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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RIXION ENRIQUE MARTINEZ-
TOBIAS,

Petitioner,

v.

WARDEN JEREMY CASEY,

Respondent.

CASE NO.: 26-cv-2315-BJC-BLM

**Supplemental Briefing in Support of
Habeas Petition**

INTRODUCTION

In 2024, Mr. Martinez-Tobias entered the United States from Venezuela legally through the CBP-One App. He was *paroled into the country*. Mr. Martinez-Tobias has a pending asylum application.

But less than a month before his immigration hearing, ICE arrested him. On February 2, 2026, agents in unmarked cars and in civilian clothing stopped

¹ This Court conditionally appointed Federal Defenders of San Diego, Inc. and requested the filing of a CJA 23 financial affidavit form. Counsel has already spoken to Mr. Martinez-Tobias and inadvertently forgot to review the form with him. However, counsel did go over his financial eligibility and obtained his statement in the attached declaration. Counsel will supplement with the filing of the CJA 23 form at a later date, unless the Court orders otherwise.

1 Mr. Martinez-Tobias as he was driving in Coachella, California. They immediately
2 arrested him without any individualized determination, and no opportunity to be
3 heard. It did not matter that Mr. Martinez-Tobias was legally permitted to be in the
4 country, it did not matter that his parole continued to be valid, and it did not matter
5 that he had a pending asylum application.

6 Rather than continuing his asylum case outside in the community, he was
7 taken away from his community and required to proceed as a detained person. An
8 immigration judge denied his asylum claim on April 20, 2026. The proceedings
9 remain pending as he appeals the immigration judge's decision.

10 Mr. Martinez-Tobias's re-detention violates his regulatory and due process
11 rights. Specifically, while it is unclear whether the government has formally
12 revoked Mr. Martinez-Tobias's parole, the government's actions are unlawful
13 regardless. If the agency did not revoke his parole, then it violated that parole by
14 detaining him. And if the agency *did* revoke his parole, then it did so in violation
15 of the statute and regulations, which require written notification and a
16 determination that the purposes of the parole have been served, as well as the
17 Constitution, which requires pre-deprivation notice and hearing. Either way, the
18 agency's actions violated the Administrative Procedures Act and the Due Process
19 Clause.

20 This Court should grant *immediate release* as this Court and other courts in
21 this district have done in similar cases. *Alkan v. U.S. Immigr. & Customs Enft*, No.
22 26-CV-0672-BJC-DDL, 2026 WL 559776, at *1 (S.D. Cal. Feb. 27, 2026); *Zapata*
23 *Velasquez v. Noem*, No. 26-CV-0746-BJC-MMP, 2026 WL 1005077, at *3 (S.D.
24 Cal. Apr. 14, 2026); *Alegria Palma v. LaRose*, 25-cv-1942-BJC-MMP, ECF No.
25 14 (S.D. Cal. Aug. 11, 2025); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP,
26 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025); *Rahman v. Casey*, No. 26-CV-
27 646 JLS (MMP), 2026 WL 512878, at *2 (S.D. Cal. Feb. 23, 2026); *Rodriguez Alba*
28 *v. Noem*, No. 26CV561-LL-DEB, 2026 WL 776060, at *3 (S.D. Cal. Mar. 19,

1 2026).

2 **STATEMENT OF FACTS**

3 Mr. Martinez-Tobias is a Venezuelan national who entered the United States
4 on October 28, 2024. Exhibit A, Declaration of Martinez-Tobias at ¶¶ 1–2. He
5 entered through an appointment with the CBP-One App. *Id.* at ¶ 2.

6 Mr. Martinez-Tobias integrated himself into the community. He was
7 working as an UBER delivery driver and worked in landscaping maintenance. *Id.*
8 at ¶ 11. He lives with his United States Citizen girlfriend. *Id.*

9 Mr. Martinez-Tobias filed an application for asylum. He had a hearing before
10 an immigration judge on February 28, 2026. *Id.* at ¶ 4.

11 On February 2, 2026, Mr. Martinez-Tobias was driving in Coachella when
12 agents stopped his car. *Id.* at ¶ 5. People in unmarked cars wearing civilian clothes
13 stopped him. *Id.* Mr. Martinez-Tobias did not even know who these people were,
14 he believes that they may be people paid reward money to arrest people for ICE.
15 *Id.*

16 They asked Mr. Martinez-Tobias for his papers and arrested him without any
17 explanation. *Id.* They did not give him an opportunity to contest his detention and
18 he was eventually sent to the Imperial Detention Center where he remains today.
19 *Id.* at ¶¶ 6–7.

