U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, NY 11201

March 9, 2026

BY ECF
Honorable Diane Gujarati
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Ali v. Charles*, No. 26-cv-0578 (DG)

Dear Judge Gujarati:

This Office represents Respondents (or "government") in the above-captioned case in which Petitioner Imran Ali ("Petitioner") filed a petition for a writ of habeas corpus on February 2, 2026 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 1, Petition ("Pet.").

On March 5, 2026, the Court issued an Order requiring Respondents to file a letter "addressing that portion of the district court's decision in *O.F.B. v. Maldonado*, No. 25-CV-06336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) that concluded that the petitioner in that case was detained in violation of the Fifth Amendment even if 8 U.S.C. § 1225 ('Section 1225') – rather than 8 U.S.C. § 1226 ('Section 1226') – applied." In particular, the Court directed Respondents to "show cause why the Court should not adopt the reasoning of the *O.F.B.* court and conclude in the instant action that even if Section 1225 rather than Section 1226 applies, Petitioner is detained in violation of the Fifth Amendment. *See O.F.B.*, 2025 WL 3277677, at *7 (after determining that Section 1226 applied, concluding that even if Section 1225 applied, the petitioner was detained in violation of the agency's own regulations – *i.e.*, 8 C.F.R § 212.5(e)(2) – and that under the *Mathews* test, the petitioner's due process rights were violated)."

Respondents respectfully submit that *O.F.B.* was incorrectly decided, and does not compel the grant of the Petition here, for multiple reasons.

First, by purporting to review DHS's discretionary decision to grant or not grant parole after Petitioner's parole had automatically terminated, the Court in *O.F.B.* acted in contravention of the jurisdictional bar set forth by Congress in 8 U.S.C. § 1252(a)(2)(B)(ii). That provision states that, with exceptions not relevant here, "[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any [] decision or action of [] the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of [] the Secretary of Homeland Security." *Id.*

The exercise of parole authority under 8 U.S.C. § 1182(d)(5)(A), a provision in that subchapter, is explicitly discretionary. In particular, Congress has provided that:

> The Secretary of Homeland Security *may . . . in his discretion* parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, *in the opinion of the Secretary of Homeland Security*, have been served 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.

8 U.S.C. § 1182(d)(5)(A).

The decision to grant or not grant parole is thus a discretionary "decision or action" within the meaning of 8 U.S.C. § 1252(a)(2)(B)(ii), such that this Court lacks jurisdiction to review it. *Cf. Wilkinson v. Garland*, 601 U.S. 209, 224 (2024) (concluding that determinations made "in the opinion of" an official indicated discretionary relief).[1]

Second, even if the court in *O.F.B.* had jurisdiction to review DHS's discretionary parole determinations, which it did not,[2] Respondents respectfully submit that *O.F.B.* is incorrect insofar as it reads 8 C.F.R. 212.5(e)(2)(i) to require an individualized determination immediately upon, or shortly after, the automatic expiration of humanitarian parole, where, as here, the alien is not subject to a previously entered removal order. To the contrary, that regulation states, in relevant part, that, after the termination of parole, "[a]ny further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, *or* any order of exclusion, deportation, or removal *previously entered* shall be executed. *If the exclusion, deportation, or removal order cannot be executed within a reasonable time*, the alien shall again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody." 8 C.F.R. § 212.5(e)(2)(i) (emphases added). Thus, the regulation, by its plain terms, only contemplates a renewed parole assessment (if at all) in situations where there is a "*previously entered* . . . exclusion, deportation, or removal order" and that order "cannot be executed within a reasonable time." *Id.* (emphasis added). Here, Petitioner is currently in removal proceedings and no removal order has yet been entered.[3] *See*

---

[1] While the Second Circuit has previously held that a district court has jurisdiction to review an agency's compliance with procedural requirements, *see Mantena v. Johnson*, 809 F.3d 721, 729 (2d Cir. 2015), a district court is not permitted to review the substance of a discretionary judgment or to impose procedures that the regulations do not require.

[2] For the remainder of this letter, Respondents will assume *arguendo*, without conceding, that the § 1252(a)(2)(B)(ii) jurisdictional bar does not apply here.

[3] No exclusion or deportation orders can be entered against Petitioner because the previous distinction between exclusion proceedings and deportation proceedings was replaced with the inclusive term "removal proceedings" in 1996. *Thaapa v. Gonzalez*, 460 F.3d 323, 334, n. 3 (2d Cir. 2006).

https://acis.eoir.justice.gov/en/caseInformation/ (enter Petitioner's A number and country of origin (Pakistan)). Thus, the language in 8 C.F.R. § 212.5(e)(2)(i), quoted in *O.F.B.*, does not apply here.

Respondents acknowledge that, in *O.F.B.*, the petitioner also did not have a previously entered removal order, and yet the court inferred, based on a pending backlog of B.I.A. appeals, and the fact that "there is no indication of when Petitioner's removal proceedings will end, it necessarily follows that if the pending removal proceedings result in an order of removal, that order 'cannot be executed within a reasonable time.'" 2025 WL 3277677, at *7 (citing 8 CFR 212.5(e)(2)(i)). Respondents respectfully submit that the court's conclusion on this issue was incorrect, insofar as the remainder of the regulation makes clear in express terms that this portion applies only when there is a "previously entered" removal order. *Id.* Courts are required to give effect to limiting language where it appears in a statute or regulation. *Cf. Doe v. Noem*, 152 F.4th 272, 286 (1st Cir. 2025) ("When Congress uses limiting language . . . we must give effect to, not nullify, Congress' choice to include limiting language in some provisions but not others.") (*citing Gallardo ex rel. Vassallo v. Marstiller*, 596 U.S. 420, 431 (2022)).[4]

Third, Respondents respectfully submit that the *O.F.B.* decision is incorrect insofar as it purports to provide additional constitutional protections to applicants for admission beyond those set forth by Congress. *See O.F.B.*, 2025 WL 3277677, at *5 (applying *Mathews* test). In particular, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). 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 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953). 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 to seek parole from the agency. *Id.*; *see also Mendez Ramirez v. Decker*, 612 F. Supp.3d. 200, 219-21 (S.D.N.Y. 2020) (following *Mezei*, holding constitutional due process rights for alien deemed at threshold of entry extended no further than the process outlined by statute, and concluding that alien previously released from custody but not lawfully admitted was still considered "at the threshold of initial entry" for immigration purposes such that § 1225 still applied); *Poonjani v. Shanahan*, 319 F. Supp.3d 644, 648 (S.D.N.Y. 2018) (petitioner paroled into the United States and continuously present for over 15 years, but not lawfully admitted, was "at the threshold of initial entry" such that "due process

[4] Moreover, even if this language applied to situations, as here and in *O.F.B.*, where there is no "previously entered" removal order, which it does not, *O.F.B.* did not supply a definition of "reasonable time" within the meaning of this regulation, and there is nothing in the regulation that indicates that any type of individualized determination is required immediately upon the expiration of parole. By way of analogy, Respondents note that the Supreme Court has recognized that six months is a presumptively reasonable period of time for the government to effectuate an alien's removal *following* the entry of a final order of removal and that an alien may be detained during this time period. *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001).

amounts to whatever the procedure authorized by Congress is") (cleaned up); *Salim v. Tryon*, No. 13-cv-6659, 2014 WL 1664413, *2 (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.").

Thank you for the Court's time and attention to this matter.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: */s/ Kimberly Francis*
KIMBERLY FRANCIS
Assistant United States Attorney
(718) 254-6147
kimberly.francis@usdoj.gov

cc: All Counsel of Record (by ECF)