cir. 2002) (§ 1252(a)(2)(B)(ii) "is a catch-all provision that serves to ensure that any unenumerated provisions [from § 1252(a)(2)(B)(i)] governing discretionary relief are covered" by the jurisdictional bar.); *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 690 (9th Cir. 2003) (holding that provisions providing that the Attorney General "may" take certain action vest

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

unreviewable "ultimate authority . . . in the discretion of the Attorney General"); *Poursina v. U.S.C.I.S.*, 936 F.3d 868, 875 (9th Cir. 2019) (rejecting challenge to denial of national interest waiver the "decision to deny a national-interest waiver is specified to be in its discretion [by § 1153(b)(2)(B)(i)], § 1252(a)(2)(B)(ii) strips the federal courts of jurisdiction to review USCIS's refusal").

The decision to grant, deny, or revoke parole is one such decision committed to agency discretion that is covered by this jurisdictional bar. *See* 8 U.S.C. § 1182(d)(5)(A) (providing that "The Secretary of Homeland Security *may* . . . in [her] *discretion* parole in the United States temporarily under such conditions as [s]he may prescribe" applicants for admission and "when the purposes of such parole shall, *in the opinion of* the Secretary of Homeland Security, have been served the alien shall hereforthwith 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") (emphasis added); *see also* 8 C.F.R. § 212.5(e)(2)(i) (providing that "when in the opinion" of the Secretary of the DHS, "parole shall be terminated[.]").[8] In binding authority, the Ninth Circuit has expressly (and repeatedly) held that § 1182(d)(5)(A) parole decisions are not reviewable. In *Hassan v. Chertoff*, after finding it lacked jurisdiction to review the § 1255 adjustment determination, the Ninth Circuit affirmed the ruling that it lacked jurisdiction to review the revocation of parole under the terms of § 1182(d)(5)(A). 593 F.3d 785, 790 (9th Cir. 2010). Likewise, in *Vazquez Romero v. Garland*, the court held that "the jurisdiction-stripping provision of § 1252(a)(2)(B)(ii) applies to discretionary parole decisions under § 1182(d)(5)." 999 F.3d 656, 665 (9th Cir. 2021). Even if there were any statutory conditions predicate to revoking discretionary § 1182(d)(5)(A) parole (which there are not), the Court could still not review DHS's determination that Petitioner was eligible to have her parole revoked. *See Zia v. Garland*, 112 F.4th 1194, 1200 (9th Cir. 2024) ("We read 'any other decision or action' expansively to cover all determinations made in support of a grant of discretionary

[8] The Supreme Court has noted, "the word may clearly connotates discretion." *Bouarfa v. Mayorkas*, 604 U.S. 6, 13 (2024) (citing *Biden v. Texas*, 597 U.S. at 802 (internal quotations omitted)).

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

relief under subsection (ii)."). The Court cannot review the revocation because § 1252(a)(2)(B)(ii) precludes review under 5 U.S.C. § 701(a)(1).

In addition to the bar at § 1252(a)(2)(B)(ii), the decision to revoke Petitioner's parole arises out the commencement of her removal proceedings, and cannot be reviewed under 8 U.S.C. § 1252(a)(5), (b)(9), and (g). Under § 1252(b)(9), Congress consolidated all questions of law and fact into the petition for review process provided by § 1252(a)(5). 8 U.S.C. § 1252(b)(9) ("Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus. . . ., or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact."). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the PFR process." *J. E. F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original). Further, per 8 U.S.C. § 1252(g), Congress stripped jurisdiction of jurisdiction over such claims: "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

These provisions apply here. Petitioner's parole was revoked because DHS determined to place her into removal proceedings and served her with a charging document noticing that determination. 8 C.F.R. § 212.5(e)(2)(i) ("When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified."). The decision to revoke her parole arises from the decision to place her into removal proceedings, the decision to commence proceedings and revoke parole were the same decision, and were noticed together. She can attempt to seek review in a petition for review with the

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

appropriate court of appeals, but she cannot seek review of the institution of removal proceedings and the attendant parole revocation outside of that process. 8 U.S.C. § 1252(b)(9), (g).

