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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Askat Zharmatov,

Petitioner

v.

1. TONYA ANDREWS, Facility
Administrator, Golden State Annex
Detention Center;
2. DAVID J. VENTURELLA,
Acting Director, U.S.
Immigration and Customs
Enforcement;
3. TODD BLANCHE, Acting U.S.
Attorney General;
4. MARKWAYNE MULLIN,
Secretary, U.S. Department
of Homeland Security.

Respondents.

CASE NO: 1:26-CV-05240-TLN-AC

**PETITIONER'S REPLY IN
SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Respondents' Opposition does not dispute facts alleged in the Petition. It does not deny that Petitioner presented himself for inspection at the Hidalgo, Texas port of entry; that DHS exercised its discretion to grant him a written parole under INA § 212(d)(5)(A); that he resided openly in Roseville, California for more than two years, reporting for every scheduled ICE check-in and wearing a GPS monitor furnished by ICE; that he has no criminal record; or that he was taken into custody without notice, explanation, or any opportunity to be heard. Respondents instead "submit on this pleading alone without additional documentation or briefing," *Opp. at 1:17–19*, offering no evidence and, beyond one generalized sentence borrowed from Mezei and Thuraissigiam and addressed in Section III.C below, no case-specific argument addressing Petitioner's due process claims (Counts Three and Four). Their Opposition otherwise rests on a single, two-page argument — that Petitioner is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b) — supported by two out-of-circuit appellate decisions and one factually distinguishable district-court order. None of that authority answers the question this case actually presents: whether the government may detain, indefinitely and without any hearing, a paroled asylum-seeker who lived compliantly in this community for more than two years before his re-arrest. Tellingly, Respondents' own Opposition concedes that "this case is in the category of immigration habeas cases for which the Court has typically ordered immediate release." *Opp. at 1:16–17*.

ARGUMENT

I.

RESPONDENTS' UNCONTESTED SUBMISSION LEAVES THE MATERIAL FACTS — AND PETITIONER'S DUE PROCESS CLAIMS — UNREBUTTED

1 Respondents elected to submit “on this pleading alone,” *Opp. at 1:17–18*, without
2 any declaration, exhibit, or evidentiary submission of any kind. Every material fact
3 alleged in the Petition therefore stands un rebutted on this record: Petitioner’s inspection
4 and written grant of parole at a port of entry (Pet. ¶¶ 3, 20, Ex. 3–4); his unbroken
5 compliance with every condition of supervision, including GPS monitoring and
6 in-person check-ins, for more than two years (Pet. ¶ 22, Ex. 5); his pending, timely filed
7 I-589 application (Pet. ¶ 24, Ex. 6); his lack of any criminal history (Pet. ¶ 23); and his
8 extensive family and community ties (Pet. ¶ 21, Ex. 10–12). Respondents likewise do
9 not meaningfully address Petitioner’s claims that his parole was terminated without
10 notice or process (Count Two) or that his detention without any individualized hearing
11 violates procedural due process (Counts Three and Four); their only reference to due
12 process is the single generalized sentence, addressed in Section III.C below, that
13 Petitioner “does not possess a right to freedom from immigration detention in any form
14 other than the form provided by Congress.” Respondents identify no basis on which the
15 Court could deny relief on them. The Court may grant the Petition on this uncontested
16 record alone.

17 II.

18 EVEN IF SECTION 1225(b) APPLIES, PETITIONER’S PROLONGED 19 DETENTION WITHOUT ANY HEARING VIOLATES DUE PROCESS — THE 20 QUESTION JENNINGS LEFT OPEN

21 Respondents’ Opposition treats the statutory label attached to Petitioner’s
22 detention as the end of the inquiry. It is only the beginning. In *Jennings v. Rodriguez*,
23 583 U.S. 281 (2018), the Supreme Court held that §§ 1225(b) and 1226(c) contain no
24 implicit statutory right to periodic bond hearings — but it expressly declined to decide
25 whether the Constitution independently requires such process, remanding that question
for the courts below to resolve in the first instance. Petitioner’s due process claims are
exactly the as-applied constitutional challenge *Jennings* left open; Respondents’
Opposition does not engage with them.

1 Petitioner's liberty interest here is not the diffuse interest of a noncitizen who has
2 never been free. DHS made an affirmative, written grant of parole under INA §
3 212(d)(5)(A) and released Petitioner into the community for more than two years before
4 re-detaining him without warning. That history matters: although Morrissey addressed
5 revocation of criminal parole rather than parole under INA § 212(d)(5)(A), its reasoning
6 is instructive on the character of the interest at stake once liberty has been granted and
7 relied upon: "[T]he liberty of a parolee, although indeterminate, includes many of the
8 core values of unqualified liberty and its termination inflicts a 'grievous loss' on the
9 parolee." Cf. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Earlier this year, on
10 materially indistinguishable facts, a court in this District held that the government may
11 not re-detain a noncitizen who had been released and compliant for years without first
12 providing notice and a hearing. See *Singh v. Albarran*, No. 1:25-cv-01788-CDB (E.D.
13 Cal. Jan. 9, 2026) (petitioner released on an order of recognizance and compliant for
14 three and a half years; ordering that, before re-detention, "the government must provide
15 notice to Petitioner a minimum of seven (7) days in advance and must hold a bond
16 hearing before a neutral arbiter," and finding a substantial private interest in remaining
17 free where the petitioner had "remained released from immigration detention for over
18 three and a half years without incident"). The same analysis governs here, and
19 Petitioner's case for relief is at least as strong: he was affirmatively paroled, not merely
20 released on recognizance; he complied with GPS monitoring in addition to every
21 check-in; and he was seized at a routine, scheduled appointment with no notice of any
22 kind.

