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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO

Cesar Ernesto TUNACA-GALINDO, Petitioner, v. Attorney General of the United States, Department of Justice, *et al.*, Respondents.	Case No. 26-cv-02226-LL-BJW **PETITIONER'S TRAVERSE**

In Petitioner's case, the facts are clearly in support of immediate release given the failures of Respondents to adequately follow requirements of a pre-deprivation hearing upon re-detaining Petitioner, as fully alleged in the petition. *See generally*, ECF No. 1.

Respondents do not oppose Petitioner's eligibility for a bond hearing under current law in this district, but the predominate issue here is the procedure by which Respondents unlawfully re-detained Petitioner in the first instance. Respondents are not wrong that the Department of Homeland Security ("DHS") has discretion to authorize parole for great number of reasons, but there is a prerequisite to find the person is not a danger or flight risk. In the Respondents' Return, Respondents incorrectly allege that "[n]o such finding" of flight risk or danger to the U.S. community was made before Petitioner's release from custody on parole. ECF No. 4, p. 3. Immigration and Customs Enforcement ("ICE") authorized Petitioner's parole on April 29, 2022, pursuant to 8 U.S.C. § 1182(d)(5)(A), because, rightly or wrongly he was initially processed for expedited removal pursuant to 8 U.S.C. § 1225(b). ECF No. 4-1, Ex. 4. The companion regulations for parole pursuant to 8 U.S.C. § 1182(d)(5)(A) are 8 C.F.R.§ 212.5. According to 8 C.F.R.§ 212.5(b), it is a prerequisite that someone subject to expedited removal who will be released on parole "present neither a security risk nor a risk of absconding." Thus, to the extent that Respondents contend there was not a determination of flight risk or danger to the U.S.

community before authorizing parole, the evidence in the record and the statutory and regulatory interworking of parole determinations do not support such an assertion. Importantly, the expiration of the parole is not a valid reason to re-detain someone without notice and an opportunity to be heard. *See Sanchez v. LaRose*, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) ("[w]hen the government grants an alien parole into the country, it creates a liberty interest intimately tied to freedom from imprisonment.").

Additionally, Petitioner was at liberty in the United States pursuant to a finding he was not a danger or flight risk for three (3) years, one (1) month, and 22 days before his unlawful re-detention. For some unknown reason, Petitioner's removal proceedings were not initiated despite ICE regularly reviewing his case and indicating there was not yet court. ECF No. 1, ¶ 18. He even received formal notice that his "Notice to Appear, Form I-862"[1] would be filed and removal proceedings would initiate with the Los Angeles Immigration Court. He also was not scheduled for a credible fear interview until two (2) years, one month (1), and 22 days after his parole expired. ECF No. 4-1. During all this time, he did not violate the conditions of his release and he relied on his liberty interest given there were no signs or information

[1] *See* ECF No. 4-1, p. 17. This is additional evidence, along with his extended parole and liberty in the United States, that the DHS had used its discretion to not enforce expedited removal against Petitioner and instead initiate 8 U.S.C. § 1229a removal proceedings against him. In fact, the procedure of this case is rare, conflated, and assuredly a violation of due process.

provided that his liberty was a stake. Yet, on the day of his re-detention, where he willingly appeared at an appointment at the Los Angeles Asylum Office, he was not provided any notice or an opportunity to be heard as to why the conditions of his release were revoked. Instead, it seems the government sought to implement its expanded expedited removal process against him, and was thwarted from doing so while Petitioner suffered in detention. *See Make the Road N.Y. v. Noem*, 2025 WL 2494908 (D.D.C. Aug. 29, 2025) (the expanded expedited removal process halted by nationwide order).

Finally, it cannot be true that Petitioner is detained pursuant to 8 U.S.C. § 1225(b) and 8 U.S.C. 1226(a). Thus if Petitioner is detained pursuant to 8 U.S.C. 1226(a) given his entry without inspection (*See* ECF No. 1, Ex. B), his arrest must be predicated by an arrest warrant. Respondents have not made any showing that any such warrant exists.

Therefore, Petitioner respectfully requests this court restore to him his liberty.

Respectfully submitted,

Dated: April 24, 2026

/s/ *Leah L. Chavarria*
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