Additionally (or alternatively), § 701(a)(2) also precludes review. Courts in this circuit have found that the "applicable statutory and regulatory provisions vest full discretion for humanitarian parole in the Attorney General, the Secretary of [DHS], and various DHS officials." *Garcia-Jimenez v. ICE Field Office Dir.*, No. C15-820-RSL-JPD, 2015 U.S. Dist. LEXIS 130442, at *4 (W.D. Wash. Aug. 27, 2015), *R&R adopted*, 2015 U.S. Dist. LEXIS 130463 (W.D. Wash. Sep. 28, 2015); *see United States v. Leal-Del Carmen*, 697 F.3d 964, 975 (9th Cir. 2012) ("[T]he federal government had exclusive authority to parole [an alien lacking a lawful immigration status] into the country . . . ."). Because the statute vests parole discretion with the Secretary, the INA precludes judicial review. 8 U.S.C. § 1252(a)(2)(B)(ii); *see also Bolante v. Keisler*, 506 F.3d 618, 621 (7th Cir. 2007) ("The Attorney General can and often does release the alien on parole, 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5, but his decision to do so is not judicially reviewable."). The APA does not apply under either 5 U.S.C. § 701(a)(1) or (2). The termination of Petitioner's parole is therefore unreviewable under § 1252(a)(2)(B)(ii), and thus, per 5 U.S.C. § 701(a), the APA does not apply.

G. Petitioner Fails to State a Claim That The Parole Revocation Was Unlawful.

In Petitioner's second claim for relief, Petitioner alleges that the government's purported failure to provide her with notice of the reasons why her parole was revoked and purported failure to consider her individualized facts in doing so amounted to a violation of the APA. Pet. ¶¶ 40–43. Because parole decisions are made in the discretion of the Executive, they are not reviewable under the APA. Notwithstanding the Court's lack of jurisdiction, Petitioner received sufficient notice of the reasons why her parole was revoked and does not establish that consideration of her individualized facts was required to do so.

While Petitioner complains that, in addition to the lack of a sufficient explanation of the revocation of her parole, the government violated the APA when it did so "without consideration

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

of her individualized facts[,]" Pet. ¶ 42, this allegation goes against the well-tread presumption of administrative regularity. *See, e.g.*, *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14 (1926). Moreover, § 1182(d)(5)(A) does not require individualized determinations to cancel parole, nor explanations for those determinations. *Doe v. Noem*, 152 F.4th 272, 286 (1st Cir. 2025) ("Congress's decision to add the 'case-by-case' language only to the clause 'granting' parole suggests that it intended to narrow only DHS's ability to categorically grant parole, not to restrain a categorical termination of the same."); *Gisbert v. U.S. Att'y Gen.*, 988 F.2d 1437, 1443 (5th Cir. 1993) ("[t]he language of the statute does not require the Attorney General to parole any alien, nor does it mandate parole on any particular finding or findings or place any substantive restriction on the authority to deny parole."). As the First Circuit recently explained, the "case-by-case" language restricts the authority to *grant* parole, but it does not operate to restrict DHS's authority to revoke, deny, or terminate parole. *Doe*, 152 F.4th at 286 ("Giving every word effect, the statutory text thus reflects a deliberate choice on the part of Congress to require the Secretary to implement a case-by-case approach to granting parole, but not to end such grants. The statutory text, therefore, favors an interpretation that the 'case-by-case' requirement only limits the Secretary's discretion to grant parole."). DHS is not required to do more than what the statute requires.

