UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JHON RODRIGUEZ ORELLANA,

Plaintiff,

-against-

LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General,

Defendants.

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Civil Action No.
25-cv-4212

(Merchant, J.)

RESPONDENTS' OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

JOSEPH NOCELLA, JR.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

August 12, 2025

Geoffrey M. Stannard
Assistant U.S. Attorney
(Of Counsel)

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PRELIMINARY STATEMENT

Respondents Immigration and Customs Enforcement ("ICE") New York Field Office Acting Director LaDeon Francis, ICE Acting Director Todd Lyons, Secretary of Homeland Security Kristi Noem, and Attorney General Pam Bondi (collectively, "Respondents"), by their attorney, Joseph Nocella, Jr., United States Attorney for the Eastern District of New York, Geoffrey Stannard, Assistant United States Attorney, of counsel, respectfully submit this memorandum of law in opposition to the Petition for a Writ of Habeas Corpus ("Petition") (ECF No. 1).

Petitioner Jhon Rodrigeuz Orellana is an applicant for admission from Ecuador who presented at a United States port of entry in Brownsville, Texas. Because he was an alien who entered the United States without inspection or admission without proper documentation, U.S. Customs and Border Protection ("CBP") opted at that time to place Petitioner in removal proceedings under 8 U.S.C. § 1229a and to release him temporarily; his parole expired in April 2025. In June 2025, ICE exercised its prosecutorial discretion and moved to dismiss Petitioner's removal proceedings, which the immigration judge granted. ICE then detained Petitioner. The next day, Petitioner appealed the immigration judge's decision to the Board of Immigration Appeals ("BIA"), on account of which his removal proceedings remain pending. Should the BIA affirm the dismissal of the § 1229a proceedings, ICE will continue to pursue expedited removal proceedings, through which Petitioner will receive the process afforded by statute, which includes the potential to pursue an application for asylum.

Petitioner filed this habeas petition to challenge ICE's efforts to dismiss his removal proceedings and invoke the expedited removal procedures against him. He also asserts a panoply of claims under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-06, contending that his detention and the decision to dismiss the § 1229a proceedings in favor of expedited removal

violates the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.* and its implementing regulations, and violated his constitutional rights under the Fourth Amendment and to procedural due process under the Fifth Amendment.

All of Petitioner's claims fail. In 8 U.S.C. §§ 1252(a) and (g), for example, Congress barred his ability to challenge ICE's decision to dismiss his removal proceedings and to invoke the expedited removal procedures against him. Nor may the limited sovereign immunity waiver under the APA be used to collaterally attack midstream a process that is still under way before the BIA. In any event, ICE's actions do not violate any statute, regulation, or constitutional provision, not least because his parole was time-limited and automatically terminated by operation of law, without notice being required, and the detention appurtenant to both removal proceedings in this context and expedited removal is otherwise mandatory under 8 USC §§ 1225(b)(1)(B)(ii) and 1225(b)(2)(A). Nor has Petitioner demonstrated that he is entitled to release pending adjudication.[1]

RELEVANT STATUTORY AND REGULATORY FRAMEWORK

In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

Pursuant to 8 U.S.C. § 1225(a)(1), an alien present in the United States who has not been admitted is "deemed . . . an applicant for admission." All applicants for admission are subject to inspection by immigration officers to determine if they are admissible to the United States. *See* 8

[1] Ordinarily, outside of a habeas petition, the government has 60 days to respond. To the extent the Court does not dismiss Petitioner's non-habeas claims at this stage, Respondents respectfully reserve the right to brief the dismissal of those claims in due course.

U.S.C. § 1225(a)(3). The term "admission" is defined by the INA to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 235.1 (setting forth inspection procedures).

Section 1225(b)(1) provides for the inspection of aliens arriving in the United States who are applicants for admission and assert a credible fear of persecution, and mandates detention of such aliens. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). And, in any event, also relevant here, §1225(b)(2)(A) provides for the inspection of all "other" applicants for admission and states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding section 1229a of this title."[2] *See* 8 U.S.C. § 1225(b)(2)(A); *see also Matter of Q. Li*, 29 I. & N. Dec. at 68 ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded'") (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 299, 138 S. Ct. 830, 844 (2018)).

Notably, while an alien is paroled into the United States as a matter of discretion, the parolee *remains* an applicant for admission. 8 USC § 1182(d)(5)(A). Moreover, if "at the expiration of the time for which parole was authorized" then parole is "automatically terminated without written notice." 8 C.F.R. § 212.5(e)(1)

RELEVANT FACTS AND PROCEDURAL HISTORY

On December 18, 2024, Petitioner, asserting he was from Ecuador, presented himself at the port of entry in Brownsville, Texas, and applied for admission. Declaration of Michael Charles dated August 12, 2025 (Charles Decl.) ¶ 3. Petitioner arrived at the port of entry after having

[2] Section 240 of the INA, codified at 8 U.S.C. § 1229a, refers to the removal proceedings that the Petitioner is currently subject to before the immigration court. If the dismissal of the § 1229a proceedings is affirmed by the BIA, then the expedited removal provisions of § 1225(b)(1) would apply.

scheduled an appointment with the use of the "CBP One" mobile application then extant, which served as an online tool available to aliens to schedule appointments for inspection. *Id.* Such appointments did not provide any guarantee of admission or parole. *Id.* During the inspection, U.S. Customs and Border Protection ("CBP") interviewed Petitioner and determined that he lacked valid documents sufficient for lawful entry into the United States. *Id.*