20 While detained, Mr. Martinez-Tobias continued to request an explanation for
21 his detention. He was eventually given a paper that stated that the reason for his
22 detention was because he was in the country illegally, which is contrary to his status
23 as a parolee. *Id.* at ¶ 7.

24 Now detained, Mr. Martinez-Tobias was required to pursue his asylum claim
25 as a detained person with limited access to counsel and evidence. *Id.* at ¶ 11. On
26 April 20, 2026, an immigration judge denied his asylum. *Id.* The proceedings
27 remain pending as Mr. Martinez-Tobias is appealing the decision. *Id.*
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4 **LEGAL BACKGROUND**

5 This Court should grant this petition by ordering Mr. Martinez-Tobias's
6 immediate release.

7 **I. Revoking Mr. Martinez-Tobias's release and subjecting him to**
8 **detention violates the Administrative Procedures Act and Due Process.**

9 **A. The government's actions violated the Administrative**
10 **Procedures Act.**

11 The INA "establishes the framework governing noncitizens' entry into and
12 removal from the United States, with regulations promulgated by the enforcing
13 agencies providing further governance." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,
14 1132 (D. Or. 2025). "Noncitizens who arrive at a port of entry without a visa or
15 other entry document, like Petitioner, are deemed 'inadmissible' under 8 U.S.C.
16 § 1182(a)(7)" due to their lack of entry documents. *Id.* at 1132 & n.7 (noting that
17 "[d]epending on the circumstances, other categories of inadmissibility may also
18 apply, but § 1182(a)(7) applies for noncitizens without proper documentation").
19 Once a noncitizen is deemed inadmissible, "the immigration officer must order the
20 noncitizen's removal unless the noncitizen indicates an intention to apply for
21 asylum or fear of prosecution." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). The
22 government may place the noncitizen into expedited removal proceedings, *see*
23 8 U.S.C. § 1225(b)(1), or the government may place the noncitizen into regular
24 removal proceedings under 8 U.S.C. § 1229(a). *See Y-Z-L-H*, 792 F. Supp. 3d at
25 1132–33 (citing 8 U.S.C. § 1225(b)(2)).

26 Section § 1225(b)(2)(A) provides that "in the case of an alien who is an
27 applicant for admission, if the examining immigration officer determines that an
28 alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
the alien shall be detained for a proceeding under section 1229a of this title."
8 U.S.C. § 1225(b)(2)(A). However, "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.*

1 *Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). The
2 decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined “on a
3 case-by-case basis.” 8 U.S.C. § 1182(d)(5)(A). Then, “when the purpose of the
4 parole has been served,” § 1182(d)(5)(A) provides that “the alien shall forthwith
5 return or be returned to the custody from which he was paroled and thereafter his
6 case shall continue to be dealt with in the same manner as that of any other applicant
7 for admission to the United States.” *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C.
8 § 1182(d)(5)(A)).

9 To terminate the previously granted parole, the agency must comply with the
10 applicable regulatory and statutory requirements. As set forth in 8 C.F.R.
11 § 212.5(e)(2)(i), which governs the “[t]ermination of parole,”

12 In cases not covered by paragraph (e)(1) of this section,³ upon
13 accomplishment of the purpose for which parole was authorized or
14 when in the opinion of one of the officials listed in paragraph (a) of
15 this section, neither humanitarian reasons nor public benefit
16 warrants the continued presence of the alien in the United States,
17 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.

18 8 C.F.R. § 212.5(e)(2)(i). That is, “[u]nder the governing regulation,
19 [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is
20 accomplished, or humanitarian reasons and the public benefit no longer warrant
21 parole.” *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL
22 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)).

23 What’s more, ICE is required to inform noncitizens of the reasons for
24 revocation. The court in *Y-Z-H-L* determined that under the Administrative
25 Procedure Act, immigration parolees are entitled to determinations related to their
26 parole revocations that are not arbitrary, capricious or an abuse of discretion. *Y-Z-*
27 *L-H*, 792 F. Supp. 3d at 1144. An agency acts arbitrarily and capriciously by failing
28 to make a reasoned determination or where the agency fails to “articulate[] a

1 satisfactory explanation for its action including a rational connection between the
2 facts found and the choice made.” *Id.* Parole revocations in the context of the INA
3 must occur on a case-by-case basis and may occur “when the purposes of such
4 parole shall, in the opinion of the Secretary of Homeland Security, have been served
5 the alien shall forthwith return or be returned to the custody from which he was
6 paroled.” *Id.* (quoting 8 C.F.R. § 212.5(e)). 8 C.F.R. § 212.5(e) requires written
7 notice of the termination of parole except where the immigrant has departed or
8 when the specified period of parole has expired.