In any event, the requirement to make determinations—assuming one exists—does not necessarily subsume a requirement to issue detailed explanations about the determination's underlying rationale. *E.g., Trump v. Hawaii*, 585 U.S. 667, 685–86 (2018) ("[T]he premise that §1182(f) not only requires the President to make a finding that entry 'would be detrimental to the interests of the United States,' but also to explain that finding with sufficient detail to enable judicial review... is questionable." (citing *Webster v. Doe*, 486 U. S. 592, 600 (1988)); *see also Arias v. Noem*, No. 5:22-CV-5248, 2025 U.S. Dist. LEXIS 59788, *18 (W.D. Ark. Mar. 31, 2025) ("[U]nder 9 FAM 302.5-4(B)(2)..., the consular officer must 'make clear findings in the case notes, setting forth in detail all the facts supporting a reason to believe that the applicant is a member of a criminal organization[.]'... But there is no requirement that those factual findings

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

be disclosed [to the applicant]"). At most, it is only when parole is granted that furnishing individualized explanations may be or may become necessary. *See, e.g.*, 8 U.S.C. § 1182(d)(5)(C) ("...the limitation under subparagraph (A) [is] that parole solely be granted on a case-by-case basis and solely for urgent humanitarian reasons or a significant public benefit"); *Biden v. Texas*, 597 U.S. at 815 (Kavanaugh, J. concurring) ("[W]hen . . . DHS chooses to parole noncitizens into the United States . . ., DHS must reasonably explain why parole provides a 'significant public benefit.'"). No explanation for parole denials or cancellations are required by § 1182(d)(5)(A)–(C). *Doe*, 152 F.4th at 286 (reversing "[t]he district court conclu[sion that] the termination of parole requires an individualized, rather than a categorical, analysis.").

In any event, unique or highly detailed decisions are not the *sine qua non* of bona fide decision-making regardless. *See, e.g.*, *United States v. Howard*, 962 F.3d 1013, 1015 (8th Cir. 2020) ("The district court... was uniquely positioned to consider the many factors necessary in exercising its ultimate discretion. The court's plain statement regarding its decision not to exercise its discretion... in this case closes the matter."); *Petitfrere v. Austin*, No. 1:22-cv-1819-RCL, 2023 U.S. Dist. LEXIS 146547, *10 (D.D.C. Aug. 21, 2023) ("She claims that DoD [] provided an unmeaningful and 'boilerplate' explanation as to the denial of her claim.... Though DoD's explanation of its denial of Lt. Petitfrere's claim was brief, such brevity does not necessarily indicate a lack of meaningfulness."); *see also Seila Law LLC v. CFPB*, 591 U.S. 197 (2020) (analyzing the use of boilerplate language in the context of the Dodd-Frank statute, noting, "boilerplate is boilerplate for a reason—because it offers tried-and-true language to ensure a precise and predictable result").

This is doubly true when it comes to decisions shielded from judicial review by statute. *Morales de Soto v. Lynch*, 824 F.3d 822, 828 (9th Cir. 2016); *Ferreira v. Mayorkas*, 767 F. Supp. 3d 929, 940 (N.D. Cal. 2025) (rejecting argument that "boilerplate decisions" violated APA or due process in discretionary adjustment of status determinations); *Monroy v. DHS*, 396 F. Supp. 3d 1206, 1209 (S.D. Fla. 2019) (rejecting argument that courts may circumvent clear jurisdictional bars based on argument "the agencies' issuance of boilerplate denial letters lacks

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

any indication that these factors were properly considered"). Use of 'boilerplate' language is a widespread practice among government agencies as well as courts when applying uniform standards of review to different sets of facts. Such an approach can help to ensure consistency and fairness. *See Parzenn Partners, LLC v. Baran*, No. 19-cv-11515-ADB, 2020 U.S. Dist. LEXIS 178633, *11 (D. Mass. Sep. 29, 2020). And indeed, boilerplate and brief notices containing only a statutory citation are the norm in the visa context. *See, e.g., Dep't of State v. Muñoz*, 602 U.S. 899, 917 (2024); *Kerry v. Din*, 576 U.S. 86, 105 (2015).

Here, Petitioner received statutory citations, 8 CFR § 212.5(e) and 8 U.S.C. § 1182(a)(7)(A)(i)(I), explaining that she was being placed into removal proceedings and that her parole was therefore revoked, and that is sufficient.

