

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

EMERARDO MAGANA-GARCIA,	§	
<i>Petitioner</i>	§	
	§	
v.	§	
	§	No. 1:26-CV-51-ADA
PAMELA JO BONDI, UNITED	§	
STATES ATTORNEY GENERAL	§	
IN HER OFFICIAL CAPACITY, et	§	
al.,	§	
<i>Respondents</i>	§	

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

TO: THE HONORABLE ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

Before the Court is Petitioner Emerardo Magana-Garcia's 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus. Dkt. 1. The District Judge referred Magana-Garcia's petition to the undersigned for report and recommendation pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and Rule 1, Appendix C of the Local Rules of the U.S. District Court for the Western District of Texas. The undersigned recommends that the District Judge grant the petition.

I. BACKGROUND

Magana-Garcia is a citizen of Mexico detained in Taylor, Texas. Dkt. 1, at 3. Magana-Garcia entered the United States at a port of entry, on September 18, 2018, where he declared his fear of persecution in Mexico and his intent to apply for asylum. Dkt. 1, at 3; 4-1. Magana-Garcia was subsequently paroled into the country under 8 U.S.C. § 1182(d)(5)(A) "pending [his] immigration hearing," after Immigration and

Customs Enforcement (“ICE”) determined that he was neither a flight risk nor a danger to the community. Dkt. 1, at 3; 1-8. The government also issued Magana-Garcia a notice to appear, charging him as a noncitizen not in possession of a valid visa or entry document at the time he applied for admission at a port of entry, under 8 U.S.C. § 1182(a)(7)(A)(i). Dkt. 1, at 3; 1-3 (notice to appear issued on March 18, 2019). Magana-Garcia applied for asylum, and has continuously resided in Austin, Texas and successfully reapplied for parole since 2018. Dkt. 1, at 3. In fact, ICE recently renewed Magana-Garcia’s parole through October 8, 2026. Dkt. 1, at 3; 1-7, at 2.

On December 9, 2025, around thirty days after extending Magana-Garcia’s parole, ICE detained Magana-Garcia after a traffic stop—one for which Magana-Garcia was neither issued a traffic ticket nor charged with a criminal offense; in fact, he wasn’t even the driver of the vehicle. Dkts. 1, at 4; 4-2¹ (Department of Homeland Security Form stating, without more, that Magana-Garcia “had been stopped for a traffic violation”); 7-1 (declaration from Magana-Garcia averring that he was a passenger at the time of the traffic stop), 7-2 (declaration from driver of vehicle confirming that Magana-Garcia was a passenger). Magana-Garcia has no criminal

¹ As Magana-Garcia points out in his reply and supporting evidence, the I-213 Form the government attached to its response is replete with errors. Dkt. 7, at 5. For instance, the form states that Magana-Garcia told ICE he was “without any legal documents allowing him to enter, be in, or remain in the United States legally,” when in fact, Magana-Garcia and his employer (who was driving the vehicle at the time of the traffic stop), assert that Magana-Garcia showed ICE officers his parole documentation and valid work permit at the time of the stop. Dkts. 4-2, at 1; 7-2, at 1; 7-3, at 1. While the undersigned does not go so far as to accuse the government of “cut[ting] and past[ing]” from another person’s form, as Magana-Garcia does, the apparent errors in the I-213 Form are nonetheless gravely concerning and weigh against the credibility of the government’s proffered evidence in this proceeding.

arrests or convictions. Dkt. 1, at 18. When Magana-Garcia's counsel asked ICE for the basis under which it had detained Magana-Garcia, it responded that he "is in [Immigration Judge] proceedings and will be detained at T. Don Hutto Detention Center pending his new court date with the IJ," with no further explanation. Dkts. 1, at 4; 1-10, at 2. Magana-Garcia's asylum application remains pending and is scheduled for a merits hearing on July 9, 2026, along with applications from Magana-Garcia's nine other immediate family members; his continued detention would prevent him from attending that hearing with his family members—three of whom are his children and are derivatives on his asylum application. Dkt. 1, at 18. Magana-Garcia's next master calendar hearing is set for February 6, 2026. Dkt. 7-3.