Petitioner was categorized as an "arriving alien" based on his status as an "applicant for admission coming or attempting to come into the United States at a port-of-entry." *Id.* ¶ 4; 8 C.F.R. § 1.2. He lacked a valid entry document, rendering him inadmissible under 8 U.S.C. § 1182(a)(7). Charles Decl. ¶ 4. Therefore, he was amenable to expedited removal under 8 U.S.C. § 1225(b)(1)(A). *Id.* CBP opted to issue a Notice to Appear placing Petitioner into removal proceedings under 8 U.S.C. § 1229a [INA § 240]. *Id.* ¶ 5. In connection with the § 1229a proceedings, CBP used its discretion under 8 U.S.C. § 1182(d)(5) to parole Petitioner into the United States through April 18, 2025. *Id.* He was not then, nor has he since been, admitted to the United States. *Id.*

On February 28, 2025, Petitioner appeared *pro se* before an immigration judge for an initial Master Calendar hearing, at 290 Broadway, New York, New York. *Id.* At 6. At that hearing, Petitioner was advised of his rights in immigration court and his case was adjourned to afford him time to find an attorney. *Id.*

On April 19, 2025, upon the expiration of the time for which parole was authorized, Petitioner's grant of parole terminated automatically. *Id.* ¶ 7; *see* 8 C.F.R. § 212.5(e)(1). In May 2025, he sought a change of venue to the immigration court located in New Jersey, contending that he lived there, but the immigration judge denied it on June 5, 2025. *Id.* ¶ 8.

On June 20, 2025, Petitioner appeared, again *pro se*, for his second Master Calendar hearing before an immigration judge at 250 Broadway, New York, New York. *Id.* ¶ 9. At that

hearing, DHS moved to dismiss Petitioner's § 1229a proceedings as a matter of prosecutorial discretion under 8 C.F.R. § 239.2(a)(7). *Id.* The immigration judge granted ICE's motion and dismissed the § 1229a proceedings without prejudice. *Id.*

At the time of dismissal of the § 1229a proceedings, Petitioner no longer had parole status: it had automatically terminated on April 18, 2025 pursuant to 8 C.F.R. § 212.5(e)(1). *Id.* ¶ 10. On June 20, 2025, after the hearing, ICE arrested and detained Petitioner pursuant to its authority under 8 U.S.C. § 1225(b)(1)(B)(ii) for further processing. *Id.* Thereafter, ICE initiated expedited removal pursuant to 8 C.F.R. § 235.3 by serving a Form I-860, Notice and Order of Expedited Removal. *Id.* During processing on June 20, Petitioner expressed a fear of returning to Ecuador. *Id.*

On July 18, 2025, Petitioner, through counsel, requested a credible fear interview. *Id.* ¶ 11. On July 28, 2025, at 3:28 p.m., Petitioner, through counsel, informed ICE that he did not have a fear of returning to Ecuador and requested that he be allowed to self-deport to Ecuador as soon as possible. *Id.* ¶ 12. Later that same day, Petitioner, through counsel, withdrew his request to self-deport. *Id.*

Although Petitioner had been transferred to detention in Texas after initially having been detained on June 20, at 26 Federal Plaza, New York, New York, on July 29, 2025, he was eventually transferred to the Metropolitan Detention Center located in Brooklyn, New York ("MDC"), where he currently remains detained. *Id.* ¶ 13.

In the interim, on June 21, 2025, Petitioner had filed with the Board of Immigration Appeals ("BIA") a Notice of Appeal of the immigration judge's dismissal of his § 1229a proceedings. *Id.* ¶ 14. Petitioner has since been detained under 8 U.S.C. § 1225(b)(2)(A). This appeal is currently pending before the BIA. *Id.* ¶ 15. A briefing schedule has not yet been issued.

Id. Petitioner's expedited removal proceedings are currently paused pending the outcome of Petitioner's BIA appeal. *Id.* ¶ 16.

On July 30, 2025, one day after he was transferred to MDC, this suit was filed.

ARGUMENT

I. THE COURT LACKS JURISDICTION OVER PETITIONER'S CLAIMS

A. Petitioner's Challenge to The Commencement of Expedited Removal is Jurisdictionally Barred By 8 U.S.C. §§ 1252(a)(2) and 1252(g)

This Court lacks jurisdiction to hear challenges to certain executive actions taken in the immigration context, including the initiation of removal proceedings, and thus, Petitioner's claims should be denied at the outset for violating this jurisdictional limitation.

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). As a threshold matter, Petitioner's claims challenging matters relating to removal proceedings are not properly presented in this habeas corpus action because the claims are, in substance, not challenges to detention. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in this context that its protections have been strongest." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Munaf v. Geren*, 533 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful detention.").

Petitioner's challenge to ICE's decision to initiate expedited removal is jurisdictionally barred by 8 U.S.C. § 1252(a)(2)(A). The Second Circuit has held that, subject to exceptions not relevant here, "§ 1252(a)(2)(A) deprives court[s] of jurisdiction to hear challenges relating to [the Secretary's] decision to invoke expedited removal, his choice of whom to remove in this manner, his procedures and policies, and the implementation or operation of a removal order." *Shumaula*

v. Holder, 732 F.3d 143, 146 (2d Cir. 2013) (quotations omitted). This jurisdictional bar expressly applies, *inter alia*, to claims asserted under "any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(2)(A); *see also* 5 USC § 701(a)(1) (limiting the APA sovereign immunity waiver to exclude instances where "statutes preclude judicial review"). Section 1252(a)(2)(A) therefore bars Petitioner's challenges to ICE's decision to initiate expedited removal against him.

