

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Emerardo MAGANA GARCIA,

Petitioner-Plaintiff,

v.

PAMELA JO BONDI, Attorney
General of the United States, et al.,

Respondents-Defendants.

Civil Action 1:26-CV-00051

RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWER

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I. INTRODUCTION

The Petitioner filed his habeas petition on January 9, 2026. Dkt. 1. The Court entered a show cause order requiring the Government respond by January 16, 2026. Dkt. 3. The Respondents filed their return opposing the grant of the petition on January 16, 2026. Dkt.4. Your Honor set the case for a hearing on the merits of this Petition on January 28, 2026.

The Respondents primary argument is that since Petitioner is classified as an arriving alien on his Notice to Appear and that he is properly detained under section 1225(b)(2)(A) with no right to a bond hearing, no due process right requiring the government follow its statutory process for revocation of his parole and no due process right to maintain his parole status free of arbitrary governmental revocation. Respondents rely on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020) and *Gutierrez Soto v. Sessions*, 317 F. Supp. 3d 917 (W.D. Tex. 2018). The Respondents also submitted two exhibits with their response. Respondent's Exhibit A is an I-213 created by immigration officials on September 15, 2018, in Brownsville, Texas when Petitioner and his family requested admission to seek asylum and were released on parole. Exhibit B is the I-213 created by immigration officials after Petitioner was re-detained near Austin, Texas on December 9, 2025. Exhibit B contains many errors and is not a reliable document. Petitioner submits a sworn declaration detailing these errors. In short, the I-213 in Exhibit B appears to cut and paste from another person and does not accurately or reliably document what happened to Petitioner on December 9, 2025.

Petitioner now files this reply to the Respondent's answer. Petitioner asserts that the Respondents have violated his due process rights. Specifically, that as applied to Petitioner, the Respondents failed to follow the statutory requirements for parole revocation under 8 CFR 212.5(e)(2)(i). Respondents renewed Petitioner's parole on October 9, 2025, and it is valid

October 8, 2026. Dkt. 1, Exh. 6. The purposes of his parole had not been met when he was detained on December 9, 2026. His removal proceedings were still pending which was the stated reason for his initial parole in 2018. The Respondents state that the issuance of the Notice to Appear automatically terminated Petitioner's parole. However, Respondents re-issued Petitioner's parole over the next seven years, after the Notice to Appear was served. Dkt. 6, Exh. 6. Any termination was cured by the continual renewal of Petitioner's parole. Likewise, Respondents have not provided any indication that they weighed whether Petitioner's parole was no longer in the public interest or needed for humanitarian reasons. As opposed to the petitioners in both *Thuraissigiam* and *Gutierrez Soto*, Petitioner has not been ordered removed or found to lack a credible fear of persecution. Petitioner's asylum application is currently pending. His next immigration master calendar hearing is set for February 6, 2026. Exh. 12

Respondents also fail to address case law nationwide that almost without exception finds that persons situated as Mr. Magana Garcia may not be subject to arbitrary arrest and mandatory detention without due process, *see, e.g., Martinez Rodriguez v. Raycraft*, 1:25-cv-1504, 2025 WL 3511093 at *7 (W.D. Mich., Dec. 8, 2025) (“[I]f Respondents did not follow the applicable statutory and regulatory requirements to properly revoke Petitioner’s previously granted parole, then they did not have the authority to arrest and detain Petitioner, “unless there [wa]s some other valid reason to arrest him.”). *See also Ramirez Tesara v. Wamsley*, where the District Court for the Western District of Washington rejected a similar argument: the court found that the government's "argument does not explain why [immigration authorities] found Petitioner to be eligible for parole [when they released him a year earlier], but not the following year even after he had established deep ties to the community . . . and timely filed an asylum application." *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP TLF, 2025 WL 2637663, at *3 (W.D.

Wash. Sept. 12, 2025).