Based on his allegedly unlawful arrest and detention, Magana-Garcia filed this habeas petition under § 2241, alleging that his arrest, parole revocation, and continued detention under 8 U.S.C. § 1225(b)(2) violates the Immigration and Nationality Act ("INA")² as well as his procedural due process rights under the Fifth Amendment. Dkt. 1, at 27-30. The Federal Respondents Pam Bondi, Kristi Noem,

² In his petition, Magana-Garcia cites authority in support of his statutory claims for relief grounded in the Administrative Procedure Act ("APA"). Dkt. 1, at 27-29. The undersigned thus construes these statutory claims to be for violations of the INA as well as the APA. At the hearing, the government posited that APA claims are not properly brought within a habeas proceeding, yet Magana-Garcia's APA claim is squarely within the "province of habeas corpus" given that it challenges his continued confinement as unlawful. *See* Dkts. 1; 7; *Ramirez-Morales v. Lyons*, No. EP-25-CV-00476-DCG-RFC, 2025 WL 4057146, at *3 (W.D. Tex. Nov. 21, 2025), *R.& R. adopted as modified*, No. EP-25-CV-00476-DCG-RFC, 2025 WL 3767065 (W.D. Tex. Dec. 30, 2025) (finding that the "APA provides cognizable grounds for habeas relief" where petitioner "challenge[d] the validity of the immigration court's decision to require his continued confinement[.]").

Todd Lyons, and Miguel Vergara³ (the “government”) insist that Magana-Garcia is properly detained under § 1225(b)(2) as an arriving alien following its attempt to revoke his parole. Dkt. 4, at 3-5. The government also asserts that even if it unlawfully revoked Magana-Garcia’s parole, such a violation of law does not “mandate” his release, as the government could instead provide “substitute process” to provide Magana-Garcia with notice of its intent to revoke his parole. *Id.* at 5.⁴ The Court held a hearing on Magana-Garcia’s petition, during which the government offered no evidence that it had revoked Magana-Garcia’s parole. *See* Dkt. 7.

³ Respondent Charlotte Collins, warden of the T. Don Hutto Detention Center, did not file any response to Magana-Garcia’s petition.

⁴ The government also asks the Court to dissolve the stay on Magana-Garcia’s removal from the country pending the resolution of his habeas petition, arguing the Court lacked the jurisdiction to enter such an order under 8 U.S.C. § 1252(g). Dkt. 4, at 1-2 (citing *Imran v. Harper*, No. 25-30370, 2026 WL 93131, at *1 (5th Cir. Jan. 13, 2026)). In *Imran*, the Fifth Circuit held that the district court lacked jurisdiction to grant the petitioner’s request for a stay of removal, finding that the petitioner’s request was a challenge to a removal order and was thereby barred by 8 U.S.C. § 1252(g). *Imran*, 2026 WL 93131, at *1. There, however, the petitioner was subject to a removal order and sought relief from that pending order. *Imran v. Harper*, No. 1:25-cv-00841-DDD-JPM, Dkt. 1 at 5, 8, 14 (W.D. La. June 16, 2025). Here, in contrast, Magana-Garcia is not subject to a removal order and is instead challenging the lawfulness of his detention during ongoing removal proceedings. Dkt. 1 at 18. Accordingly, by ordering the government not to remove Magana-Garcia from the United States during the pendency of this litigation, the Court is not preventing the execution of a removal order but rather preserving its ability to hear the case in the near term, which it is permitted to do. *See United Mine Workers*, 330 U.S. at 293; *United States v. Shipp*, 203 U.S. 563, 573 (1906); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (explaining § 1252(g) bars the court’s jurisdiction only with respect to the three discrete actions mentioned in the statute); *Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000) (noting that § 1252(g) does not prohibit courts from reviewing a noncitizen detention order). The undersigned denies the government’s request to alter the order prohibiting the government from removing Magana-Garcia during the pendency of this proceeding.

