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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mehrad Asadieidivand,

Petitioner,

vs.

Ghulam Rasool, ICE Enforcement and
Removal Operations Phoenix Supervisory
Detention and Deportation Officer;
Justin Smith, ICE Enforcement and Removal
Operations Phoenix Assistant Field Office
Director;
John Cantu, ICE Enforcement and Removal
Operations Phoenix Field Office Director;
Marcos Charles, ICE Acting Executive
Associate Director, Enforcement and
Removal Operations;
Kristi Noem, United States Secretary of
Homeland Security; and
Pamela Bondi, Attorney General of the
United States,
Respondents.

No. CV-25-02475-PHX-KML (JFM)

Supplemental Brief

On August 11, 2025, the Court issued an Order directing the parties to (*inter alia*) no later than noon on August 25, 2025, file simultaneous supplemental briefs of no more than ten pages addressing eight questions formulated by the Court. (Doc. 18 at 3.) Mr. Asadieidivand files this brief in compliance with the Court's Order.

1 **1. Is the determination whether to grant parole meaningfully different from the**
2 **determination whether to grant bond? Assuming an individual is eligible for bond, is it**
3 **plausible he would be granted bond but denied parole?**

4 The determination whether to grant parole is not “meaningfully” different from the
5 determination whether to grant bond, because while the specific decisionmakers are different, the
6 decision in both contexts is made by Executive Branch officials, and the essential criteria
7 governing the decision are the same, at least as they pertain to Mr. Asadieidivand.

8 Parole is governed by 8 U.S.C. § 1182(d)(5)(A), 8 C.F.R. § 212.5, and ICE Directive
9 11002.1. Section 1182(d)(5)(A) gives the parole power to the Secretary of Homeland Security,
10 and Section 212.5(a) delegates the power to certain lower-level DHS officials. Section
11 1182(d)(5)(A) specifies that parole may be granted “only on a case-by-case basis for urgent
12 humanitarian reasons or significant public benefit.” The statute further specifies that when the
13 “purposes of such parole” shall have been served, the alien “shall forthwith return or be
14 returned” to custody. Section 212.5(b) provides examples of “urgent humanitarian reasons” and
15 “significant public benefit”—including aliens with serious medical conditions, pregnant women,
16 minors, witnesses, and aliens “whose continued detention is not in the public interest.” ICE
17 Directive 11002.1 further specifies that parole is generally “in the public interest” where an
18 arriving alien found to have a credible fear establishes his identity and that he “presents neither a
19 flight risk nor danger to the community.” ICE Directive 11002.1 par. 6.2.

20 Bond is governed by 8 U.S.C. § 1226(a) and 8 C.F.R. § 236.1. Section 1226(a) specifies
21 that the Attorney General may release a detained alien on bond of at least \$1,500 or “conditional
22 parole,” pending a decision on whether the alien is to be removed from the United States.
23 Section 236.1(c)(8) further specifies that “[a]ny officer authorized to issue a warrant of arrest”
24 may release an alien on bond or conditional parole “provided that the alien must demonstrate to
25 the satisfaction of the officer that such release would not pose a danger to property or persons,
26 and that the alien is likely to appear for any future proceeding.” Pursuant to 8 C.F.R. § 236.1(d),
27 an administrative bond determination may be challenged before an immigration judge, and from
28 there (in some circumstances) appealed to the Board of Immigration Appeals.

1 In sum, these two regimes involve different decisionmakers and terminology, but both
 2 focus on the classic bail factors of flight risk and danger. And while § 1182(d)(5)(A) on its face
 3 specifies an additional requirement of “urgent humanitarian reasons or significant public
 4 benefit,” the clarifying regulation and ICE Directive provide that this requirement is satisfied by
 5 the absence of flight risk or danger. It follows that, because an individual granted bond has
 6 necessarily been deemed neither a flight risk nor a danger, he should qualify for parole as well.
 7 Thus, assuming the officials involved are faithfully following the governing statutes and
 8 regulations, it is not plausible that an individual eligible for bond would be granted bond but
 9 denied parole.