The Respondents here have no answer, but simply insist that their statutory interpretation is the correct one. Dkt. 4 at 5. Indeed, the Respondents nowhere in their Answer point to any authority that would be persuasive, and cite the inapposite case of *Gutierrez Soto v. Sessions*, 317 F. Supp. 3d 917 (W.D. Tex. 2018), which involved parole revocation after the immigration judge ordered removal and pre-dates the Respondents' new practice of re-arresting noncitizens initially released on parole under 8 U.S.C. § 1226(a) based on an internal policy change rather than the statutory factors required, i.e. purposes of parole met or parole no longer being in the public benefit.

The vast weight of authority finds persons in Mr. Magana Garcia's exact position merit a grant of habeas corpus, *see e.g., Iza By His Next Friend Iza v. Larocco*, 2:25-cv-6915, 2025 WL 3712274 (E.D.N.Y., Dec. 22, 2025) (parolee's re-detention likely violated his procedural due process rights under the Fifth Amendment when he was detained by ICE in the parking lot of Home Depot without "any notice, an opportunity to respond, or an individualized determination that he posed a flight risk or danger to the community" before he was detained."); *See also Tenemasa-Lema v. Hyde*, 1:25-cv-13029-BEM at *9 (D.C. Mass. Nov. 25, 2025) (granting habeas for arriving alien finding that his re-detention violated his due process rights under *Mathews v. Elridge*, "[i]need the Supreme Court has previously recognized that a non-citizen's 'ties' to this country can inform the substance of their constitutional protections even in the absence of strict physical presence...Thus, even without disturbing the metaphysical 'entry fiction' that may obstruct, in some sense, our ability to admit that a non-citizen is really 'here,' one can still constitutionally recognize Petitioner's actual life in this country – his years as part of the community – not so easily set aside. Whatever theoretical route one takes, the only conclusion is

that Petitioner is a ‘person’ who cannot ‘be deprived of life, liberty, or property, without due process of law.’”

The rationale identified for mandatorily re-arresting persons like Petitioner has been unsuccessful in nearly every district court including the Western District of Texas. *See e.g. Acosta Dominguez v. Noem*, EP-25-CV-00741-DB (W.D. Tex. El Paso, Jan. 8, 2026) (granting habeas petition after revocation of parole without notice because noncitizen had due process rights under the Fifth Amendment and the INA applying the *Mathews v. Elridge* test and holding that 1252(b) is unconstitutional as applied to petitioner.) Respondents do not meaningfully address their failure to show why they revoked Petitioner’s parole, or to provide him an individual, case-by-case review in revoking his parole, as a violation of the parole statute and regulations.

II. BRIEF SUMMARY OF FACTS

Petitioner, Emerardo Magana-Garcia, age 41, a citizen of Mexico, is in the physical custody of Respondents at the T Don Hutto Detention Center in Taylor, Texas. He now faces unlawful detention because the Department of Homeland Security (DHS) unlawfully revoked his parole status without providing a pre-detention hearing or any due process.

Petitioner last entered the United States with his family on September 18, 2018. He presented himself at the Brownsville, Texas port of entry. He claimed fear of persecution in Mexico and his intention to apply for asylum, which he did on September 3, 2019. Immigration officials issued Petitioner and his family with I-94 parole documents, see 8 U.S.C. §1182(d)(5), and paroled them into the United States pending removal proceedings under 8 U.S.C. § 1182(d)(5)(A). Dkt. 1 Exh. 7, 2018 CBP Form I-94A with Parole Stamp, indicating one year parole for “pending immigration hearing.” The DHS also issued Petitioner a Notice to Appear (NTA), Form I-862. His NTA charges

him under 8 U.S.C. § 1182(a)(7)(A)(i), noncitizen not in possession of a valid visa or entry at the time he applied for admission at a port of entry. Dkt. 1, Exh. 2, Notice to Appear. His removal proceedings remain pending.

Petitioner has lived in the Austin, Texas area with his children and extended family since he was paroled into the country in 2018. He has continuously renewed his parole document. He last renewed his parole when he reported to ICE in San Antonio, Texas on or about October 8, 2025. San Antonio ICE officer #4971 extended his parole until October 8, 2026. Dkt. 1, Exh. 6-7, CBP Form I-94A documents showing parole was renewed annually from 2018 to 2026.