9 The government has failed to follow the applicable statutory and regulatory
10 provisions to terminate Petitioner’s parole. *Cf. Coal. for Humane Immigrant Rts. v.*
11 *Noem*, No. 25-cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025)
12 (holding that the government failed to follow the applicable statutory and regulatory
13 provisions and that paroled noncitizens cannot be subject to expedited removal
14 proceedings); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *5–
15 7 (E.D. Mich. Oct. 29, 2025) (same); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 WL
16 2938594, at *10 (N.D. Ohio Oct. 16, 2025) (same).

17 First, the statute at 8 U.S.C. § 1182(d)(5)(A) permits the termination of parole
18 only where there is a finding that the purpose of such parole has been served. *Y-Z-*
19 *L-H*, 792 F. Supp. 3d at 1133. Here, however, the purpose of Petitioner’s parole has
20 not been served. He fled from Venezuela, seeking asylum in the United States, and
21 he entered the United States through the CBP One application. Exh. A ¶¶ 1–2. At
22 that time, Mr. Martinez-Tobias was granted release pursuant to 8 U.S.C.
23 § 1182(d)(5)(A), which provides for parole into the United States “for urgent
24 humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). He
25 filed an asylum application and he had court before an immigration judge less than
26 a month from the date of his arrest. Moreover, now that he has been detained, he is
27 appealing the immigration court’s decision. Thus, the purpose of parole has not yet
28 been served. *Perez Bueno v. Janecka*, No. 5:25-CV-03376-CAS-BFM, 2026 WL

309934, at *1 (C.D. Cal. Feb. 5, 2026) (granting habeas noting asylum remains pending when on appeal prior to detention); *Velasquez-Chinga v. Noem*, No. 3:26-CV-00105-RBM-KSC, 2026 WL 311507, at *1 (S.D. Cal. Feb. 5, 2026) (same)

Second, ICE is required to provide the noncitizen “a cogent description of the reasons supporting the revocation decision.” *J.E.H.G. v. Chestnut*, No. 1:25-CV-01673-JLT SKO, 2025 WL 3523108, at *6 (E.D. Cal. Dec. 9, 2025). In *Y-Z-H-L*, the Petitioner received an email stating that “DHS was exercising its discretion” to terminate parole. 792 F. Supp. 3d at 1146. The court said that this language was vague and did not provide an actual reason. *Id.* It stated that the “email was legally insufficient to meet the statutory and regulatory requirements, even though it cited those provisions and invoked the word ‘discretion.’” *Id.* 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.” *J.E.H.G.*, 2025 WL 3523108, at *6 (citing *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025)). There is no indication that the government conducted that analysis in this case.

Judge Curiel found an APA violation in *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025). *Noori* concluded that “to meet statutory and regulatory requirements, revocation should only occur when (1) the parole’s purpose is served or (2) when humanitarian reasons and public benefit are no longer warranted, and the noncitizen is provided written notice.” *Id.* The first requirement was not met because the petitioner “applied for asylum and was still in the middle of those proceedings when Respondents issued and executed the revocation.” *Id.* And even though the petitioner was provided a “generic notification” of his revocation, the second requirement was not met because “humanitarian reasons still warrant the Petitioner’s presence in the country.” *Id.* at a minimum, Judge Curiel held, parole revocation “requires an individualized

determination,” which the government had not provided because it failed to explain “why the Petitioner would now be considered a flight risk or danger to the community.” *Id.*

Here, as in *Noori*, the government failed to meet the statutory and regulatory requirements for parole revocation. Thus, the government here “has acted arbitrarily and capriciously in violation of the APA.” *Id.*

B. Mr. Martinez-Tobias’s detention is a violation of the Due Process Clause.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

An individual released from immigration custody has a constitutionally protected liberty interest in remaining free from detention. *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also Sanchez v. LaRose*, 25-cv-2396; 2025 WL 2770629, at * 3 (S.D. Cal.). Thus, Petitioner has a fundamental interest in liberty and being free from official restraint.

“Even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted). Thus, the liberty interest applies to individuals who are paroled into the United States and released to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or.