Separately, 8 U.S.C. § 1252(g) specifically deprives district courts of subject matter jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added).[3] Notably, § 1252(g)'s jurisdictional bar expressly applies, *inter alia*, to claims asserted under "any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(g); *see also* 5 USC § 701(a)(1) (limiting the APA sovereign immunity waiver to exclude instances where "statutes preclude judicial review").

The Supreme Court explained in *Reno v. American-Arab Anti-Discrimination Committee* that § 1252(g) was "designed to give some measure of protection" to immigration authorities' discretionary decisions regarding the commencement of removal proceedings: Congress provided that if those decisions "are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed." 525 U.S. 471, 485 (1999); *see also id.* at 485 n.9 ("[§]1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion. It does not tax the imagination to understand why it focuses upon the stages of administration where those attempts

[3] Congress has transferred immigration enforcement functions from the Attorney General to the Secretary of Homeland Security (the "Secretary"). 6 U.S.C. § 251; *Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005).

have occurred.").

The Second Circuit enforced the § 1252(g) bar in *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008). Ajlani sought "a declaration that the then-pending removal proceedings against him were unconstitutional and discriminatory." *Id.* The Second Circuit held that the district court correctly dismissed that action as jurisdictionally barred by § 1252(g). The Second Circuit added that Ajlani could assert constitutional and other legal challenges to his removal proceedings under 8 U.S.C. § 1252(a)(2)(D), but only in the court appeals after he exhausts administrative remedies. *Id.*; *accord*, *Guzman v. Barr*, No. 19-cv-7163, 2021 WL 135909, at *5 (S.D.N.Y. Jan. 14, 2021) (dismissing, as barred by § 1252(g), Guzman's claim that the initiation of removal proceedings against him violated his constitutional rights); *Rodriguez v. Holder*, No. 11-cv-2124, 2014 WL 6983401, at *2 (E.D.N.Y. Dec. 10, 2014) (Irizarry, J.) (§ 1252(g) barred Rodriguez's "challenge to her removal proceedings"); *Kumar v. Holder*, No. 12-cv-5261, 2013 WL 6092707, at *6 (E.D.N.Y. Nov. 18, 2013) (Feuerstein, J.) (§ 1252(g) barred claim that ICE commenced removal proceedings against Kumar as retaliation for his commencing an action in district court).

Petitioner challenges ICE's commencement of expedited removal against him by alleging, *inter alia,* that ICE "violate[d] the Immigration and Nationality Act and implementing regulations" by commencing those proceedings. Pet. at 2. Section 1252(g) bars this Court from hearing that challenge, and the Court should dismiss that challenge pursuant to Rule 12(b)(1). *Ajlani*, 545 F.3d at 235.

B. Petitioner's Challenge to the Alleged Revocation of His Parole, and Lack of Restoration of Parole, is Jurisdictionally Barred by 8 U.S.C. § 1252(a)(2)(B)(ii)

To the extent Petitioner is desirous of a restoration of his parole and attempts to challenge ICE's decision not to restore it, or to the extent Petitioner's claims are rooted in an assertion that his parole was wrongfully revoked—which is not the case, as it was granted for a limited period and terminated under 8 C.F.R. 212.5(e)(1)—this relief and these claims would be subject to

another jurisdictional bar. Most relevant here, § 1252(a)(B)(ii) bars judicial review of "any other decision or action of [the Secretary] *which is specified under this subchapter to be in the discretion of [the Secretary]*" (emphasis added).

Assuming *arguendo* that, as Plaintiff alleges, ICE revoked Petitioner's parole in June 2025—which is incorrect because the parole had expired in April 2025—such revocation would have been pursuant to 8 U.S.C. § 1182(d)(5)(A), which permits ICE to revoked parole "when the purpose of such parole shall *in the opinion of the [Secretary]* shall have been served." (emphasis added). Section 1182(d)(5)(A) thereby provides ICE "with *discretion* to return paroled aliens to ICE custody." *United States v. Lett*, 944 F.3d 467, 472 (2d Cir. 2019) (holding that ICE had discretion to continue to detain a foreign national even though he had been released on bail in the criminal proceeding against him) (emphasis added). Thus, a decision by ICE to revoke parole under § 1182(d)(5)(A) is a discretionary decision that § 1252(a)(B)(ii) bars courts from reviewing. *Hassan v. Chertoff*, 593 F.3d 785, 789-90 (9th Cir. 2010) (district court properly held that it lacked jurisdiction to review ICE's revocation of Hassan's parole); *see also Kothari v. Director of USCIS*, 24 C 50101, 2025 WL 732075, at *5-6 (N.D. Ill. Jan. 24, 2025) (§ 1252(a)(B)(ii) bars courts from reviewing USCIS decision to deny advance parole because that decision was discretionary under § 1182(d)(5)(A)). Even assuming *arguendo* that Petitioner were correct about revocation, which he is not, or attempting to ensure the restoration of his parole, these are discretionary decisions, and Court should dismiss Petitioner's challenges to the alleged revocation of his parole pursuant to Rule 12(b)(1).[4]

[4] Petitioner repeatedly cites *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) for the proposition that "[w]hile ICE has discretion to revoke parole, it may not do so in a manner devoid of due process." *See, e.g.*, Pet. ¶ 48. However, *Mata Velasquez* is distinguishable from this case on numerous grounds, not least in that in Mata Velasquez's parole had not yet expired at the time he was detained. *See Mata Velasquez*, 2025 WL 1953796, at *3.