And even if it were not normally sufficient in other contexts, a decision concerning § 1182(d)(5)(A) parole is a decision which falls within the purview of the "nonreviewability" doctrine. "For more than a century," the Supreme Court "has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Trump v. Hawaii*, 585 U.S. at 702 (quoting *Fiallo v. Bell*, 430 U. S. 787, 792 (1977)). "Congress may delegate to executive officials the discretionary authority to admit noncitizens 'immune from judicial inquiry or interference.'" *Muñoz*, 602 U.S. at 907 (quoting *Harisiades v. Shaughnessy*, 342 U. S. 580, 588-591 (1952)). "When it does so, the action of an executive officer 'to admit or to exclude an alien' 'is final and conclusive.'" *Id.* (quoting *Knauff*, 338 U.S. at 543). "The Judicial Branch has no role to play 'unless expressly authorized by law.'" *Id.* (quoting *Knauff*, 338 U. S., at 543).

A decision concerning the termination of parole is not reviewable under this doctrine. *See Mason v. Brooks*, 862 F.2d 190, 193–94 (9th Cir. 1988) ("[A] rejection of parole will be upheld if the agency advanced a facially legitimate and bona fide reason for the denial."); *Amanullah v. Nelson*, 811 F.2d 1, 9–10 (1st Cir. 1987) ("[I]nasmuch as the decisions which we are called upon to consider were discretionary parole decisions made incident to exclusion proceedings, the applicable standard of review... is that limned by *Kleindienst v. Mandel*[.]"); *see Trump v.*

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

Hawaii, 585 U.S. at 703 (applying doctrine to presidential § 1182(f) proclamations); *Kleindienst v. Mandel*, 408 U.S. 753, 757 (1972) (applying doctrine to Attorney General's denial of inadmissibility waiver); *Chiang v. Skeirik*, 582 F.3d 238, 243 (1st Cir. 2009) (application to USCIS's visa petition refusal); *Doan v. INS*, 160 F.3d 508, 509 (8th Cir. 1998) (applying doctrine to INS's denial of inadmissibility waiver); *see also Bustamante v. Mukasey*, 531 F.3d 1059, 1062 n.1 (9th Cir. 2008) ("The Supreme Court said nothing to suggest that [*Mandel*'s] reasoning or outcome would vary according to which executive officer is exercising the Congressionally-delegated power to exclude."), *abrogated in part on other grounds by Muñoz*, 602 U.S. 899. Further, the APA does not apply to decisions covered by the nonreviewability doctrine. *Baaghil v. Miller*, 1 F.4th 427, 434 (6th Cir. 2021); *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1160 (D.C. Cir. 1999). Absent an express authorization in the INA, "the federal courts cannot review those decisions." *Muñoz*, 602 U.S. at 908.[9] Thus, this Court should not review the decision to revoke Petitioner's parole.

H. Counts I and II Fail on the Merits Because Petitioner Pleads Facts Indicating She Is Ineligible for Further Parole.

Accepting her allegations as true, Petitioner pleads facts indicating that she is *prima facie* ineligible for parole under § 1182(d)(5)(B). *See* Pet. ¶ 18. Under § 1182(d)(5)(A), the Secretary "may" "in [her] discretion parole" "except as provided in subparagraph (B)[.]" Subparagraph (B) provides, "[t]he Secretary of Homeland Security may not parole into the United States an alien who is a refugee unless the Secretary of Homeland Security determines that compelling reasons in the public interest with respect to that particular alien[.]" 8 U.S.C. § 1182(d)(5)(B). The term "refugee" is defined by statute. 8 U.S.C. § 1101(a)(42). In her removal proceedings, Petitioner argues that she meets that statutory definition. *See* Decl., Ex. 4. As she argues that she meets the definition of a "refugee" within the meaning of § 1101(a)(42) and she does not allege any facts showing "compelling reasons in the public interest with respect to" her specifically that would

[9] Because Petitioner is not a U.S. citizen, the narrow exception to this bar does not apply. *See Muñoz*, 602 U.S. at 908 ("a narrow exception to this bar exists 'when the denial... allegedly burdens the constitutional rights of a U. S. citizen.'") (citing *Trump v. Hawaii*, 585 U.S. at 703).

