UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YOK

JHON RODRIGUEZ ORELLANA,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

Case No. 1:25-cv-4212

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

TABLE OF CONTENTS

I. Respondents' Abortive Attempt to Place Petitioner Into Expedited Removal Is No Longer At Issue. 1

II. This Court Has Jurisdiction to Consider the Lawfulness of The Revocation of Petitioner's Parole. 2

III. Respondents' Revocation of Petitioner's Parole Did Not Comport With the Parole Statute or the Due Process Clause..... 5

IV. Petitioner's Detention is Unlawful and the Proper Remedy Is Release..... 9

TABLE OF AUTHORITIES

Cases

CHIRLA v. Noem, No. 25-CV-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025)..... 2
Doe v. Noem, 778 F. Supp. 3d 311 (D. Mass. 2025) 5
Doe v. U.S. Dept't of Homeland Security, 1:25-cv-12245-ADB (D. Mass. filed Aug. 11, 2025) . 6
Garcia v. Morris, 785 F. App'x 20 (2d Cir. 2019)..... 4
Hernandez v. Coughlin, 18 F.3d 133 (2d Cir. 1994) 4
Maklad v. Murray, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) 5, 9
Mantena v. Johnson, 809 F.3d 721 (2d Cir. 2015) 4
Martinez v. McAleenan, 385 F. Supp. 3d 349 (S.D.N.Y. 2019) 10
Mata Velasquez v. Kurzdorfer, 25-CV-493-LJV, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) 5, 7, 9
Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983)... 9
Ozturk v. Hyde, 136 F.4th 382 (2d Cir. 2025) 3, 4
Padilla, 704 F. Supp. 3d 1163 (W.D. Wash. 2023)..... 10
Sharkey v. Quarantillo, 541 F.3d 75 (2d Cir. 2008)..... 4
U.S. ex rel. Paktorovics v. Murff, 260 F.2d 610 (2d Cir. 1958)..... 7
United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954) 8
Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020)..... 8
You v. Nielsen, 321 F. Supp. 3d 451 (S.D.N.Y. 2018)..... 5
Y-Z-L-H v. Bostock, No. 3:25-CV-965-SI, 2025 WL 1898025 (D. Or. July 9, 2025)..... 4, 5, 7, 9

Statutes

5 U.S.C. § 706(2)(A)..... 8
8 U.S.C. § 1182(d)(5) ..... passim
8 U.S.C. § 1229a..... 1
8 U.S.C. § 1252(a)(2)(A) 2
8 U.S.C. § 1252(a)(2)(B)(ii) 2, 3, 4, 5
8 U.S.C. § 1252(g) 2, 5

Regulations

8 C.F.R. § 212.5(b) 9

8 C.F.R. § 212.5(e)(2)(i) 6, 7

Other Authorities

Miriam Jordan, Jazmine Ulloa, and Hamed Aleaziz, *They Followed the Rules. Now Thousands of Migrants Are Told, 'Leave,'* N.Y. Times, April 15, 2025 7

INTRODUCTION

Petitioner challenges Respondents' unlawful attempt to terminate his two-year parole authorization without individualized determination or adequate notice, contrary to statutory requirements and due process. As demonstrated below, the governing law on parole revocation requires an individualized analysis about a person's parole—a determination Respondents never made for Petitioner. The Court should therefore find Petitioner's detention unlawful and order his immediate release.

I. Respondents' Abortive Attempt to Place Petitioner Into Expedited Removal Is No Longer At Issue.

The Court no longer needs to decide counts four-seven in the petition, which asserted that Petitioner was unlawfully placed in expedited removal proceedings. As Respondents now correctly concede, Petitioner remains in regular removal proceedings under 8 U.S.C. § 1229a during the pendency of his administrative appeal to the Board of Immigration Appeals. Respondents' Opposition ("Resp. Oppo."), ECF No. 9 at n. 8 ("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"). Moreover, Respondents now acknowledge they cannot subject Petitioner to both regular and expedited removal proceedings simultaneously—notwithstanding their apparent efforts to do just that during the two months prior to the commencement of the instant petition and their continued, oblique insistence that expedited removal is merely "paused."[1] *Id.* The question, therefore, at the heart of Petitioner's claims in