C. Any Challenges to Expedited Removal-Related Policies, Statutes or Regulations Are Jurisdictionally Barred By 8 U.S.C. § 1252(e)(3)(A)

To the extent that Petitioner challenges a policy, statute, or regulation concerning expedited removal, this Court is not the proper forum. Such challenges must be timely filed in the United States District Court for the District of Columbia, 8 U.S.C. § 1252(e)(3)(A), so this Court lacks jurisdiction over such challenges.

II. THE APA CLAIMS IN COUNTS 1-8 ARE ALSO BARRED FOR INDEPENDENT REASONS

Even if, *arguendo*, Petitioner's claims were not jurisdictionally barred by 8 U.S.C.§ 1252—which they are—Petitioner's § 706(2)(A) and (B) claims under the APA asserting a host of putative actions contrary to the INA and its implementing regulations and also in violation of the Fourth and Fifth Amendments (*see* Pet. Counts 1-8) are nevertheless barred, for independent reasons.

A. To the Extent Petitioner Sues in Habeas or Generally That the Heart of His Challenge Is to His Detention, He Cannot Seek APA Relief

The APA is not the proper vehicle for Petitioner's claims arising out his detention, his terminated parole, and his desire to be released from custody, which drives this suit. In *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), in which claims including due process claims were brought under the APA, the INA, various habeas provisions, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement," regardless of whether he requests release from confinement, those claims "fall within the 'core' of the writ of habeas corpus and must be brought in habeas." *See J.G.G.*, 145 S. Ct. at 1005 (cleaned up). The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim—though they fail for the reasons discussed in Part I and Parts III and IV—and are not cognizable under the APA.

B. The APA's Waiver of Sovereign Immunity is Limited By § 704

By the APA's terms, it is available only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Petitioner's APA claims are independently barred by this limitation. As noted by Justice Kavanaugh's concurrence in *J.G.G.*, "[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claims had merit, which they do not, the result would be the same as that in habeas: release from detention.

Further, as Petitioner is aware, he also has remedies to challenge the dismissal of his § 1229a removal proceedings, including appeal of the dismissal to the BIA, which he is currently pursuing. Accordingly, due to the availability of other adequate remedies, Plaintiff's APA claims are barred at the threshold.

C. Petitioner's APA Claims Challenging the Dismissal of His Removal Proceedings and Initiation of Expedited Removal Are Barred Due to Lack of Final Agency Action

Petitioner's APA claims challenging the initiation of expedited removal are barred for a further reason: lack of final agency action. In order for agency action to be "final" within the meaning of APA § 704, that action must *both*: (1) "mark the consummation of the agency's decision-making process"; *and* (2) "be one by which rights or obligations have been determined or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citations quotation marks omitted); *see* 5 U.S.C. § 704; *6801 Realty Co. v. USCIS*, 719 F. App'x 58, 60 (2d Cir. 2018).[5] Petitioner cannot establish the requisite finality for APA review based on the dismissal of his removal proceedings or ICE's initiation of expedited removal, the former of which

[5] While it is an "open question" if finality is a jurisdictional requirement, at minimum it implicates "statutory standing," encompassing resolution on "threshold, non-merits grounds." *6801 Realty*, 719 F. App'x at 59 n.1.

is on appeal, Charles Decl. ¶ 14, and the latter of which is now paused, Charles Decl. ¶ 16. These actions are interim enforcement and processing choices, not final determinations of removability. In any event, as to expedited removal, even were it not paused, the statutory scheme contemplates that Petitioner's remedy through expedited removal is through an asylum application to be then adjudicated by an immigration judge in immigration court, not through a collateral midstream attack under the APA in a federal district court. *See* 8 U.S.C. § 1225(b)(1).

In sum, while there is action, the agency processes are incomplete, such that the APA claims warrant dismissal. *Manchanda v. Lewis*, 2021 WL 5986877, at *5-6 (2d Cir. Dec. 17, 2021) (affirming dismissal of APA suit for lack of finality because *Stokes* interview was, "at most, an additional investigative step" and "USCIS has yet to issue a decision on the application").

III. THIS ACTION MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM

Even if, *arguendo*, the Petition were not barred by 8 U.S.C. § 1252, and even if, *arguendo*, Petitioner's APA claims were not barred at the threshold for the reasons discussed in Part II, *supra*, the claims must be dismissed for failure to state a claim. The APA provides that a court may hold unlawful or set aside agency action if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" including violations of constitutional law. 5 U.S.C. §§ 706(2)(A), (B).

A. Petitioner Fails to State an APA Claim for Acts Contrary to Law in the INA or Its Implementing Regulations (Counts 1-7)

In asserting his APA claims, Petitioner makes several errors about the law, in some cases because he makes incorrect assertions about the facts.

The primary example of this is his assertion that in "revoking parole" without notice, DHS failed to follow its own regulations or procedures in contravention of *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954). Pet. Counts 1-3. However, the predicate is incorrect.