Approximately 60 days later, on December 9, 2025, an Austin ICE detained Petitioner as the passenger in a vehicle his boss was driving. Petitioner was not issued a traffic ticket or charged with a criminal offense. He presented his valid parole document, Texas driver's license and work authorization document stating he had permission to be here. Exh. 10, Petitioner's Declaration; *see* also Dkt. 1, Exh. 6-8. ICE ignored his valid documents and detained him anyway. There was no sufficient basis for his re-detention. Counsel emailed Austin ICE asking for Petitioner's release stating he had a valid parole document. ICE responded stating "subject is on IJ proceedings and will be detained..." Dkt. 1 Exh. 9, Email from Austin ICE dated December 9, 2025. That Petitioner was in removal proceedings was already known to ICE and does not constitute a sufficient change in circumstance for the revocation of his valid parole document. He was subsequently transferred to the T. Don Hutto Detention Center, where he remains detained. He has no criminal arrests or convictions, nor any connection to any organized criminal group anywhere in the world.

III. ARGUMENT

A. The Respondents Released Petitioner on Parole, and the Parole Statute and 8 C.F.R.

§ 212.5(e)(2)(i) Require Respondents to Provide an Individualized, Case-by-Case review in Revoking a Non-Citizen's Parole

Persons like Petitioner start as “applicants for admission [who] may be temporarily released on parole [into the United States] ‘for urgent humanitarian reasons or significant public benefit,’” as set forth in 8 U.S.C. § 1182(d)(5)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)). The decision to grant parole pursuant to 8 U.S.C. § 1182(d)(5)(A) is determined “on a case-by-case basis.” 8 U.S.C. § 1182(d)(5)(A). Then, “when the purpose of the parole has been served,” § 1182(d)(5)(A) provides that “the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

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

In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. 8 C.F.R. § 212.5(e)(2)(i).

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

Petitioner argues to this Court that the Respondents have failed to follow the applicable statutory and regulatory provisions to terminate Petitioner's parole. Dkt. 1 at 24. *Cf. Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025) (holding that the government failed to follow the applicable statutory and regulatory provisions and that paroled noncitizens cannot be subject to expedited removal proceedings); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *5–7 (E.D. Mich. Oct. 29, 2025) (same); *E.V. v. Raycraft*, No. 4:25-cv-2069, 2025 WL 2938594, at *10 (N.D. Ohio Oct. 16, 2025) (same). Dkt. 1 at 6, 23.

Mr. Magana Garcia has shown that the purpose of his parole has not been accomplished. Dkt. 1, Exh. 7 (2018 parole document showing parole for “pending removal hearing.”) He fled with his family from Mexico with his children and immediate family seeking asylum in the United States, and Petitioner entered the United States at a port of entry. At that time, Petitioner was granted parole pursuant to 8 U.S.C. § 1182(d)(5)(A), which provides for parole into the United States “for urgent humanitarian reasons or significant public benefit,” 8 U.S.C. § 1182(d)(5)(A). There is nothing in the record to suggest that the humanitarian reason or public benefit that justified Petitioner's parole no longer applies. His removal proceedings are still pending with his next court date on February 6, 2026.

Indeed, Respondents make no argument about whether the requirements for termination of parole in § 1182(d)(5)(A) and its regulations have been satisfied. Although they may seek to use

the I-213 dated December 9, 2025 (Exh. B) showing Petitioner was given a traffic ticket, this is not what in fact occurred. He was the passenger in a vehicle, not the driver. He was working with a valid employment document and had recently renewed his parole document and his Texas driver's license albeit such a license was not necessary as he was not driving the vehicle when it was stopped. His boss, Mr. Guillermo Fabian Granados, was driving and presumably received the traffic ticket. Exh 11, Declaration of Guillermo Fabian Granados. This I-213 also inaccurately states that Petitioner had no lawful documentation to be in the United States when in fact an ICE officer in the San Antonio field office had just renewed his parole on October 9, 2025. Dkt 1, Exh. 6. According to the Austin ICE email, the only reason given for not releasing Petitioner on his valid parole was that he had an open removal case. Dkt. 1, Exh. 9.