[1] As noted in the petition, Respondents claimed to have deported Petitioner during the pendency of his appeal to the Board—despite the absence of a removal order emanating an immigration judge. This raises a significant question regarding what authority Respondents were invoking when they asserted that Petitioner was "in Ecuador" on July 17, 2025 at or around 4:26pm. ECF No. 1-4 at 11. Respondents do not contest that this attempted removal occurred nor do they deny that ICE claimed he avoided removal because he "did not make the flight." ECF No. 1-4 at 11. Respondents have also confirmed Petitioner expressed a fear of removal and requested a credible fear interview, Charles Decl. at ¶ 10-11, both procedures which pertain to the expedited removal process and are inapplicable to

counts four-seven of which proceedings and attendant rules govern Petitioner's immigration case is resolved and undisputed: Petitioner is still in removal proceedings under 8 U.S.C. § 1229a.

Accordingly, Respondents' jurisdictional objections under 8 U.S.C. § 1252(a)(2)(A) and 1252(g) are out-of-place. Respondents contend that both Section 1252(a)(2)(A), which regulates federal jurisdiction over matters relating to expedited removal, and Section 1252(g), which precludes judicial review of decisions "to commence proceedings, adjudicate cases, or execute removal orders," bar this Court from considering Petitioner's claims concerning his placement in expedited removal. Resp. Oppo. at 13-15. But the parties now concur that Petitioner is subject only to regular proceedings, thus rendering moot any jurisdictional bars on this issue. Furthermore, any attempt by Respondents to place Petitioner in expedited removal would be foreclosed by the recent decision in *CHIRLA v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025), effective nationwide, which establishes that individuals with prior parole authorization cannot be subjected to expedited removal proceedings.

II. This Court Has Jurisdiction to Consider the Lawfulness of The Revocation of Petitioner's Parole.

Respondents' final jurisdictional objection lacks merit. They assert that 8 U.S.C. § 1252(a)(2)(B)(ii) bars this Court from reviewing whether Respondents lawfully attempted to revoke Petitioner's parole authorization—which Respondents acknowledge was granted until December 17, 2026. *See* Respondents' Letter ("Resp. Letter") of August 13, 2025, ECF No. 12 (acknowledging "Petitioner's filing of an I-94 appears to reflect parole until December 2026"). Section 1252(a)(2)(B)(ii), however, presents no impediment to judicial review.

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individuals still in removal proceedings. Finally, litigation in other cases—and indeed the experience of counsel—suggest Respondents may have subjected individuals like petitioner to dueling processes until such efforts began to be rejected by courts. *E.g. Mata Velasquez*, 2025 WL 1953796, at *8 (rejecting Respondents' argument it could pursue both processes simultaneously).

Section 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review... any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security...." Respondents invoke this provision and contend that parole revocation falls within the discretionary authority granted under 8 U.S.C. § 1182(d)(5) (the "Parole Statute") and so is immune from judicial scrutiny. Resp. Oppo. at 16.

This argument fails for several reasons. *First*, the Parole Statute's text is more limited than Respondents suggest. When determining whether a statute precludes judicial review of administrative action, courts must apply the presumption favoring such review. *Ozturk v. Hyde*, 136 F.4th 382, 395 (2d Cir. 2025). As the Second Circuit emphasized in *Ozturk*, Section 1252(a)(2)(B)(ii) does not shield agency action merely because "it requires an exercise of discretion because even if it probably does, the crux is whether the text specifies that the decision is in the discretion of the [agency]." *Id.* (cleaned up). Accordingly, Respondents must point to a "clear statement" that overcomes the presumption of judicial review, rather than merely asserting that parole revocation involves discretionary elements.