II. DISCUSSION

A. The government has not shown that it lawfully revoked Magana-Garcia's parole.

At the crux of Magana-Garcia's petition is the question of whether Magana-Garcia is an "applicant for admission" subject to mandatory detention under § 1225(b)(2) based on the government's revocation of his parole. *See* Dkts. 1; 4; 8 U.S.C. § 1225(b)(2) (mandating detention pending removal proceeding in the case of an individual who is "an applicant for admission"). While Magana-Garcia argues that he has been unlawfully detained because the government did not properly revoke his parole, the government insists that "service of a[] [Notice to Appear] and placement in removal proceedings automatically terminated" Magana-Garcia's parole such that he may be detained without further process. Dkts. 1, at 22-23; 4, at 3. Because the government has presented no evidence or even suggested that it followed the law in attempting to revoke Magana-Garcia's parole, the undersigned finds that the government's revocation of Magana-Garcia's parole does not form a lawful basis for his detention.

Under 8 U.S.C. § 1225(a)(1), a noncitizen "present in the United States who has not been admitted or who arrives in the United States" is "deemed" "an applicant for admission." Section 1225(b)(2)(A) provides that "[i]n 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 under section 1229a of this title." If the Department of Homeland Security ("DHS") declines to detain an "applicant for

admission” under § 1225(b)(2)(A), it may: (1) grant the noncitizen’s parole⁵ into the United States if parole provides a “significant public benefit”; or (2) return the noncitizen to his home country. 8 U.S.C. §§ 1225(b)(2)(C), 1182(d)(5)(A); *Biden v. Texas*, 597 U.S. 785, 814-15 (2022). Here, as explained above, DHS found in 2018 that Magana-Garcia was not a flight risk or danger to the community and granted him parole “pending [his] immigration hearing,” subsequently renewing that determination every year since—most recently in October 2025. Dkt. 1-7; 1-8.

DHS has discretion⁶ to terminate discretionary parole when “in the opinion of the Secretary of Homeland Security,” “the purposes of such parole ... have been served,” at which time the formerly-paroled noncitizen “shall forthwith return or be returned to the custody⁷ from which he was paroled” and the noncitizen’s “case shall

⁵ Under section 1182(d)(5)(A), such discretionary parole “shall not be regarded as an admission of the alien.” 8 U.S.C. § 1182(d)(5)(A).

⁶ Although not raised by either party, the government’s discretion in revoking parole perhaps implicates the jurisdictional bar in 8 U.S.C. § 1252(a)(2)(B)(ii). *See Sanchez v. Smith*, No. 4:25-CV-05384, 2025 WL 3687914, at *1 (S.D. Tex. Dec. 19, 2025) (finding that APA claim premised on government’s failure to properly revoke parole was barred by § 1252(a)(2)(B)(ii) “because parole decisions are discretionary”). Here, however, Magana-Garcia does not challenge the government’s decision to revoke his parole, but rather the “the manner in which the government has re-detained him” based on the purported revocation. *Villanueva v. Tate*, 801 F. Supp. 3d 689, 698 (S.D. Tex. 2025) (“Nothing in 8 U.S.C. § 1252(a)(2)(B)(ii) prevents the Court from considering [petitioner]’s challenge to the manner in which the government revoked his Order of Supervision or considering whether the government followed its own regulations in doing so”); *see also Mantena v. Johnson*, 809 F.3d 721, 728-29 (2d Cir. 2015) (even when a “statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges” and when procedural requirements bind an official’s exercise of discretion, “courts retain jurisdiction to review whether those requirements have been met”).

⁷ “The instruction that the noncitizen be ‘returned to the custody from which he was paroled’ does not [necessarily] mean a return to physical custody.” *Qasemi v. Francis*, No. 25-CV-10029 (LJL), 2025 WL 3654098, at *10 (S.D.N.Y. Dec. 17, 2025).

continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A). Under 8 C.F.R. § 212.5(e)(2)(i), the governing regulation, the government may revoke parole “upon written notice” and either “[1] accomplishment of the purpose for which parole was authorized or [2] 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.” Courts have found that revocation of parole requires an individualized determination. *See, e.g., Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1138 (D. Or. 2025) (“Common sense suggests ... that parole given only on a case-by-case basis is to be terminated only on such a basis.” (citation omitted)); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025) (“[B]oth common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis[.]”); *but see Doe v. Noem*, 152 F.4th 272, 287 (1st Cir. 2025) (concluding that “[t]he statute does not require individualized termination of parole” where parole for class of immigrants had been properly terminated by government).