Further, district courts that have addressed the termination of § 1182(d)(5)(A) parole "have found that just as a grant of parole requires an individualized review, revocation of parole requires a case-by-case assessment to comply with the statute," and the Court finds the reasoning in these non-binding cases to be persuasive. *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (citations omitted) (addressing this issue, and granting the petitioner's motion for preliminary injunction and ordering that the petitioner be released); *see, e.g., Y-Z-L-H*, 792 F. Supp. 3d at 1137–47 (addressing this issue, and granting the petitioner's habeas petition and ordering that the petitioner be released from custody); *Loaiza Arias*, 2025 WL 3295385, at *2–4 (same); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *10–13 (S.D. Cal. Oct. 1, 2025) (same); *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), --- F. Supp. 3d ----, 2025 WL 2630826, at *14–17 (S.D.N.Y. Sept. 12, 2025) (same); *Gabriel B.M. v. Bondi*, No. 25-cv-4298 (KMM/EMB), 2025 WL 3443584, at *6–7 (D. Minn. Dec. 1, 2025) (addressing this issue, and granting the petitioner's request for a preliminary injunction and ordering the petitioner's release

from custody); *Orellana v. Francis*, No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2–3 (E.D.N.Y. Oct. 3, 2025) (addressing the issue in the context of a motion for reconsideration filed by the respondents, and affirming the court's grant of habeas relief to the petitioner and the court's order to release the petitioner). But see *Doe v. Noem*, 152 F.4th 272, 278–79, 285 (1st Cir. 2025) (reversing district court's grant of preliminary relief and vacating district court's stay of the termination notice for previously granted parole because “Plaintiffs ha[d] not demonstrated a strong likelihood of success in showing that under the statute, the Secretary must terminate these grants of parole under the [parole] program[s] on an individual basis”). Here, there is no indication in the record that any such case-by-case determination regarding the revocation of Petitioner's parole was made.¹

Respondents have not followed the applicable statutory and regulatory requirements to revoke Petitioner's parole. If Respondents did not follow the applicable statutory and regulatory requirements to properly revoke his previously granted parole, then they did not have the authority to arrest and detain him, “unless there [wa]s some other valid reason to arrest [him].” *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 145 (W.D. New York July 16, 2025) (granting preliminary injunction finding DHS did not properly revoke petitioner's parole); cf. *Norfolk S. Ry. Co. v. U.S. Dep't of Lab.*, No. 21-3369, 2022 WL 17369438, at *6 (6th Cir. Dec. 2, 2022) (discussing that “an agency's action that fails to observe the procedures required by its own regulations should be set aside” (citation omitted)); *Wilson v. Comm'r of Soc. Sec.*, 378 F.3d 541,

¹ The *Doe v. Noem* case is distinguishable because, unlike here, the government in *Doe* did make a determination that the purpose of the plaintiffs' parole had been accomplished. The plaintiffs, non-citizens who entered into the United States through the Cuba, Haiti, Nicaragua, and Venezuela (“CHNV”) parole program, lost parole status when the government, via a lengthy and thorough notice published in the Federal Register, decided to terminate the CHNV program altogether, determining that the program no longer served its implementing purpose. In contrast, for Petitioner's revocation, there is no evidence to suggest that such a determination or other finding was made at all, and the evidence in the record strongly suggests it wasn't.

545 (6th Cir. 2004) (“It is an elemental principle of administrative law that agencies are bound to follow their own regulations[,...][and] ‘[a]n agency’s failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual’s constitutional right to due process.’ ” (additional internal quotation marks omitted) (*quoting Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998))).