23 The result follows directly from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976),
24 which requires weighing (1) the private interest at stake, (2) the risk of erroneous
25 deprivation through the procedures used and the value of additional safeguards, and (3)
the government's interest, including the administrative burden of more process. Each
factor favors Petitioner. His interest in physical liberty is, as the Supreme Court has
repeatedly recognized, at the core of what due process protects. The risk of erroneous

1 deprivation is high: no neutral decisionmaker has ever assessed whether Petitioner
2 presents a flight risk or danger, despite his unblemished two-year compliance record.
3 And the government's countervailing interest is minimal — the very statutory scheme
4 Respondents invoke already commits parole and custody decisions to DHS's discretion,
5 and Respondents have articulated no reason, on this record, that a hearing would burden
6 that interest.

7 III.

8 RESPONDENTS' AUTHORITY DOES NOT SUPPORT DETENTION 9 WITHOUT ANY HEARING ON THESE FACTS

10 **A. Herrera Avila and Buenrostro-Mendez Are Out-of-Circuit and Reflect an** 11 **Unsettled, Actively Splitting Question**

12 Respondents' two lead cases arise from the Eighth and Fifth Circuits and are not
13 binding on this Court. *Herrera Avila v. Bondi*, No. 25-3248 (8th Cir. Mar. 25, 2026)
14 (Respondents' citation to "No. 25-3741" is not the Eighth Circuit's appellate docket
15 number for this case); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). The
16 Ninth Circuit has not decided the question, and the circuits that have divide sharply.
17 Compare *Herrera Avila* and *Buenrostro-Mendez*, with *Cunha v. Freden*, No. 25-3141 (2d
18 Cir. Apr. 28, 2026) (§ 1225(b)(2)(A) does not reach noncitizens, however long present
19 without admission, who are not presently seeking admission; § 1226(a) governs, with
20 bond eligibility). Respondents' authority establishes, at most, that the question is
unsettled outside this Circuit — not that Petitioner's constitutional claim fails.

21 **B. None of Respondents' Cases Involved a Noncitizen Who Was Affirmatively** 22 **Paroled**

23 More fundamentally, none of Respondents' cited petitioners had received what
24 Petitioner received: a formal, written DHS grant of parole authorizing his presence in the
25 community. *Cortes Alonzo v. Noem* denied relief based on the entry fiction: an

1 unadmitted noncitizen has “never effected an ‘entry’” for due-process purposes,
2 regardless of how long he has lived in the interior. No. 1:25-cv-01519-WBS-SCR, Dkt.
3 14 (E.D. Cal. Nov. 17, 2025) (petitioner “never obtained lawful status” and “never
4 effected an ‘entry’”). Petitioner’s claim does not depend on disputing that fiction. Unlike
5 bare unlawful presence, Petitioner received DHS’s own affirmative, written grant of
6 parole under INA § 212(d)(5)(A) — an act of release, not mere physical presence — and
7 DHS permitted him to live in this community, under GPS supervision, for more than two
8 years before re-detaining him. Pet. Ex. 4 (grant dated Feb. 8, 2024). That grant is the
9 source of the liberty interest that *Morrissey* protects, independent of whether Petitioner
is deemed to have made an “entry” in the technical, immigration-law sense.

10 **C. Shaughnessy v. Mezei and DHS v. Thuraissigiam Involved Noncitizens Detained**
11 **at the Threshold, Never Released Into the Community**

12 Respondents’ remaining authority is further afield still. Mezei involved a
13 noncitizen detained at Ellis Island pending exclusion proceedings; although the lower
14 courts granted him temporary release on bond during the litigation, the Supreme Court
15 held that, because he was treated as if stopped at the border, he had no right to a hearing
16 before continued exclusion. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206,
17 213–15 (1953). *Thuraissigiam* involved a noncitizen apprehended approximately
18 twenty-five yards from the border and treated, for due process purposes, “as if stopped at
19 the border.” *DHS v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020). Petitioner is the
20 converse case: DHS affirmatively released him into the interior for more than two years
21 before re-arresting him at a routine, pre-scheduled appointment far from any border. The
22 entry fiction that drove *Mezei* and *Thuraissigiam* does not erase the liberty interest
Petitioner accrued during two years of lawful, monitored residence in this District.

23 **IV.**

24 **PETITIONER IS PROPERLY DETAINED, IF AT ALL, UNDER 8 U.S.C. §**
25 **1226(a), NOT § 1225(b)**

1 For the reasons set forth in the Petition (Count One) and reinforced by the circuit
2 split identified above, § 1226(a) — not § 1225(b) — governs Petitioner's detention,
3 because he has been paroled into, and physically present in, the United States for a
4 prolonged period while in standard removal proceedings, rather than detained as a recent
5 arrival at the border. The Court need not resolve this statutory question to grant relief,
6 however: even crediting Respondents' statutory position in full, Petitioner's due process
7 claim in Section II, above, independently requires the relief he seeks.

8 **CONCLUSION**

9 For the foregoing reasons, and for the reasons set forth in the Petition, Petitioner
10 respectfully renews his request that the Court grant the Petition and order his immediate
11 release, or, in the alternative, order Respondents to provide him a prompt, individualized
12 bond hearing before a neutral adjudicator within a short, specified period, absent which
13 Respondents must release him forthwith.

14 Dated: July 21, 2026

15
16 Respectfully submitted,
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