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

merit an exception to § 1182(d)(5)(B), her pleadings (accepted as true) are self-defeating of her claim for § 1182(d)(5)(A) parole.

I. Count I Fails As There Is No Due Process Interest in Discretionary Benefits.

Count I fails because temporary, discretionary parole under § 1182(d)(5)(A) does not create constitutionally-protected interests. The Ninth Circuit, in binding authority, has found the exact claim brought by Petitioner is not colorable and it is therefore foreclosed here. In *Kwai Fun Wong v. United States INS*, the Ninth Circuit squarely held, "[t]he INA does not create any liberty interest in temporary parole that is protected by the Fifth Amendment. Rather, the statute makes clear that whether and for how long temporary parole is granted are matters entirely within the discretion of the Attorney General." 373 F.3d 952, 968 (9th Cir. 2004). Petitioner's "due process claim must therefore be dismissed." *Id.* The Court must follow this holding.[10]

To the extent that Plaintiff claims an independent "reliance interest" in her prior parole, such argument fails. Per its definition, parole is a discretionary and may only be granted on a case-by-case basis. 8 U.S.C. § 1182(d)(5)(A). And courts in this circuit have said that "a liberal award of parole in the past... does not create a 'serious reliance interest' in being approved for parole[.]" *S.A. v. Trump*, 363 F. Supp. 3d 1048, 1086 (N.D. Cal. 2018); *see also Gerhart v. Lake Cnty., Mont.*, 637 F.3d 1013, 1021 (9th Cir. 2011) ("a government body's past practice of granting a government benefit is insufficient to establish a legal entitlement to the benefit."). Parole is and always has been too discretionary to create the reliance interest. *Cf. S.A. v. Trump*, 363 F. Supp. 3d at 1085 ("[A]n application for parole that has not been approved does not engender a reliance interest").

[10] This holding is also not novel. *Lorenzo v. Taylor*, No. 17-11640 (CCC), 2018 U.S. Dist. LEXIS 32803, at *3 (D.N.J. Feb. 28, 2018) (collecting cases) ("...neither the language of § 1182(d)(5) nor any case law supports the proposition that § 1182(d)(5) creates a liberty interest to parole for immigration detainees.").

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

II. Petitioner's Habeas Petition Fails and Should Be Denied (Count III)

A. Petitioner's Detention Complies with Statute

Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). Petitioner entered the United States as an arriving alien who was granted temporary authorization to remain in the United States under 8 U.S.C. § 1182(d)(5)(A). Petitioner was served with an NTA that informed her that her parole was revoked pursuant to 8 C.F.R. 212.5(e). Pet. ¶ 19, Ex. 2. Petitioner's NTA also informed her that she was subject to removal under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). Pet., Ex. 2. Upon the revocation of her parole, Petitioner's status returned to that of an arriving alien. *See* 8 C.F.R. § 215(e)(2). Before being detained, Petitioner filed an application for asylum. Pet. ¶ 18. Section 1225(b)(1)(B)(ii) specifically contemplates that an alien "shall be detained for further consideration of the application for asylum." Section 1225(b) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S. at 302. Because Petitioner's application for asylum remains pending, Petitioner is subject to mandatory detention.

Notably, Petitioner does not allege that there is no statutory authority for her detention, she merely concludes her detention violates the Fifth Amendment. The Fifth Amendment protects against deprivations of life, liberty, or property without due process, but it does not create an entitlement to procedure for the sake of procedure. *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983) ("Process is not an end in itself."). Petitioner was paroled from Afghanistan and, as an inadmissible arriving alien, she has no inherent rights under the U.S. Constitution and is protected only by the rights conferred by statute. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned"). The Supreme Court reaffirmed this in *Thuraissigiam*, where it held that "an alien at the threshold of initial entry" has no procedural due process rights "other than those afforded by statute." 591 U.S. at 107. "[Sections] 1225(b)(1) and (b)(2) ... provide for detention for a specified period of time," namely "throughout the completion of applicable

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

proceedings." *Jennings*, 583 U.S. at 299, 302; *id.* at 300 ("neither provision can reasonably be read to limit detention to six months.").

