BY ECF

Honorable Diane Gujarti
US District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Dated: March 23, 2026

Re: *Walter A Martinez-Martinez v. Bondi et al*, No. 1:26-cv-1278 (DG)

Dear Judge Gujarti,

This office represents Petitioner in the above-referenced Petition for Writ of Habeas Corpus ("Petition"). On March 16, the parties appeared before Your Honor for a hearing on the Petition. At the hearing, Your Honor directed Respondents to file a letter providing their position on whether the Notice to Appear ("NTA") served on Petitioner several hours after he was detained by ICE officers constituted termination "on notice" of Petitioner's Parole in compliance with 8 C.F.R. § 212.5(e). Petitioner Walter A. Martinez-Martinez ("Petitioner" or "Mr. Martinez-Martinez") submits this letter in reply to Respondents' letter dated March 10, 2026 (ECF No. 4).

I. PROCEDURAL POSTURE OF PETITIONER'S IMMIGRATION PROCEEDINGS

As indicated in Respondents' previously filed exhibits and throughout oral arguments made on March 16, 2026 before Your Honor, Petitioner has a pending I-485 application on file with United States Citizenship and Immigration Services ("USCIS"). *See Case 2:267-CV-01278-DG, Document 4-1, pg. 10.* On March 28, 2024, Petitioner received an approval notice for an I-131 Application for Travel Document with USCIS, which was valid from September 4, 2024 through September 3, 2029. This document permitted Petitioner to travel to his home country of El Salvador one (1) time without having any effect on the pendency of his I-485 application. *See Case 2:267-CV-01278-DG, Document 7-7, pg. 2.* According to the instructions on the I-131 approval document, "If you [Petitioner] have a pending Form I-485 and we deny it, you may be subject to removal proceedings for being inadmissible to the U.S. In his reliance of this approval document, Petitioner departed from the United States on December 19, 2024, and returned on December 28, 2024, well within the dates of validity established by USCIS. Of note, USCIS has not yet

adjudicated the pending I-485, and he is not subject to removal proceedings due to a denial of his pending application.

According to the I-94 Arrival/Departure Record submitted by Respondents, Petitioner was admitted back into the United States until December 26, 2025. Respondents argue that this I-94 served as "Notice" that Petitioner's parole would be automatically revoked after that day. However, there is no indication within the submitted documents that Petitioner ever received a copy of his I-94 Arrival/Departure Record, and Respondents have not submitted a stamped copy of his passport indicating an expiration date for his parole back into the United States.

II. Legal Arguments and Authority Regarding Notice of Parole Revocation

Respondent is currently detained pursuant to INA § 235 as an arriving alien. However, Respondent has a properly filed, pending Form I-485 with USCIS. As recognized by agency policy and controlling legal framework, a noncitizen "whose adjustment of status application is pending is in a period of stay authorized and does not accrue unlawful presence." See USCIS Policy Manual Volume 7, Part B, Chapter 3. This period of authorized stay, while not constituting lawful status or admission, reflects that DHS has affirmatively permitted the Respondent to remain in the United States for the purpose of adjudicating the application for permanent residence, despite the parole date indicated on his I-94 arrival/departure record.

Although Respondent is classified as an arriving alien, jurisdiction over the pending Form I-485 remains with USCIS, not the Immigration Court. See 8 C.F.R. § 1245.2(a)(1)(ii). Accordingly, Respondent's detention under § 235, without meaningful opportunity to pursue the pending adjustment application before the proper adjudicating authority, undermines the statutory and regulatory scheme governing adjustment of status.

Given that Respondent is in a period of authorized stay, has an application for permanent residence currently pending before USCIS, and continued detention would pose a barrier to the adjudication of his petitioner, continued custody is not justified. While Respondents may characterize such detention as mandatory, the Constitution requires that civil detention bear a reasonable relation to its purpose and be accompanied by adequate procedural safeguards. Here, Petitioner is pursuing relief that only USCIS has jurisdiction to adjudicate, see 8 C.F.R. §

1245.2(a)(1)(ii), yet remains detained with no mechanism to challenge the necessity of that detention. Additionally, because Petitioner is still in an authorized period of stay, notice of it's revocation is required, and given that Petitioner's I-200 arrest warrant and Notice to Appear were served on him several hours after his detention, such notice was not afforded to Petitioner. *See Savane v. Francis*, No. 25-cv-6666, 2025 WL 2774452, *7 (S.D.N.Y. Sept. 28, 2025), and *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)).

III. Additional Legal Arguments Regarding Mandatory Detention under INA § 235

Petitioner restates his position that even if his detention is considered lawful, then it is governed by INA § 236. As per 8 CFR § 1.2, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act. *See also Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771 (BIA 2012), citing Matter of Lemus, 24 I&N Dec. 373 (BIA 2007).* As such, Petitioner's status as an "arriving alien" has not been correctly classified, and he is therefore not mandatorily detainable under INA § 235.

IV. CONCLUSION

Because Petitioner was not given proper notice regarding the termination of his parole, and because he may not be treated as an arriving alien under INA § 235(b)(1)(A)(i), the Court should grant the petition and order Petitioner's release from unlawful detention.

Thank you for the court's time and attention to this manner.

Respectfully submitted,

By: */s/ Gina M. Rodgers*

Gina M. Rodgers, Esq.
Counsel for Petitioner
(516) 414-0080
grodgers@jadejacimone.com
gina_rodgers@ymail.com

cc: All Counsel of Record (by ECF)