DHS did not revoke Petitioner's parole—it expired at the end of the granted period, which ended April 18, 2025. *See* Charles Decl. ¶¶ 5, 7. Moreover, no notice was required under the relevant regulation, 8 C.F.R. § 212.5(e)(1)(ii), in view of that circumstance. Similarly, his assertion in Count 1 that his detention lacked necessary process fails to account for the fact that he remains in removal proceedings until the completion of the BIA appeals process, and that 8 U.S.C. § 1225(b)(2)(A) mandates detention for those, like Petitioner who are still applicants for admission.[6]

Petitioner's contention that the "government's dismissal of his removal proceedings pursuant to 8 U.S.C. § 1229(a) [sic] violated the INA," Pet. ¶ 71, is meritless. Nothing prevents DHS from using its prosecutorial discretion in moving to dismiss removal proceedings, though the dismissal is ultimately up to the immigration judge.[7] Similarly, nothing prevents ICE from initiating the expedited removal process as to Petitioner once § 1229a removal proceedings are dismissed, inasmuch as he remained an applicant for admission. Simply put, ICE's actions have not violated any statute.[8]

Petitioner also incorrectly asserts, in Count 6, that ICE's initiation of expedited removal

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[6] Additionally, 8 U.S.C.§ 1225(b)(1)(B)(ii) applies to those in expedited removal process who are applicants for admission and not currently on a discretionary grant of parole.

[7] Although an ICE officer may cancel an NTA unilaterally prior to commencing proceedings, once the NTA is filed with the immigration court and jurisdiction is vested with the immigration judge (as is the case here), the regulations provide that ICE counsel may only move the immigration court for dismissal of the proceedings. *See* 8 C.F.R. §§ 239.2(a), (c); *accord* 8 C.F.R. § 1239.2. Notably, dismissal is not automatic; rather, an immigration judge evaluates the motion and any opposition and makes an independent decision. *See, e.g., Matter of G-N-C-*, 22 I. & N. Dec. 281, 284 (BIA 1998) (explaining that the language of 8 C.F.R. § 239.2(a) (1998) and § 239.2(c) (1998) "marks a clear boundary between the time prior to commencement of proceedings, where [DHS] has decisive power to cancel proceedings, and the time following commencement, where [DHS] merely has the privilege to move for dismissal of proceedings" and that, based on the distinction, "the regulation presumably contemplates not just the automatic grant of a motion . . . , but an informed adjudication by the Immigration Judge . . . based on an evaluation of the factors underlying [DHS's] motion").

[8] Similarly, in Counts 4 and 5, Petitioner argues that expedited removal cannot proceed pending the resolution of his § 1229a removal proceedings. It is true that the immigration judge's dismissal of those removal proceedings is currently on appeal before the BIA, and that until the BIA resolves that appeal, Petitioner will remain in § 1229a removal proceedings. However, Petitioner fails to acknowledge that the expedited removal process has been paused pending that appeal.

"after he was paroled" violated the INA. *See* Pet. ¶ 74. However, parole is not an admission under the INA, and the statute does not set a time limit for initiating or completing expedited removal proceedings. 8 U.S.C. § 1182(d)(5)(A); *United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) ("Parole does not change parolees' immigration status: they remain 'at the border' for the purposes of immigration law and are treated as applicants for admission into the country."); *Kordic*, 386 F.2d at 235 ("A 'parolee,' even though physically in the country, is not regarded as having 'entered' and thus has not acquired the full protection of the Constitution."). Nothing in the INA or implementing regulations precludes DHS from filing a motion to dismiss removal proceedings so long as Petitioner remains an "applicant for admission" under § 1225(a)(1) and is otherwise subject to expedited removal process under § 1225(b)(1) because he is an alien present without being admitted. *See* 8 C.F.R. § 1.2 ("An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after such parole is terminated or revoked.").

In any event, this is a matter exclusively for the immigration court. Had the immigration judge determined that DHS's motion to dismiss was not in accordance with 8 C.F.R. § 239.2(c) or some other statutory provision, he would have adjudicated pursuant to the appropriate standards, which would have included consideration of a party's opposition to the motion. 8 C.F.R. § 1239.2(b). Further, Petitioner has now filed an administrative appeal to the BIA, which will adjudicate it according to the applicable standard; therefore, Petitioner's challenge is premature. And even if DHS's motion to dismiss the removal proceedings were improper—which it was not—any alleged violation is harmless, as the removal proceedings remain pending before the BIA. Petitioner therefore cannot show any prejudice required to make out a compelling argument under the *Accardi* doctrine. *See, e.g.*, *United States v. Schiller*, 81 F.4th 64, 71 (2d Cir. 2023) ("Although an agency's failure to follow its own regulations or procedures can require its action to be invalidated, *see United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954), our

precedent requires a showing of prejudice to the rights protected where the subject regulation 'does not affect fundamental rights derived from the Constitution or a federal statute,' *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993).").

B. Petitioner Has Failed to State an APA Claim for Procedural Due Process Violations

Petitioner's Due Process claims under the APA fail. To state a claim for procedural due process, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due, which process is variable depending on the circumstances. *See Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976). Petitioner cannot satisfy these requirements for any of his claims.

i. Petitioner Has Failed to State a Due Process APA Claim Based on the Alleged Revocation of His Parole (Counts 2-3)

Petitioner's APA claim that procedural due process was violated by not providing him a hearing prior to revoking his parole is not only based on a faulty premise—his parole terminated automatically and not notice was required as a matter of law in that scenario, *see* Part III.A, *supra* –but even were it the case it should be dismissed as legally insufficient. Relief from detention is not a liberty interest protected by the Due Process Clause if government officials have discretion to grant that relief. *Hernandez v. Coughlin*, 18 F.3d 133, 137 (2d Cir. 1994) (affirming the Rule 12(b)(6) dismissal of a claim that state prison officials violated Hernandez's due process rights by denying him conjugal visits because the officials' decision was discretionary); *accord, Garcia v. Morris*, 785 Fed. Appx. 20, 21 (2nd Cir. 2019) (same). Moreover, not only is there no liberty interest, but also a person has no protected property interest in discretionary relief. *Jin v. Mukasey,* 438 F.3d 154, 156-58 (2d Cir. 2008).