The Ninth Circuit has applied this principal to arriving aliens placed into removal proceedings under 8 U.S.C. § 1225(b). *See Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022) ("any rights [a petitioner] may have in regard to removal or admission are purely statutory in nature and are not derived from, or protected by, the Constitution's Due Process Clause."); *see id.* at 1164 (quoting *Thuraissigiam*, 591 U.S. at 139) (noting "an arriving alien 'has no constitutional rights regarding his application,' [and] '[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned'"); *Mendoza-Linares v. Garland*, No. 21-cv-1169-BEN (AHG), 2024 U.S. Dist. LEXIS 103006, at *5 (S.D. Cal. June 10, 2024); *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151 JLS (KSC), 2023 U.S. Dist. LEXIS 72761, at *9–10 (S.D. Cal. Apr. 25, 2024); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'")); *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021) ("[I]n the expedited removal context, a petitioner's due process rights are coextensive with the statutory rights Congress provides."); *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021) ("Congress has already balanced the amount of due process available to petitioners with the executive's prerogative to remove individuals, and we decline to expand judicial review beyond the parameters set by Congress.").

Other Circuits agree, often citing *Thuraissigiam* as support for their holdings that arriving aliens detained under § 1225(b)(1) do not have a due process beyond what is afforded by statute *See United States v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 300 (3d Cir. 2020); *Martinez v. LaRose*, 980 F.3d 551, 552 (6th Cir. 2020) (Thapar, J., concurring). Petitioner's sole protections are those afforded by Congress via statute.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

Here, the government complied with all statutory protections. Petitioner received the written NTA, which informed her that her "parole ha[d] been affirmatively cancelled under 8 C.F.R. § 212.5(e)." *See* Pet. ¶ 19, Ex. 2. The service of the NTA on Petitioner "constitute[d] written notice of termination of parole," sufficient terminate Petitioner's parole. 8 C.F.R. § 212.5(e)(2)(i). *See L.M.*, 2026 U.S. Dist. LEXIS 6869, at *9–10 ("The requirement of written notice is the only safeguard, for both the alien and the United States government, that parole status is administered in an orderly manner.") (quoting *Lagarda-Aguilar*, 617 F.2d at 527).

Petitioner does not satisfy her burden of showing that her detention is unlawful, as she depends solely on conclusory, unsupported allegations that she does not pose a security or flight risk because she was granted parole from Afghanistan. Notwithstanding that Petitioner's conclusory allegations and legal conclusions are not entitled to a presumption of truth, Petitioner's allegations are wrong. Petitioner was granted parole under 8 C.F.R. § 212.5(c) by CBP and then re-paroled under the same regulation by USCIS, not 8 C.F.R. § 212.5(b) (applicable to aliens paroled from custody). No finding concerning her safety/flight risk was necessitated by her initial grant of parole by CBP upon arrival from abroad. Neither was there any flight risk/safety assessment during USCIS's more recent re-parole decision, nor does she contend as much.[11] In any event, Petitioner does not allege any facts showing that her flight risk or public safety threat was "actually litigated" in advance of either of those decisions such that DHS cannot contest it now. *See Janjua v. Neufeld*, 933 F.3d 1061, 1066 (9th Cir. 2019). And while Petitioner appears to cite a bevy of caselaw supporting her conclusory and incorrect allegations, these cases concern grants of parole to individuals from custody (or individuals whom those courts construed as being paroled from custody), not from abroad or from outside of custody, and are inapplicable here.

[11] To be eligible for re-parole under USCIS's Re-Parole Process for Certain Afghans Nationals, the only stated qualifications were: (1) being an Afghan national, and (2) being previously granted OAR/OAW parole or having the status of previously being granted OAR/OAW parole. *Re-Parole Process for Certain Afghans Nationals*, U.S. Citizenship & Immigration Servs. (updated April 23, 2025) (https://www.uscis.gov/humanitarian/information-for-afghan-nationals/re-parole-process-for-certain-afghans-nationals).