10 **2. Is it plausible to infer DHS intended for petitioner to be released in August 2022?**

11 Yes. Two DHS officials, Supervisory Detention and Deportation Officer Patrick Arbuco,
 12 and Deportation Officer Martinez, both signed a DHS Notice of Custody Determination
 13 confirming that Mehrad would be released on a \$10,000 bond. (Doc. 1-7.) Although DHS
 14 officials may have been confused as to the proper legal and regulatory framework governing their
 15 decision to release Mehrad, the record confirms—and Respondents do not deny—that these
 16 officials made a deliberate decision to release him. Indeed, they not only enshrined their decision
 17 in formal documents (*id.*), but also collected a \$10,000 bond, issued him employment
 18 authorization, and monitored his performance on release for two years, nine months, and 22
 19 days. (Doc. 1 at 9.) On this record, no other inference is plausible. ICE’s decision to release
 20 Mehrad necessarily “reflected a determination by the government that [he] was neither a flight
 21 risk nor a danger to the community[.]” *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
 22 2084921, at *4 (N.D. Cal. July 24, 2025); *accord Hernandez v. Sessions*, 872 F.3d 976, 981 n.3 (9th
 23 Cir. 2017) (“The fact that ICE or an IJ has determined that a non-citizen is eligible for release on
 24 bond shows that he is not so great a flight risk as to require detention without bond.”).

25 **3. What process is required for revocation of bond and was that process followed here?**

26 8 U.S.C. § 1226(b) specifies that “[t]he Attorney General at any time may revoke a bond
 27 or parole authorized under subsection (a), rearrest the alien under the original warrant, and
 28

1 detain the alien.” 8 C.F.R. § 236.1(c)(9) provides that, when an alien taken into custody has been
2 released, such release “may be revoked at any time” in the discretion of specified officials, “in
3 which event the alien may be taken into physical custody and detained,” and unless a breach has
4 occurred, “any outstanding bond shall be revoked and canceled.” Purely in terms of the
5 requirements set forth in the statute and regulation, the required process appears to have been
6 followed here—but as Mr. Asadieidivand demonstrated in his petition, the Administrative
7 Procedure Act (APA), the Fifth Amendment’s Due Process Clause, and caselaw construing and
8 applying these authorities specified that his bond could not lawfully be revoked in a manner that
9 was arbitrary, capricious, an abuse of discretion, and violative of the governing statutes,
10 regulations, and policies. As Mehrad demonstrated in his petition and reply, Respondents’
11 revocation of his release was not in compliance with these legal authorities. (Doc. 1 at 12–20.)

12 **4. What process is required to detain an individual who has been released on bond before**
13 **that bond has been canceled, and was that process followed here?**

14 Regarding the process required by statute and regulation to re-detain a noncitizen who
15 has been released on bond, see previous answer. It is necessary to draw a distinction between
16 “bond” as a shorthand for a noncitizen’s *release* on bond, and “bond” in the sense of the
17 financial instrument issued in connection with a noncitizen’s release—in this case, by US
18 Immigration Bonds & Insurance Services, Inc., a company located in Fort Lauderdale, Florida.
19 (Doc. 1-9.) The purpose of the financial bond instrument was to ensure Mr. Asadieidivand’s
20 appearance at any hearing or proceeding. Once he was back in custody, there was no longer any
21 need for this financial instrument. 8 C.F.R. § 236.1(c)(9) describes the process for the detention
22 of a noncitizen who has been detained and released, and then states: “If detained, unless a breach
23 has occurred, any outstanding bond shall be revoked and canceled.” This suggests that the re-
24 detention of the noncitizen may occur just before, or simultaneously with, the cancellation of the
25 financial bond instrument. Of course, the guarantees of the APA, the Fifth Amendment Due
26 Process Clause, and the further legal authorities cited in Mr. Asadieidivand’s habeas corpus
27
28

petition and reply would have to be complied with, in respect to any such re-detention of a noncitizen.

5. If Asadieidivand had been granted parole in 2022, what process would have been required before that parole was revoked?

If Mr. Asadieidivand had been granted parole in 2022, the parole could have been revoked “when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served.” 8 U.S.C. § 1182(d)(5)(A). Assuming Mr. Asadieidivand did not leave the United States during the parole term, and the parole did not have a built-in time limit, revocation would have required that he be given “written notice.” 8 C.F.R. § 212.5(e)(1), (2). Upon revocation, Mr. Asadieidivand would have been “forthwith return[ed] . . . to the custody from which he was paroled and thereafter his case [would] continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A). Like the grant of parole, the revocation of parole would require an individualized exercise of discretion. *See id.* (referencing the purposes of “such parole,” “the alien,” and “his case”); *Doe v. Noem*, No. 25-1384, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (“Common sense suggests (but does not dictate) that parole given only on a case-by-case basis is to be terminated only on such a basis.”). In addition, the guarantees of the APA, the Fifth Amendment Due Process Clause, and the legal authorities cited in Mr. Asadieidivand’s habeas corpus petition and reply would have to be complied with in respect to any such revocation.

6. Was the release of Asadieidivand on bond void ab initio? If void ab initio, why was it necessary for respondents to “cancel[]” the bond on June 9, 2025? (Doc. 16 at 2.)