As demonstrated in Section I.C. above, under 8 U.S.C. § 1182(d)(5)(A), ICE's decision to revoke parole is a matter of discretion. *Lett*, 944 F.3d at 472. Thus, Petitioner has no protected liberty or property interest in parole, and his procedural due process challenge to the alleged

revocation of his parole—which did not occur—should be dismissed pursuant to Rule 12(b)(6). *Hernandez*, 18 F.3d at 137.

ii. Petitioner Fails to State a Due Process APA Claim Based on Dismissal of Removal Proceedings or Commencement of Expedited Removal (Counts 4-7)

Petitioner asserts that ICE's efforts to dismiss his § 1229a removal proceedings in favor of the expedited removal process and to then detain him violates due process. *See* Pet. Counts 4-7. Not so. As explained below, Petitioner can point to nothing to support process that is due to him that he has not received inasmuch as applicants for admission at the threshold of entry into the United States like Petitioner have limited due process rights, and those remain available to him; his claim is also premature and he can show no cognizable prejudice on the current record.

The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals and to exclude those who possess those characteristics which Congress has forbidden." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). The broad scope of the political branches' authority over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004).[9]

The Supreme Court has explained that applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *United*

[9] Accordingly, "certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 543 (1950). The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020).

As the Supreme Court explained, "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country." *Thuraissigiam*, 591 U.S. at 139. Stated further, "aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due process purposes 'as if stopped at the border.'" *Id.* (quoting *Mezei*, 345 U.S. at 215). Applying the "century-old rule regarding the due process rights of an alien seeking initial entry[,]" the Court explained that aliens arrested after crossing the border have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140. The Court was clear: "the Due Process Clause provides nothing more" than the procedural protections set forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his home country and seeks parole from the agency. *Id.*

The Supreme Court's decision in *Thuraissigiam* is instructive. In relevant part, *Thuraissigiam* concerned a due process challenge raised by an alien detained and processed him for expedited removal because he lacked valid entry documents. 591 U.S. at 114. An asylum officer then determined that Mr. Thuraissigiam lacked a credible fear of persecution. *Id.* Mr. Thuraissigiam petitioned for a writ of habeas corpus, asserting a fear of persecution and requesting another opportunity to apply for asylum. *Id.* In its decision, the Supreme Court delineated the boundaries of due process claims that can be made by applicants for admission. It held that for aliens stopped at the border, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)); *see also Guerrier v. Garland*, 18 F.4th 304, 313

(9th Cir. 2021) ("In concluding that Thuraissigiam's due process rights were not violated, the Supreme Court emphasized that the due process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the statutory rights Congress provides.").

Here, as in *Thurassigiam*, because Petitioner is an inadmissible applicant for admission seeking initial entry into this country, he "requests a privilege and has no constitutional rights regarding his application[.]" *See Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right."). Instead, Petitioner has "only those rights regarding admission that Congress has provided by statute." *See Thuraissigiam*, 591 U.S. at 140; *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). The statutory framework enacted by Congress permits DHS, in its sole discretion, to place Petitioner in § 1229a removal proceedings so that he may pursue an application for relief, or to instead invoke the expedited removal process, which also provides a potential opportunity to pursue asylum in proceedings before an immigration judge. As an applicant for admission, Petitioner has no constitutional or statutory right to pick which process is applied to him. So long as he is afforded the procedures provided by statute, he is not deprived of due process. Here, Petitioner can identify no statutory violation, and, thus, no due process violation. At the discretion of CBP, Petitioner was placed in § 1229a removal proceedings—which remain pending as of today's date—and while DHS has moved to dismiss those proceedings as a matter of prosecutorial discretion and to instead invoke the expedited removal process, it has paused them, *see* Charles Decl. ¶ 16. Petitioner is pursuing an administrative BIA appeal, which is the process he is owed under 8 C.F.R. § 1240.15. Were the expedited removal process to continue, Petitioner would then receive the process set forth by 8 U.S.C. § 1225(b)(1).

And even if Petitioner could invoke additional due process protections greater than those discussed above—of which, for the reasons discussed above, there are none—his due process claim would still fail. In the context of challenges to removal proceedings—which this plainly is—the Second Circuit has explained that "[t]o establish a violation of due process, an alien must show that she was denied a full and fair opportunity to present her claims or that the IJ or BIA otherwise deprived her of fundamental fairness." *Burger v. Gonzales*, 498 F.3d 131, 134 (2d Cir. 2007) (quotation marks omitted). Importantly, "[p]arties claiming denial of due process in immigration cases must, in order to prevail, allege some cognizable prejudice fairly attributable to the challenged process." *Garcia-Villeda v. Mukasey*, 531 F.3d 141, 149 (2d Cir. 2008) (quotation marks omitted). Petitioner cannot satisfy these requirements. He remains in § 1229a removal proceedings while the BIA considers his appeal of the dismissal of the proceedings, and even if affirmed, he will be afforded ample process through the expedited removal statute, 8 U.S.C. § 1225(b)(1), which includes the potential for him to pursue an asylum application in removal proceedings before an immigration judge. *Cf. Garcia-Villeda*, 531 F.3d at 149 (explaining that "despite the lack of a formal hearing, the fast-track reinstatement process . . . is not devoid of procedural safeguards"). He has not shown the prejudice required to state a due process claim, let alone identified any cognizable prejudice that he has suffered as a result of the complained-of actions. Simply put, Petitioner cannot identify any deprivation of due process.