Respondents do not claim that they had any reason to arrest and detain Petitioner other than his status as a noncitizen who is removal proceedings. Indeed, Respondents now argue, since July 8, 2025, and in similar re-arrest habeas cases, that *any* noncitizen, regardless of whether they are already present and residing in the United States, is “an alien seeking admission” subject to mandatory detention under § 1225. This Court, and other courts throughout the country have rejected this argument. *Cf., e.g., Inclan-Lopez v. Thompson*, 25-CV-1533-FB, 2025 WL 3766110 (W.D. Tex 2025); *Y-Z-L-H v. Bostock*, 792 F.Supp.3d 1123 (D.Or., 2025); *Salgado Mendoza v. Noem*, No. 1:25-cv-1252, 2025 WL 3077589, at *6 (W.D. Mich. Nov. 4, 2025); *Ruiz Mejia v. Noem*, No. 1:25-cv-1227, 2025 WL 3041827, at *5–6 (W.D. Mich. Oct. 31, 2025); *Gabriel v. Bondi*, 2025 WL 3443584, at *3 (D.Minn., 2025).

Petitioner is challenging whether Respondents followed the procedures enumerated in the parole statute and 8 C.F.R. § 212.5(e)(2)(i) in revoking his parole. Petitioner challenges Respondents utter abandonment of any semblance of compliance with the ‘procedure surrounding the substantive decision’ to revoke his parole.” *Orellana v. Francis*, No. 25-cv-04212 (OEM), 2025 WL 2822640, at *2 (E.D.N.Y. Oct. 3, 2025). The consensus of circuit courts is that § 1252(a)(2)(B)(ii) does not preclude judicial review of questions of law arising from an agency's use of discretionary power. *See, e.g., Mantena v. Johnson*, 809 F.3d 721, 728 (2d Cir. 2015) (“Although the statute strips jurisdiction over a substantive discretionary decision, section 1252

does not strip jurisdiction over procedural challenges.”); *Pinho v. Gonzales*, 432 F.3d 193, 204 (3d Cir. 2005); *Mireles-Valdez v. Ashcroft*, 349 F.3d 213, 215–16 (5th Cir. 2003); *Morales-Morales v. Ashcroft*, 384 F.3d 418, 423 (7th Cir. 2004); *Mejia Rodriguez v. U.S. Dep’t of Homeland Sec.*, 562 F.3d 1137, 1143–44 (11th Cir. 2009) (“The statute requires us to look at the particular decision being made and to ascertain whether that decision is one that Congress has designated to be discretionary.”). Whether Respondents complied with mandatory procedures in exercising their discretionary power is not precluded from review by § 1252(a)(2)(B)(ii). As stated by the Eighth Circuit, “even if § 1252(a)(2)(B) otherwise bars review of a discretionary act, [federal courts] have jurisdiction to review a ‘predicate legal question that amounts to a nondiscretionary determination underlying the denial of relief.’” *Abdelwahab v. Frazier*, 578 F.3d 817, 821 (8th Cir. 2009) (quoting *Ibrahimi v. Holder*, 566 F.3d 758, 764 (8th Cir. 2009)). The same is true regarding review of an agency’s compliance with its own regulations, at least where “the rules were intended primarily to confer important procedural benefits upon individuals in the face of otherwise unfettered discretion.” *Rajasekaran*, 815 F.3d at 1099 (quoting *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 538–39 (1970)) (cleaned up).

Under § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2)(i), those predicate legal questions are: (1) whether a determination or finding has been made that the purposes of the individual’s parole have been accomplished or that there no longer exist humanitarian reasons or any public benefit justifying the continued presence of the person in the United States; and (2) whether the government has provided written notice of the determination to the parolee. While § 1252(a)(2)(B)(ii) precludes judicial review of a discretionary determination that a non-citizen’s parole ought to be revoked, Respondents nonetheless must comply with the requirements of the governing statute and regulation before doing so. Because Petitioner here challenges whether these