Respondents’ release of Mr. Asadieidivand on bond was not void ab initio, for three independently sufficient reasons.

First, while the governing statutes specify the officials who may grant “bond” and “parole,” and the circumstances in which each type of release may be granted, they do *not* provide that an otherwise-proper issuance of bond is rendered “void” by a technical error in respect to these specifications. In this respect, these statutes may be contrasted with statutes like the Federal Vacancies Reform Act, 5 U.S.C. § 3348, which expressly declares that an action

1 taken by a person not acting under specified statutory authorities “shall have no force or effect”
 2 and “may not be ratified.” *Id.* § 3348(d)(1), (2).

3
 4 Second, the “de facto officer doctrine” confers validity on the actions of persons acting
 5 under color of official title, notwithstanding the fact the legitimacy of their authority to take such
 6 actions is deficient. *Nguyen v. United States*, 539 U.S. 69, 77 (2003). The doctrine is not applied
 7 where it would contravene a “strong policy” embodied in the statute giving rise to the
 8 deficiency, *id.* at 78 (internal quotation marks omitted), but that is not the case here. The
 9 apparent oversight here merely involved different Executive Branch officials, citing a parallel
 10 statutory framework that—as shown above in the answer to Question 1—applies essentially the
 11 same governing factors to the release decision.

12 Third, as Mr. Asadieidivand demonstrated in his petition, even erroneously granted
 13 liberty is constitutionally protected where (a) the error is not attributable to the releasee, (b) the
 14 error amounted to more than simple neglect, and (c) under the circumstances, extinguishing the
 15 releasee’s liberty would be “unequivocally inconsistent with fundamental principles of liberty
 16 and justice.” *United States v. Martinez*, 837 F.2d 861, 864 (9th Cir. 1988) (internal quotation
 17 marks omitted). (Doc. 1 at 15.) These circumstances are present here. (*Id.* at 15–16.)

18 With respect to the second part of the question, it is necessary once again to note the
 19 distinction between “bond” as a shorthand for *release* on bond, and “bond” in the sense of the
 20 financial instrument issued by US Immigration Bonds & Insurance Services, Inc. (Doc. 1-9.)
 21 Regardless of whether Mr. Asadieidivand’s *release* on bond was void ab initio, upon his re-
 22 detention it was necessary to cancel the financial bond instrument, 8 C.F.R. § 236.1(c)(9)—
 23 which is what occurred on June 9, 2025. (Doc. 1-9.)

24
 25 **7. If the 2022 bond was not void, and was not cancelled until June 9, 2025, what was the**
 26 **legal authority for petitioner’s detention between May 31 and June 9, 2025?**

27 Mr. Asadieidivand’s release on bond was effectively revoked by his re-detention on May
 28 31, 2025. (Doc. 1-1 at 3.) This revocation of Mr. Asadieidivand’s release on bond was separate
 from the cancellation of the financial bond instrument, which was noticed on June 9, 2025. (Doc.

1-9.) Pursuant to 8 C.F.R. § 236.1(c)(9), if an alien released on bond is re-detained, “unless a breach has occurred, any outstanding bond shall be revoked and canceled.” The legal authority that Respondents cite for Mr. Asadieidivand’s detention from May 31, 2025 through the present is 8 U.S.C. § 1225(b), which provides as a default matter for the detention of an asylum-seeking arriving alien found to have a credible fear of persecution, pending consideration of his application for asylum. (Doc. 16 at 2.) As Mr. Asadieidivand has noted, this authority is accompanied by the authority to release such an alien on parole—and both forms of authority must be exercised consistently with the APA, the Fifth Amendment’s Due Process Clause, and the further legal authorities cited in Mr. Asadieidivand’s petition and reply.

8. Are asylum-seekers such as Asadieidivand still being considered for parole? If respondents have adopted a policy of no longer granting parole, is that policy consistent with the governing statutory text?

The record indicates that, per Florence Detention Center Deportation Officer Robert E. Jones, Jr., under the current administration, “we don’t give paroles to anyone anymore under Trump’s law.” (Doc. 1-8 at 3.) Respondents notably did not deny or dispute this in their response to Mehrad’s habeas petition. (Doc. 16.) This blanket policy is not consistent with the governing statutory text, which expressly mandates a “case-by-case” exercise of “discretion.” 8 U.S.C. § 1182(d)(5)(A); *see Damus v. Nielsen*, 313 F. Supp. 3d 317, 338–42 (D.D.C. 2018) (requiring individualized parole determinations).

Respectfully submitted:

August 25, 2025

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