iii. Petitioner Has Failed to State an APA for Procedural Due Process Violations Arising from His Putatively Unlawful Detention (Counts 1-2, 9)

Petitioner also claims that his detention violates due process, asserting that he was not accorded any pre-deprivation notice and there was no change in his case compelling a change in his custody status. *See* Pet. Counts 1-2. Petitioner's challenge fails. As explained below, Petitioner can point to nothing to support process that is due to him that he has not received.

For more than a century, the immigration laws have authorized immigration officials to

charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore*, 538 U.S. at 523–26; *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848 (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) for the duration of his removal proceedings is mandatory, subject only to the possibility of release on discretionary parole by ICE under 8 U.S.C. § 1182(d)(5)(A). *See Jennings*, 583 U.S. at 298-301. Having been placed in removal proceedings—setting aside that he was even release on parole—Petitioner has been afforded all of the process that he is due, and his continued detention is authorized by law for the duration of those removal proceedings and comports with his limited due process rights under the Constitution as an applicant for admission, as discussed at length *supra*.

Among other things, aliens seeking admission may be detained without a bond hearing pending admission or removal. In *Mezei*, the Supreme Court held that an alien's detention at the border without a hearing to effectuate his exclusion from the United States did not violate due process. *Mezei*, 345 U.S. at 206. Mezei arrived at Ellis Island seeking admission into the United States; although he had resided in the United States previously, he had since been "permanently

excluded from the United States on security grounds." *Id.* at 207. His home country would not accept him, and he had been detained for more than a year and a half to effectuate his exclusion when he filed a habeas petition seeking release into the United States. *Id.* at 207-08.

The Supreme Court held that Mezei's detention did not "deprive[ ] him of any statutory or constitutional right." *Id.* at 215. The Court reiterated that "the power to expel or exclude aliens" is a "fundamental sovereign attribute exercised by the Government's political departments" that is "largely immune from judicial control." *Id.* at 210. The Court recognized that "once passed through our gates, even illegally," aliens "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.* at 212. But "an alien on the threshold of initial entry stands on a different footing" than an alien within the United States. *Id.* For aliens seeking admission, "[w]hatever the procedure authorized by Congress is, it is due process." *Id.*; *see also* Part III.B.2 *supra.*

Congress has established a procedure for the mandatory detention of applicants for admission like Petitioner under 8 U.S.C. § 1225(b)(2)(A). That statute mandates detention during the pendency of removal proceedings, and the exclusive means of release for an applicant for admission such as Petitioner is the DHS's discretionary parole authority. *See Jennings*, 583 U.S. at 298-301; 8 U.S.C. § 1182(d)(5)(A) (parole may be granted for "urgent humanitarian reasons" or "significant public benefit"); 8 C.F.R. §§ 212.5(b), 235.3(c) (elaborating on instances where parole may be appropriate).

Petitioner incorrectly asserts that Respondents "violated their own regulations for the revocation of humanitarian parole," Pet. ¶ 66, but he is incorrect. To the contrary, Petitioner's parole was automatically revoked upon its expiration on April 18, 2025. Indeed, 8 C.F.R. § 212.5(e) expressly allows for automatic termination of parole, without notice, "at the expiration of the time for which parole was authorized." *See* 8 C.F.R. § 212.5(e)(1)(ii). Accordingly, the

revocation of parole was strictly in accordance with the INA's implementing regulations, not in violation of it.[10]

And the Supreme Court's decisions in *Thuraissigiam* and *Mezei* foreclose the relief Petitioner seeks because, again, "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Mezei*, 345 U.S. at 212; *cf. Guzman*, 130 F.3d at 66 (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"); *see also, e.g.*, *Gonzales Garcia v. Rosen*, No. 19-cv-6327, 513 F. Supp. 3d 329, 333-36 (W.D.N.Y. 2021) (applying *Mezei* and *Thuraissigiam* and holding that an applicant for admission is not entitled to procedural protections beyond those provided by statute); *D.A.V.V. v. Warden*, Irwin County Detention Center, No. 20-cv-159, 2020 WL 13240240, at *4-6 (M.D. Ga. Dec. 7, 2020) ("Applying this rule in *Thuraissigiam*, which squares with longstanding Supreme Court precedent, this Court similarly holds that arriving aliens' procedural due process rights entitle them only to the relief provided by the INA."); *Mendez Ramirez v. Decker*, 612 F. Supp. 200, 220-21 (S.D.N.Y. 2020) (Woods, J.) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute); *Salim v. Tryon*, No. 13-cv-6659, 2014 WL 1664413 (W.D.N.Y. Apr. 25, 2014) ("The Due Process Clause provides an inadmissible alien no procedural protection beyond the procedure explicitly authorized by Congress, nor any right to be free from detention pending removal proceedings.").