Here, the government provided no argument or evidence that it made any assessment—let alone an individualized one—before deciding to revoke Magana-Garcia’s parole. *See* Dkt. 7 (conceding at hearing that there is “no evidence that [parole revocation] occurred”). In its response, the government argues that “service of a[] [Notice to Appear] and placement in removal proceedings automatically terminated said parole,” yet references only the 2019 Notice to Appear (“NTA”) and fails to address the fact that it has repeatedly, and even recently, renewed Magana-

Garcia's parole since that time. Dkt. 4, at 3; 4-3; 8 C.F.R. § 212.5(e)(2)(i) ("When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.").⁸ The government also fails to address the fact that even if it belatedly provided Magana-Garcia with notice of its intent to revoke his parole, which it has not, that does not change the fact that the government lacked the authority to arrest and detain Magana-Garcia in the first place.

In addition to failing to provide Magana-Garcia with notice of its intent to revoke his parole, the government has not shown that either of the statutory bases for revoking the parole exist. First, "the purpose for which parole has been authorized," to allow Magana-Garcia to attend his immigration hearings, has plainly not been accomplished, and the government has offered no evidence to the contrary. Dkt. 1-8; 8 C.F.R. § 212.5(e)(2)(i). Indeed, the government's hasty attempt to revoke his parole would actually impede Magana-Garcia's ability to attend his upcoming master calendar hearing on February 6, 2026, which is part of the parole's stated purpose. Dkt. 7-3. Second, the government has also offered no evidence that "neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States." *See* Dkts. 3; 7.⁹ Rather, the government does not deny that

⁸ To the extent the government posits that the 2025 I-213 Form provided Magana-Garcia with notice, no portion of that document references the government's intention to revoke Magana-Garcia's parole. *See* Dkt. 4-2. Moreover, an I-213 Form is not a charging document.

⁹ This is particularly so given that the government has offered no other valid basis for ICE's arrest and detention of Magana-Garcia at the time of the traffic stop. *See* Dkts. 3; 7; *Martinez v. Raycraft*, No. 1:25-CV-1504, 2025 WL 3511093, at *7 (W.D. Mich. Dec. 8, 2025) ("If Respondents did not follow the applicable statutory and regulatory requirements to properly

Magana-Garcia is an applicant for asylum who has lived and worked as a law-abiding member of his community, in accordance with his parole and work authorization, and that he has shown compliance with the requirements of his immigration proceedings. *See* Dkts. 1; 3; 7. Thus, the government has not shown that it complied with 8 U.S.C. § 1182 in attempting to revoke Magana-Garcia's parole after illegally arresting and detaining him.

B. The government's failure to follow its own statutes and regulations in attempting to revoke Magana-Garcia's parole renders his detention unlawful.

Magana-Garcia asserts that if the government did not properly revoke his parole, then "then they did not have the authority to arrest and detain" him. Dkt. 1, at 13. The government argues that even if it wrongfully revoked Magana-Garcia's parole in violation of the relevant statutory or regulatory provisions, "the remedy is substitute process" because "failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained." Dkt. 4, at 5. Yet the government identifies no authority under which Magana-Garcia "should otherwise be detained" in the absence of the proper revocation of his parole.

Courts around the country have ordered the government to release individuals who, like Magama-Garcia, have demonstrated that the government improperly revoked their parole in violation of 8 U.S.C. § 1182(d)(5)(A) and the APA because "[i]f Respondents did not follow the applicable statutory and regulatory requirements to

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.'" (quoting *Mata Velasquez*, 794 F. Supp. 3d at 145)).

properly revoke [Magana-Garcia]'s 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.'" *See, e.g., Martinez*, 2025 WL 3511093, at *7; *Y-Z-L-H*, 792 F. Supp. 3d 1123, 1143-44; *Savane v. Francis*, 801 F. Supp. 3d 483, 493 (S.D.N.Y. 2025); *Ramirez-Bibiano v. LaRose*, No. 25-CV-3429 JLS (SBC), 2025 WL 3632748, at *4 (S.D. Cal. Dec. 15, 2025); *Singh v. Albarran*, No. 1:25-CV-01821-DAD-SCR (HC), 2025 WL 3640678, at *3 (E.D. Cal. Dec. 16, 2025); *Mata Velasquez*, 794 F. Supp. 3d at 154-55; *see also Nat'l Auto. Dealers Ass'n v. Fed. Trade Comm'n*, 127 F.4th 549, 553 (5th Cir. 2025) ("It is a given of administrative law that agencies must follow their own regulations." (citation omitted)); *Am. Stewards of Liberty v. Dep't of the Interior*, 370 F. Supp. 3d 711, 725 (W.D. Tex. 2019) ("Agency action that disregards applicable law is arbitrary and capricious, and must be set aside." (citations omitted)). Moreover, the "typical remedy for [unlawful] detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." (citations omitted)).