conditions were adhered to in revoking his parole status, judicial review of his Petition is not precluded by § 1252(a)(2)(B)(ii). *See e.g. Acosta Dominguez v. Noem*, EP-25-CV-00741-DB (W.D. Tex. El Paso, Jan. 8, 2026); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1136–41 (D. Or. 2025); *Orellana*, 2025 WL 2402780, at *3–4 (E.D.N.Y. Aug. 19, 2025), affirmed on reconsideration in all relevant parts, 2025 WL 2822640, at *2 (E.D.N.Y. Oct. 3, 2025); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 141–42 (W.D.N.Y. 2025); *Villanueva v. Tate*, No. H-25-cv-3364, 2025 WL 2774610, at *5 (S.D. Tex. Sept. 26, 2025); *cf. Savane v. Francis*, No. 1:25-cv-6666-GHW, 2025 WL 2774452, at *3 n.4 (S.D.N.Y. Sept. 28, 2025).

The statute and the regulation impose specific procedural requirements on the Respondents. The parole statute and 8 C.F.R. § 212.5(e)(2)(i) required Respondents to determine that the purpose on which Petitioner was paroled into the United States for had been “served” (whether that was a specific purpose for his entry or, if not, because “neither humanitarian reasons nor public benefit warrants [her] continued presence” in the United States). In addition, 8 C.F.R. § 212.5(e)(2)(ii) required Respondents to serve written notice of any revocation on Petitioner. Respondents have not suggested that they complied with the requirements of the regulation. They simply state even if the revocation was wrong, Petitioner should not be released. Dkt. 4 at 5.

Indeed, the revocation clause in the parole statute gives the Secretary of Homeland Security the authority to revoke parole “when the purposes of such parole shall, in the opinion of the Secretary ..., have been served.” If Respondents were not required to make such a determination to effect termination of parole, then there would be no reason for this language to have been included in the statute. A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Instead, because the parole statute (and its implementing

regulation) require such a pre-conditional determination to be made, this Court should enforce it here.

This accords with the virtually unanimous decisions from sister district courts considering parole revocations identical or very similar to the one here. *Y-Z-L-H*, 792 F. Supp. 3d at 1144–46; *Orellana*, 2025 WL 2402780, at *5–7, affirmed on reconsideration in all relevant parts, 2025 WL 2822640, at *2–3; *Mata Velasquez*, 794 F. Supp. 3d at 144–46; *Savane*, 2025 WL 2774452, at *8; *Salazar v. Casey*, No. 25-cv-2784 JLS (VET), 2025 WL 3063629, at *5–6 (S.D. Cal. Nov. 3, 2025); *Noori v. Larose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1, 2025). Thus, Petitioner believes he has shown that the Respondents’ failure to follow the law provides they may not subject him to mandatory detention, and his immediate release should be granted.

B. Scope of Relief

As to the appropriate remedy, Petitioner requests that he be immediately released from custody. This is because a bond hearing would only be an appropriate remedy where “the government has at least some articulable, legitimate interest in detaining the petitioner,” but immediate release is appropriate where “the government had no or an insignificant interest in detaining the petitioner.” *Santiago-Santiago v Noem*, EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) at *13. Furthermore, immigration judges do not have jurisdiction to re-determine custody decisions of persons who are charged as arriving aliens. 8 C.F.R. § 1236.1(c)(11).

Noncitizens released by the government into the country acquire a protected liberty interest in remaining out of custody and are entitled to procedural safeguards before being detained. *See Danierov v. Noem*, No. 2:25-cv-01215-KG-KRS, 2025 WL 3653925, at *2 (D.N.M. Dec. 17, 2025); *Santiago*, 2025 WL 2792588, at *11; *Fernandez Lopez v. Wofford*, 2025 WL 2959319, *3-