Congress has decided to treat applicants for admission differently, in order to effectuate their exclusion from the United States while considering whether to admit them, by holding them

[10] Here, Petitioner remains an applicant for admission, notwithstanding his prior release on parole. *See, e.g.*, *United States v. Balde*, 943 F.3d 73, 84 (2d Cir. 2019) ("Parole does not change parolees' immigration status: they remain 'at the border' for the purposes of immigration law and are treated as applicants for admission into the country."); *Kordic*, 386 F.2d at 235 ("A 'parolee,' even though physically in the country, is not regarded as having 'entered' and thus has not acquired the full protection of the Constitution.").

in detention during those ongoing proceedings. Unlike admitted aliens placed in removal proceedings and detained under 8 U.S.C. § 1226, applicants for admission were not living in the United States and are "request[ing] a privilege," *Landon*, 459 U.S. at 32, and therefore "stand[ ] on a different footing," *Mezei*, 345 U.S. at 212-13; *see also Thuraissigiam*, 591 U.S. at 140 ("an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry'"). Further, applicants for admission are not foreclosed from any and all possibility of release during their proceedings: they may secure release through discretionary parole. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3(c). An alien can also agree to his removal, thus bringing his detention during removal proceedings to an end and ordinarily returning him to freedom (albeit abroad). And unlike the detention at issue in *Mezei*, detention under § 1225(b) is inherently temporary and has a discernable endpoint: the conclusion of removal proceedings. *See Jennings*, 583 U.S. at 297 (when removal proceedings end for applicants for admission who have been placed in removal proceedings, "detention under § 1225(b) must end as well").[11]

The constitutional due process rights of applicants for admission are limited to the process that Congress chooses to provide. In § 1225(b) and related provisions, Congress has afforded applicants for admission a variety of protections, but nevertheless mandated detention with only the possibility of discretionary parole, subject to automatic termination upon expiration. Consequently, Petitioner's detention under § 1225(b) does not violate due process right, and so the Court should therefore deny the habeas petition.

C. Petitioner Has Failed to State an APA Claim for Fourth Amendment Violations

Petitioner's APA claims arising from constitutional violations of his Fourth Amendment

[11] The conclusion of removal proceedings is when the proceedings are administratively final. *See, e.g.*, *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) ("An order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA." (citing 8 U.S.C. § 1101(a)(47)(B))). Here, administrative finality will not occur until, at minimum, the BIA affirms dismissal of the removal proceedings. Until then, removal proceedings remain pending.

rights fail because his civil detention was a reasonable and lawful exercise of federal immigration authority. As the Supreme Court recognized in *Abel v. United States*, 362 U.S. 217 (1960), administrative arrests for deportation have a long-standing statutory history and are distinct from arrests for criminal offenses. The Supreme Court held that that "[s]tatutes authorizing administrative arrest to achieve detention pending deportation proceedings have the sanction of time. It would emphasize the disregard for the presumptive respect the Court owes to the validity of Acts of Congress, especially when confirmed by uncontested historical legitimacy, to bring into question for the first time such a long-sanctioned practice of government at the behest of a party who not only did not challenge the exercise of authority below, but expressly acknowledged its validity." *Abel*, 362 U.S. at 230. Petitioner's arrest was not a criminal arrest requiring a judicial warrant or probable cause of a new crime; rather, it was a civil, administrative arrest carried out pursuant to the broad authority granted by Congress to enforce the nation's immigration laws. As discussed at length *supra*, the INA grants the executive branch the authority to arrest and detain noncitizens during the course of removal proceedings. Petitioner's arrest was a straightforward exercise of this statutory power. Accordingly, Petitioner's Fourth Amendment claim fails.

IV. PETITIONER IS NOT ENTITLED TO RELEASE PENDING ADJUDICATION

Petitioner has no entitlement to release pending adjudication. "[T]he standard for bail pending habeas litigation is a difficult one to meet: The petitioner must demonstrate that the habeas petition raises substantial claims and that extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (quoting *Grune v. Coughlin*, 913 F.2d 41, 44 (2d Cir. 1990)). Petitioner can demonstrate neither. As discussed, in addition to being jurisdictionally barred, Petitioner challenges detention that is mandatory under the INA. As discussed *supra*, his prior parole granted to him temporarily, and as a matter of discretion, did not alter his status as an applicant for admission, let alone imbue

him with a vested right to remain undetained, and ICE acted within its authority to detain him pursuant to his removal proceeding and, as relevant the now-paused expedited removal process. For similar reasons, there are no extraordinary circumstances present. Petitioner is subject to routine, mandatory detention under the INA, applicable to any arriving alien who is an applicant for admission. Thus, the Court should deny petitioner's request for release pending adjudication of the habeas petition.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus and grant such other further relief that the Court deems just and proper.

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JOSEPH NOCELLA, JR.
United States Attorney
Eastern District of New York
Attorney for Defendant
271 Cadman Plaza East
Brooklyn, New York 11201

By: /s/ *Geoffrey M. Stannard*
GEOFFREY M. STANNARD
Assistant United States Attorney
(718) 254-6229
geoffrey.stannard@usdoj.gov

To: Paige Austin
Make the Road New York
Counsel for Petitioner
301 Grove Street
Brooklyn, NY 11237
(718) 418-7690
paige.austin@maketheroadny.org

Harold A. Solis
Make the Road New York
Counsel for Petitioner
301 Grove Street
Brooklyn, NY 11237
(347) 719-1603
harold.solis@maketheroadny.org