1 July 9, 2025).

2 To determine which procedures are constitutionally sufficient to satisfy the
3 Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews*, 424
4 U.S. at 335. Courts must consider: (1) “the private interest that will be affected by
5 the official action”; (2) “the risk of an erroneous deprivation of such interest
6 through the procedures used, and the probable value, if any, of additional or
7 substitute procedural safeguards”; and (3) “the Government's interest, including the
8 function involved and the fiscal and administrative burdens that the additional or
9 substitute procedural requirement would entail.” *Id.*

10 All three factors support a finding that the government’s revocation of
11 Mr. Martinez-Tobias’s release without reasoning or an opportunity to be heard,
12 denied Petitioner of his due process rights. First, Mr. Martinez-Tobias has a
13 significant liberty interest in remaining out of custody pursuant to his conditional
14 parole. “Freedom from imprisonment—from government custody, detention, or
15 other forms of physical restraint—lies at the heart of the liberty [the Due Process
16 Clause] protects.” *Zadvydas*, 533 U.S. at 690. He also has an interest in remaining
17 with his family and continuing the process of adjusting status to a lawful permanent
18 resident and asylum. *See Morrissey*, 408 U.S. 471 at 482 (“Subject to the conditions
19 of his parole, he can be gainfully employed and is free to be with family and friends
20 and to form the other enduring attachments of normal life.”).

21 Second, the risk of an erroneous deprivation of such interest is high as
22 Mr. Martinez-Tobias parole was revoked without providing him a reason for
23 revocation or giving him an opportunity to be heard. When he was paroled, the
24 government made a finding that he did not pose a danger to the community and was
25 not a flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017)
26 (“Release reflects a determination by the government that the noncitizen is not a
27 danger to the community or a flight risk.”). “Once a noncitizen has been released,
28 the law prohibits federal agents from rearresting him merely because he is subject

1 to removal proceedings.” *Saravia*, 280 F. Supp. 3d at 1760. “Rather, the federal
2 agents must be able to present evidence of materially changed circumstances—
3 namely, evidence that the noncitizen is in fact dangerous or has become a flight risk
4” *Id.* “Where, as here, ‘the petitioner has not received any bond or custody
5 hearing,’ ‘the risk of an erroneous deprivation of liberty is high’ because neither
6 the government nor [Petitioner] has had an opportunity to determine whether there
7 is any valid basis for [his] detention.” *Pinchi*, 2025 WL 2084921, at *5 (quoting
8 *Singh v. Andrews*, No. 25-cv-801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D.
9 Cal. July 11, 2025)) (cleaned up).

10 Third, the Government’s interest in detaining Mr. Martinez-Tobias without
11 proper notice and reasoning or a hearing is “low.” *See Pinchi*, 2025 WL 2084921,
12 at *5; *Matute*, 2025 WL 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
13 970 (N.D. Cal. Nov. 22, 2019) (“If the government wishes to re-arrest [Petitioner]
14 at any point, it has the power to take steps toward doing so; but its interest in doing
15 so without a hearing is low.”).

16 Thus, Mr. Martinez-Tobias’s detention is unlawful. *See, e.g., Alegria Palma*
17 *v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11,
18 2025) (granting a TRO based on a procedural due process challenge to a revocation
19 of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629,
20 at *5 (granting a writ of habeas corpus releasing petitioner from custody to the
21 conditions of her preexisting parole on due process grounds).

22 **II. This Court has jurisdiction to consider Mr. Martinez-Tobias’s claim.**

23 In cases raising similar claims, the government has argued that this Court
24 lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and
25 1252(b)(9). This argument fails here for at least three independent reasons. First,
26 Mr. Martinez-Tobias’s claims are inextricably intertwined with the government’s
27 authority to detain him, which this Court has jurisdiction to consider. Second, this
28 Court has jurisdiction to review whether the agency has complied with due process

1 and its mandatory, nondiscretionary duties.

2 Courts have jurisdiction to “decide a purely legal question that does not
3 challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United*
4 *States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*,
5 the Ninth Circuit squarely held that “§ 1252(g) does not prohibit challenges to
6 unlawful practices merely because they are in some fashion connected to removal
7 orders.” *Id.* at 997. Accordingly, the question is whether Petitioner’s claim
8 “challenge[s] the Attorney General’s discretionary authority.” *Id.* at 996.