4 (E.D. Ca. Oct. 17, 2025) (finding “[a] protected liberty interest may arise from a conditional release from physical restraint” even if proceedings were under § 1225(b) rather than § 1226); *Rojas v. Almodovar*, 2025 WL 3034183, at *6 (S.D.N.Y., 2025) (granting release after re-arrest of a paroled noncitizen, and noting “a noncitizen who is neither admitted nor denied, but who is granted permission to live in the United States, is protected by the Due Process Clause.”) The Fifth Amendment’s Due Process Clause extends to all persons, regardless of status. *See A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1367 (2025). Thus, noncitizens, such as Petitioner, are entitled to due process protections. *See id.*; *see also Chavez-Acosta v. Garland*, No. 22-3045, 2023 WL 246837, at *3 (6th Cir. Jan. 18, 2023). When Respondents released Petitioner after his entry into the country in 2018, they did so because they determined he was not a flight risk or a danger to the community. There can be no doubt that he is “experiencing [many of] the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, ...lack of privacy, and, most fundamentally, the lack of freedom of movement.” *See Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025).

The Supreme Court’s *Mathews v. Eldridge* test provides the appropriate framework when determining what procedural safeguards are due, requiring courts to consider “(1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguard; and (3) the Government’s interest, including the fiscal and administrative burdens of additional procedures.” *Danierov*, 2025 WL 3653925, at *2 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)) (internal quotations omitted). Indeed, many district courts have determined instead to order the immediate release of immigration habeas petitioners held in custody in violation of their due process rights. *See, e.g., J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-

cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado*, 2025 WL 2337099, at *19; *M.S.L.*, 2025 WL 2430267, at *15. In the majority of these cases, the Court found that the government had no or an insignificant interest in detaining the petitioner. See *J.U.*, 2025 WL 2772765, at *10; *Zumba*, 2025 WL 2753496, at *10; *Rosado*, 2025 WL 2337099, at *14, 18; *Sepulveda Ayala II*, 2025 WL 2209708, at *3.

Turning to the first *Mathews* factor, petitioner has a substantial private interest in remaining free from detention. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner resided at liberty within the U.S. for over eight years, and during that time, he established extensive ties and life in the community.

Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is “nonpunitive in purpose and effect[,]” is justified when a noncitizen presents a risk of flight or danger to the community. See *Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). Petitioner has no criminal convictions. The government does not dispute this and did not present evidence that petitioner was a flight risk or danger to community. Nonetheless, ICE detained him, and the government has not given any reason why it did so, other than arguing that he is subject to mandatory detention because he was paroled into the United States as an arriving alien. Petitioner has not been provided any procedural safeguards to determine whether the revocation of his parole and subsequent detention is justified under the statute or the Fifth Amendment. Given the absence of any procedural safeguards, the probable

value of additional procedural safeguards is high.

Third, the government's interest in detaining petitioner without procedural safeguards is low. The government's interest is further diminished where a person "has consistently appeared for [his] immigration hearings ... and [] does not have a criminal record," *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763 at *2 (N.D. Cal. July 4, 2025), as is the case here.

On balance, the *Mathews* factors show that Petitioner is entitled to immediate release or at a minimum an individual case review regarding whether the Respondents followed their own procedure when they revoked his valid parole and detained him. The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their parole finally revoked. *See Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

Given the absence of "evidence of urgent concerns," this Court should conclude that "a pre-deprivation hearing is required to satisfy due process." *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677 at *9 (N.D. Cal. July 17, 2025). Numerous district courts have reached a similar conclusion. *See, e.g., id.*; *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 at *5 (E.D. Cal. July 14, 2025); *Pinchi*, 2025 WL 1853763, at *3–4; *Ortega*, 415 F. Supp. 3d at 970; *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679 at *6 (E.D. Cal. July 11, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207 at *1 (N.D. Cal. Sept. 5, 2025).

III. CONCLUSION

For the foregoing reasons, the Court should grant Mr. Magana Garcia's petition for habeas corpus and order his immediate release.

Respectfully submitted on this 26th day of January, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWER in the case of Emerardo Garcia Mangana v. Pamela Bondi, et al., Civil Action 26-00051, was sent to Assistant United States Attorney Fidel Esparza via the CM/ECF Pacer system.

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 26th day of January, 2026

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