Here, the Parole Statute lacks explicit language authorizing the DHS Secretary to revoke parole as a matter of unfettered "discretion." While the statute states that "when the purpose of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the [noncitizen] shall forthwith return or be returned to the custody from which he was paroled," 8 U.S.C. § 1182(d)(5)(A), this language imposes substantive limitations.[2] The phrase "in the opinion

[2] The cases Respondents cite, by contrast, *see* Resp. Oppo. at 15, pertain to statutes granting unbridled discretion. *See Garcia v. Morris*, 785 F. App'x 20, 21 (2d Cir. 2019) (noting the relevant "decisions are entirely discretionary"); *Hernandez v. Coughlin*, 18 F.3d 133, 137 (2d Cir. 1994) (describing the lack of any limitation on corrections officials' "discretionary authority to determine whether a particular visitor may be permitted to enter a correctional facility").

of the Secretary" grants limited decision-making authority but it must be specifically tethered to whether "the purpose of such parole" has been fulfilled. This text conditions any authority the DHS Secretary possesses over the termination of parole on a finding regarding the purpose of an individual's parole. By contrast, Congress explicitly authorized the DHS Secretary to grant parole "in his discretion" under the same Parole Statute, yet notably omitted such language regarding revocation. This distinction strongly suggests that Congress intentionally subjected parole revocation to judicial review, as courts generally presume that "Congress acts intentionally and purposely in the disparate inclusion or exclusion" of statutory language. *Ozturk*, 136 F.4th at 396.

Absent such an individualized finding, Respondents cannot hide behind the mantel of discretion, particularly when even the limited discretion afforded in the Parole Statute was not exercised in accordance with the provision granting them discretion. *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *7 (D. Or. July 9, 2025) (finding jurisdiction where noncitizen claimed their CBP One Parole was terminated without individualized determination); *see also Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008) (explaining agency action "not performed in accordance with the mandatory rescission procedures" is "not specified...to be in the discretion of the Attorney General") (cleaned up).

Second, as the Second Circuit has held, even when a "statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges." *Mantena v. Johnson*, 809 F.3d 721, 728 (2d Cir. 2015). Here, the individualized parole-termination requirement in the Parole Statute means Section 1252(a)(2)(B)(ii)'s jurisdictional bar does not apply where, as here, an agency is unable to offer any evidence that such an individualized process was ever used with respect to Petitioner. Indeed, the growing consensus among courts facing the same issue in the same context—parole revocation for individuals subjected to Respondents' new

campaign of courthouse arrests—is that even if an agency is authorized by statute to take certain discretionary action regarding parole, a court can still "address the process used to exercise that discretion." *See e.g., Mata Velasquez v. Kurzdorfer*, 25-CV-493-LJV, 2025 WL 1953796, at *7 (W.D.N.Y. July 16, 2025); *Y-Z-L-H*, 2025 WL 1898025 at *6-8; *cf. Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *6 (E.D. Cal. Aug. 8, 2025) (rejecting jurisdictional bar argument under Section 1252(g)).

In the end, Respondents misconstrue the discretion that Congress afforded. The Parole Statute grants them discretion to grant parole. But if they wish to terminate someone's parole, and upend a person's life, "they cannot do so in any manner they please." *You v. Nielsen*, 321 F. Supp. 3d 451, 457 (S.D.N.Y. 2018). Indeed, it is "a separate question as to whether Congress, by statute, also has given the Secretary the discretion, after parole has been granted and individuals have entered the country on a lawful basis for approved periods, to categorically truncate these grants of parole en masse and without individual review, such that review of that en masse revocation may be precluded here under Section 1252(a)(2)(B)(ii). *Doe v. Noem*, 778 F. Supp. 3d 311, 330 (D. Mass. 2025). "The answer is no." *Id.*