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

B. Petitioner's Detention Comports with Due Process

Even if Petitioner did have a protected liberty interest under the Constitution, her detention is still consistent with due process under the factors considered in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019). Under *Banda*—a non-binding, albeit popular standard amongst district courts in this circuit—courts consider six factors: "(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Id.*[12] Although Petitioner bears the burden of proof to establish a due process violation, the Petition does not allege anything more than unsupported legal conclusions, which are insufficient to satisfy her burden. The evidence shows that no due process violation has occurred as Petitioner's detention has been reasonable.

First and most importantly, the length of Petitioner's detention has not been unreasonable. *See Odimara v. Bostock*, No. 2:24-cv-572-JHC-GJL, 2024 U.S. Dist. LEXIS 149107, *13 (W.D. Wash. July 12, 2024) ("The current length of Petitioner's detention is the first and most important factor of the analysis."). At only seven months, the length of detention factor favors of the Government. *Duvine v. Hermosillo*, No. C25-2583-SKV, 2026 U.S. Dist. LEXIS 13720, *8 (W.D. Wash. Jan. 9, 2026) ("Petitioner has been detained by ICE for over seven months. . . This period of detention has not yet reached the length of what this Court typically finds unreasonable.").[13]

---

[12] To be clear, the Government does not agree that *Banda* was correctly decided or that its test is appropriate. *Banda* borrowed from and relied heavily on *Zadvydas*, a case which dealt with potentially indefinite post-order detention under § 1231 and which involved aliens who had lived in the United States lawfully for decades. By *Zadvydas*'s own terms, the *Zadvydas* holding expressly did not extend to aliens who are "'treated,' for constitutional purposes, 'as if stopped at the border.'" *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (noting this distinction "made all the difference."). Incorrectly, *Banda* did away with this distinction, and extended *Zadvydas* to those who simply do not stand on the same constitutional footing. For non-citizens treated as if stopped at the border, the rule in *Mezei* continues to govern. *See Shaughnessy*, 345 U.S. at 215. Despite disagreement with *Banda*, Respondents address the test given the likelihood that it will be employed in this case.

[13] While Petitioner's detention began barely more than six months ago on July 25, 2025, Petitioner's two Bond Redetermination Requests on July 31 and October 22, 2025 were heard expeditiously within a week of filing, though she later withdrew those requests after the hearing.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

Second, "the anticipated duration of all removal proceedings including administrative and judicial appeals" at this point is unknown and speculative, making this factor, at worst, neutral. *See Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 U.S. Dist. LEXIS 73224, at *12 (W.D. Wash. Feb. 29, 2024) (explaining that the future length of detention "remains unknown at this point in time. Given the ongoing uncertainty, this Court concludes that the second factor is neutral."). In addition, here, Petitioner has already conceded removability, but she was granted asylum by the IJ. The appeal of her asylum application is pending, and if she is successful in that appeal, then her § 1225(b) detention will be at an end. Moreover, her removal proceedings are moving along expeditiously (*see* Decl. ¶¶ 6-21) and her requests for bond hearings have been honored quickly (Decl. ¶¶ 8-9, 13-14), making any claim that detention will be indefinitely prolonged extremely implausible. Thus, this factor favors the Government, or is at worst neutral.

The third factor is, at most, neutral. The conditions of Petitioner's detention have not been unreasonable, and Petitioner has offered nothing more than conclusory allegations concerning such conditions, without any record evidence. *Cf. Duvine*, 2026 U.S. Dist. LEXIS 13720, at *11 (petitioner provided evidence concerning the conditions of his confinement). Since being detained, Petitioner has been provided with the opportunity to receive medical care, although she has chosen to refuse much of it. *See* Declaration of Eddie Wang, M.D., attached as Exhibit B. The same declaration notes ICE's commitment to "timely access to necessary and appropriate medical, dental, and mental health care and treatment while in custody" and explains the "health, safety, and welfare of those detained in its custody are among agency's highest priorities, and IHSC has protocols in place to ensure that any patient medical issues within its detention facilities is promptly and appropriately addressed and treated." *Id.* Moreover, the NWIPC was "accredited by the National Commission on Correctional Health Care in January 2021 and the American