Here, the government has offered no other valid reason for Magana-Garcia's detention. Dkts. 3; 7. The cases cited by the government in support of its position that "substitute notice" would be sufficient to belatedly cure its arrest and detention of Magana-Garcia do not support such a proposition. For instance, the government cites *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016), for the proposition that "substitute process" would cure its failure to follow the law in attempting to revoke Magana-Garcia's parole. Dkt. 4, at 5. Yet in

Mohammed, the court found that the government's tardy custody review was properly remedied by the government's completion of such review; here, in contrast, the government has not established that it had any legal basis to detain Magana-Garcia. See Dkt. 4; 7; *Mohammad*, 2016 WL 8674354, at *6 n.6. Moreover, while the petitioner in *Mohammed* did not challenge as unlawful the government's initial decision to detain him after he was ordered removed, here Magana-Garcia has shown that the government has no valid basis to detain him in the first place. Moreover, the government's reliance on *Tenemasa-Lema v. Hyde* to suggest that substitute service is the proper remedy here is unconvincing given that there, petitioner's parole had already expired and he argued that the government's failure to detain him following the expiration waived its right to detain him in the future; here, in contrast, Magana-Garcia's parole was never properly revoked. Dkt. 7; No. CV 25-13029-BEM, 2025 WL 3280555, at *3 (D. Mass. Nov. 25, 2025) ("[A]s a matter of statutory interpretation and federal common law, courts generally must assume that 'an official's crucial duties are better carried out late than never.'" (citation omitted)).¹⁰

By denying Magana-Garcia "the required procedure before purporting to terminate his parole, [the government] acted arbitrarily and capriciously and violated the APA" as well the INA, which caused Magana-Garcia to be improperly detained. *Bostock*, 792 F. Supp. 3d at 1146. Magana-Garcia has thus demonstrated

¹⁰ It is also noteworthy that in *Tenemasa-Lema*, the court found that petitioner had a procedural due-process right to a bond hearing before being detained, even after the expiration of his parole. 2025 WL 3280555, at *5-12.

that “[h]e is in custody in violation of the Constitution or laws or treaties of the United States,” and the writ must issue to release him from custody. 28 U.S.C. § 2241(c)(3).

* * *

Based on the finding that the government unlawfully terminated Magana-Garcia’s parole in violation of the INA and its regulations, the undersigned need not address whether Magana-Garcia may be subject to mandatory detention under § 1225(b), as the government cannot detain him without first properly revoking his parole. Moreover, because the undersigned concludes that Magana-Garcia’s continued detention violates the INA and recommends that the District Judge grant the petition on that basis, the undersigned does not reach Magana-Garcia’s other bases for relief.

III. RECOMMENDATION

In accordance with the above discussion, the undersigned **RECOMMENDS** that the District Judge **GRANT** Magana-Garcia’s petition for writ of habeas corpus, Dkt. 1. Specifically, the District Judge should: (1) order the government to release Magana-Garcia from custody under conditions of his preexisting parole; and (2) order the government to provide a status report within two days of any order adopting this report detailing its compliance with the Court’s order.

The referral to the Magistrate Judge should now be canceled.

IV. WARNINGS

The parties may file objections to this report and recommendation. A party filing objections must specifically identify those findings or recommendations to

which objections are being made. The District Judge need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days¹¹ after the party is served with a copy of the report shall bar that party from *de novo* review by the District Judge of the proposed findings and recommendations in the report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED January 28, 2026.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE

¹¹ During the hearing, the parties agreed to shorten the objections period to seven days. *See* Dkt. 7.