9 They do not. First, Petitioner claim relates to the government’s authority to
10 detain him, and courts have widely held that review of issues related to detention is
11 not barred by § 1252(g) or (b)(9). *See, e.g., Flores-Torres v. Mukasey*, 548 F.3d
12 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a
13 challenge to immigration detention based on a citizenship claim); *Kong v. United*
14 *States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that “assertions of illegal
15 detention [were] plainly collateral to ICE’s prosecutorial decision to execute [a
16 detainee’s removal” and thus not subject to § 1252’s jurisdictional bars); *Cardoso*
17 *v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts
18 from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957
19 (7th Cir. 1999) (§ 1252(g) did not apply to a “claim concern[ing] detention”). To
20 undersigned counsel’s knowledge, every judge in this district has held that it has
21 jurisdiction to consider claims that an individual is unlawfully detained. Petitioner’s
22 claim asserts in his habeas petition relate to the government’s authority to detain
23 him without following the regulations and statues relating to parole.

24 Second, the jurisdictional bars of § 1252 do not bar review of claims that ICE
25 is “failing to carry out non-discretionary statutory duties and provide due process.”
26 *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash.
27 June 30, 2025); *see also D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d
28 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of “the purely legal

1 question of whether the Constitution and relevant statutes require notice and an
2 opportunity to be heard”).

3 That is precisely what Judge Curiel recently held in a similar case. In *Noori*
4 *v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *1 (S.D. Cal. Oct.
5 1, 2025), the petitioner was (like Petitioner) an asylum seeker from Afghanistan
6 who “presented himself at the U.S. Port of Entry in San Ysidro, California and
7 applied for admission with a CBP One application.” Immigration officials “paroled
8 him into the United States” under the same type of “DT” humanitarian parole as
9 Mr. Martinez. *Id.* But after the government cancelled the petitioner’s removal
10 proceedings and placed him in expedited removal, he filed a habeas petition, and
11 the government argued that §§ 1252(g) and (b)(9) stripped the court of jurisdiction
12 to hear his claims. *Id.* at *5.

13 Nevertheless, Judge Curiel found that he had jurisdiction to hear the claims,
14 noting that “Petitioner does not challenge the decision to commence proceedings.”
15 *Id.* at *6. Instead, “Petitioner challenges the legality of the revocation of
16 humanitarian parole in violation of the law and dismissal of ongoing removal
17 proceedings without due process.” *Id.* So even assuming the agency’s revocation
18 of parole “constitutes a decision or action to adjudicate cases,” that action is not “in
19 the discretion” of the agency under § 1252(g) where it was “not performed in
20 accordance with the mandatory procedures.” *Id.* (quoting *Sharkey v. Quarantillo*,
21 541 F.3d 75, 86 (2d Cir. 2008) (alterations omitted)).

22 Other courts have held the same. In *Dep’t of Homeland Sec. v. Regents of the*
23 *Univ. of California*, 140 S. Ct. 1891, 1907 (2020), the Supreme Court held that
24 § 1252(b)(9) “does not present a jurisdictional bar” where those bringing suit “are
25 not asking for review of an order of removal,” “the decision to seek removal,” or
26 “the process by which removability will be determined.” (quotations and alterations
27 omitted). And in *Vasquez Garcia v. Noem*, 25-cv-02180-DMS-MMP, 2025 WL
28 2549431, Dkt. 7 at *8 (S.D. Cal. Sept. 3, 2025), Judge Sabraw held that “§ 1252(g)

1 does not limit the Court’s jurisdiction in the present case” because the petitioners
2 were “enforcing their constitutional rights to due process in the context of the
3 removal proceedings—not the legitimacy of the removal proceedings or any
4 removal order.”

5 Here, because these actions were “not performed in accordance with the
6 mandatory procedures,” they were not undertaken “in the discretion” of the agency.
7 *Noori*, 2025 WL 2800149, at *6; *see also United States ex rel. Accardi v.*
8 *Shaughnessy*, 347 U.S. 260, 265–68 (1954) (holding that agencies must adhere to
9 their own binding regulations, both substantively and procedurally). Accordingly,
10 this Court is not jurisdictionally barred from reviewing them.

11 **CLAIM AND PRAYER FOR RELIEF**

12 For the reasons just given, the statute, the regulations, and the Fifth
13 Amendment Due Process Clause prohibits the government from continuing to
14 detain Petitioner.

15 Accordingly, Petitioner respectfully requests that this Court:

- 16 1. Order Respondents to immediately release Petitioner from custody
17 under the same conditions of parole;
- 18 2. Order all other relief that the Court deems just and proper.

20 Respectfully submitted,

21
22 Dated: April 22, 2026

s/ Zandra Lopez
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