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

Correctional Association in April 2021."[14] Given Petitioner has submitted no evidence concerning her detention,[15] this factor favors the Government, or at worst, is neutral. *See Odimara*, 2024 U.S. Dist. LEXIS 149107, at *17 ("The current record is devoid of any evidence regarding the conditions of Petitioner's detention at NWIPC. Thus, this factor weighs neither for nor against a bond hearing.").

Concerning the fourth and fifth factors, these factors are in equipoise. Both Petitioner and DHS have requested one continuance of approximately four weeks each. Decl. ¶¶ 11–12, 16–17. As such, these factors are in equipoise and are thus neutral. *See Odimara*, 2024 U.S. Dist. LEXIS 149107, at *18 ("there is no allegation or evidence of any undue delays in Petitioner's ongoing removal proceedings. As such [these factors] weigh neutrally . . .").

The final factor (i.e., the likelihood that proceedings will result in a final order of removal) is, at most, neutral. Petitioner has already conceded removability, although the appeal of her asylum application remains pending. Thus, any conjecture that her removal proceedings will not result in a final removal order is, at this point, speculative at best. *See Duvine*, 2026 U.S. Dist. LEXIS 13720, at *16 ("the Court lacks sufficient information to make a prediction as to the likelihood removal proceedings will result in a final order of removal and a ruling would therefore be no more than speculative. The Court thus finds the sixth and final factor neutral.").

In sum, the first and most important factor favors the government, while the remaining factors tilt in favor of the government or are neutral. Thus, the continued detention of Petitioner will serve to assure her presence at the time of her reasonably foreseeable removal, and continues to "serve its purported immigration purpose." *See Demore*, 538 U.S. at 527–28; *Prieto-Romero*, 534 F.3d at 1063.

---

[14] Office of Professional Responsibility, *Tacoma ICE Processing Center (Northwest Detention CTR) Compliance Inspection* (January 2025), U.S. Immigration & Customs Enforcement (https://www.ice.gov/doclib/foia/odo-compliance-inspections/tacomaIPC_TacomaWA_Jan28-30_2025.pdf).

[15] Excepting arguments by counsel made in support of the since stricken motion for a temporary restraining order, but "[c]ounsel's argument is neither law nor evidence[.]" *United States v. Bernard*, 625 F.2d 854, 857 (9th Cir. 1980); *see also United States v. Edwards*, 154 F.3d 915, 921 (9th Cir. 1998) (" . . . attorneys are generally prohibited from taking the witness stand to testify in a case they are litigating."). Ms. Smith's argument that "the conditions in detention are abysmal" is not evidence, and it would be improper advocate-witness testimony even if it were.

U.S. DEPARTMENT OF JUSTICE
Ben Franklin Stat., PO Box 868
Washington, D.C. 20001
(202) 451-7304

CONCLUSION

WHEREFORE Respondents respectfully request the Court dismiss the civil claims and deny the Petition.

DATED this 17th day of February, 2026.

Respectfully Submitted,

BRETT A. SHUMATE
Assistant Attorney General

DREW C. ENSIGN
Deputy Assistant Attorney General

DAVID J. BYERLEY
RUTH ANN MUELLER
Senior Litigation Counsel
U.S. Department of Justice
Civil Division
Office of Immigration Litigation

JEFFREY ALDERETTE
Trial Attorney

/s/ Jackson M. Story
JACKSON M. STORY
Florida Bar #1032001
Trial Attorney
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
P.O. Box 868, Washington, DC 20044
Telephone: (202) 451-7304
jackson.m.story@usdoj.gov

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Jackson M. Story
Jackson M. Story
Florida Bar #1032001
Trial Attorney
U.S. Department of Justice