III. Respondents' Revocation of Petitioner's Parole Did Not Comport With the Parole Statute or the Due Process Clause.

Petitioner's parole was revoked in a manner that contravenes due process, the Parole Statute, and various agency policies. After initially asserting that Petitioner's parole was pre-set to expire on April 18, 2025, thereby obviating the need for any notice, Resp. Oppo. at 20, 23, 28, Respondents now acknowledge that Petitioner was originally granted a two-year parole authorization with an expiration date of December 17, 2026. ECF No. 12. Nevertheless, they maintain that April 18, 2025, is the proper end-date. *Id.* This earlier termination date is only relevant if Petitioner's parole was affirmatively revoked—rather than having reached its

predetermined conclusion in December 2026. Notably, Respondents offer no explanation for *why* Petitioner's specific parole authorization warranted revocation and as of the time of filing still have not provided any evidence that it *was* revoked. *Cf.* 8 CFR § 212.5(e)(2)(i) (describing the process for termination "on notice"). Instead, they have offered notices about the termination of Petitioner's employment authorization, which is a separate matter; these notices merely imply that his parole had been revoked by May 2025, without actually revoking it. ECF No. 12 at 6.

The absence of an individualized parole revocation process supports Petitioner's claims that Respondents acted in violation of the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment when they terminated his parole. Moreover, though Respondents do not explicitly state as much, the evidence submitted to the Court on August 13, 2025, strongly indicates that Petitioner's parole revocation (to the extent it occurred at all) may have been part of a systematic policy to terminate CBP One parole authorizations *en masse*. This policy has become the subject of a class action lawsuit recently filed in the District of Massachusetts. *Doe v. U.S. Dept't of Homeland Security*, 1:25-cv-12245-ADB (D. Mass. filed Aug. 11, 2025).

The allegations in that case mirror the circumstances Respondents have hinted at here: specifically, that Respondents purported to revoke the parole of individuals who received parole for a defined period under the CBP One Program in April 2025, through a mass email instructing—sent without individualized facts, including to many people who had not been paroled at all—that their parole was terminated and they had seven days to depart the U.S. *See* ECF No. 12 (asserting Petitioner had "previously received an email from the Department of Homeland Security" advising his parole would be terminated "7 days after" the email). Contemporaneous reporting shows this notification was distributed indiscriminately, even reaching immigration attorneys who are U.S. citizens. *See* Miriam Jordan, Jazmine Ulloa, and Hamed Aleaziz, *They Followed the Rules. Now*

Thousands of Migrants Are Told, 'Leave,' N.Y. Times, April 15, 2025. As noted in recent cases concerning CBP One parole revocation, the purported email was in English, said only that parole was terminated, without any individualized explanation, and warned that "the federal government will find you." *Y-Z-L-H*, 2025 WL 1898025, at *4.

If this mass email is what Respondents are indeed referring to, then the Court should grant the petition as to Petitioner's statutory, Due Process and APA claims for three reasons.

First, this termination—to the extent it happened—violated the Parole Statute and its implementing regulations. As described above, the statute provides Respondents the authority to terminate a grant of parole only when its purposes "have been served" or "neither humanitarian reasons nor public benefits" warrants its continuation. 8 C.F.R. § 212.5(e)(2)(i). No such determination was made here. Nor could it have been, since Petitioner remains in removal proceedings, well within his one-year filing deadline for asylum, and so the purposes of his parole have *not* been served. *Cf. Mata Velasquez* at *17, n. 14.

Second, Petitioner's entrance through a parole program such as CBP One gives rise to a protectible due-process interest. *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610 (2d Cir. 1958). The creation of such a program by the federal government, designed to allow individuals to enter and lawfully remain in the United States for a defined multi-year period, triggers "some level of constitutional due process" which is necessary "before parole can be revoked." *Mata Velasquez*, 2025 WL 1953796 at *13 (citing *U.S. ex rel. Paktorovics*, 260 F.2d 610). Petitioner, like the individual in *Mata Velasquez*, received a two-year parole authorization upon entry, thereby creating some level of understanding that parole would remain in effect, absent some kind of violation of its terms. Yet, in both cases, parole was terminated prematurely without adequate

process—in *Mata Velasquez* the court said that the petitioner received an English-only letter, such that it likely failed to constitute sufficient notice. *Mata Velasquez*, at *10, n. 9.

Because parole under such a program creates a protectible interest, this Court should apply the three-part *Mathews* test to determine what process the Fifth Amendment requires in Petitioner's case before his parole can be lawfully revoked. *Id.* The three *Mathews* factors are well-established: (1)"the private interest that will be affected by the official action"; (2)"the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Here, given the material similarities between Petitioner's case and *Mata Velasquez*, this Court should reach the same conclusion as in *Mata Velasquez* and grant the petition.

Third, the Court can reach the same result by granting Petitioner's APA claims or by finding that Respondents violated the *Accardi* doctrine. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Pursuant to the APA, a reviewing court must "hold unlawful and set aside agency action" that is "arbitrary [or] capricious." 5 U.S.C. § 706(2)(A). The APA's arbitrary-and-capricious standard requires that agencies make reasonable decisions and provide adequate explanations for those decisions. Agency action violates this requirement if the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Petitioner's parole revocation, which now Respondents seem to contend occurred at some point earlier this year, ran afoul of all these bedrock administrative law principles. As confirmed by the growing number of cases that looked at these issues, Respondents' premature termination of parole for individuals like Petitioner contravened the relevant statute and regulations, because both require not only notice but also an individualized termination to justify such a decision. *See Y-Z-L-H,* 2025 WL 1898025; *Maklad*, 2025 WL 2299376, at *5. Equally dispositive of Petitioner's APA claim is the fact that Respondents have failed to offer a reasoned explanation for *why* it changed its position to grant Petitioner parole—less than a year ago— after undergoing a process whereby Respondents concluded he was "neither a security risk nor a [presented] a risk of absconding." 8 C.F.R. § 212.5(b). The unexplained nature of their reversal exemplifies arbitrary and capricious agency action.

IV. Petitioner's Detention is Unlawful and the Proper Remedy Is Release.

There "can be little argument that revocation of parole, which results in detention, affects the fundamental right of liberty." *Mata Velasquez*, 2025 WL at *9, n.7. Accordingly, courts that have recently examined whether Respondents lawfully revoked a person's parole have decided, in growing uniform fashion, that the proper remedy is to order the individual's release from detention and return them to their pre-arrest condition. *Maklad,* 2025 WL 2299376, at *7 (holding the proper remedy "is the status before Ms. Maklad was arrested and was still on parole"); *Mata Velasquez*, 2025 WL at *10 ("The government [] does not have the authority to arrest a noncitizen who has been granted parole without properly terminating that parole"); *Y-Z-L-H*, 2025 WL at *14 (ordering release of CBP parolee). The Court should reach the same conclusion here.

The Supreme Court's holdings in *Thuraissigiam* and *Mezei* do nothing to undermine this basic conclusion. *Cf.* Resp. Oppo. at 21-22. *Thuraissigiam v. DHS*, 591 U.S. 103 (2020), did not

concern a challenge to detention at all but rather to the procedures dictating admission—a distinct issue. 591 U.S. at 107 (noting petitioner "did not ask to be released"); s*ee Padilla v. ICE,* 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023) (discussing this difference). The thicket of differences from *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), is yet greater. Unlike the petitioner there, Mr. Rodriguez Orellana is present pursuant to parole program created by the U.S. government to facilitate his entry into the country. *Mata Velasquez*, 2025 WL at *16. He has not been "denied entry," *Mezei*, 345 U.S. at 212; he was redetained in the interior, *cf. id.* at 216; and his release from custody poses no national security concerns, such that release would defeat the very objective of Respondents in excluding him, *cf. id.*

Finally, lest Respondents contemplate a belated attempt to rectify the errors made and again terminate Petitioner's parole, the proper remedy for the violations to date remains unconditional release from custody. *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 368 (S.D.N.Y. 2019) (ordering release of petitioner who was detained without written notice and "blindsided and unknowingly deprived of the most sacred things he enjoyed – his liberty" through government "conduct [that] reeks of arbitrariness and carelessness").

CONCLUSION

The Court should grant the petition and order Petitioner's immediate release.

Dated: August 14, 2025

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CERTIFICATE OF SERVICE

I, Harold A. Solis, certify that on August 14, 2025, electronically filed the attached the foregoing Petitioner's Reply in Support of Petition for Writ of Habeas Corpus with the Clerk of the Court for the United States District Court for the Eastern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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