

UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Daniel Herrera Aldana

Petitioner,

V.

CHARLOTTE COLLINS, WARDEN,
T. DON HUTTO DETENTION CENTER

PAMELA BONDI, IN HER OFFICIAL
CAPACITY AS UNITED STATES
ATTORNEY GENERAL;

KRISTI NOEM, IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;

TODD M. LYONS, IN HIS OFFICIAL
CAPACITY AS DIRECTOR OF UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT;

MIGUEL EDUARDO VERGARA-LOPEZ,
IN HIS OFFICIAL CAPACITY AS FIELD
OFFICE DIRECTOR, U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; AND,

SIRCE E. OWEN, IN HER OFFICIAL
CAPACITY AS ACTING DIRECTOR OF
THE EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

Respondents.

Civ. No. 1:26-cv-00335

**PETITIONER'S REPLY IN SUPPORT
OF HABEAS CORPUS RELIEF**

I.

INTRODUCTION

1. On February 27, 2026, this Court issued an Order directing Respondents to respond to Petitioner's allegation that he received no notice of the termination of his parole. The Court ordered Respondents to provide: "evidence of any notice that was issued to Petitioner regarding the termination of his parole status in April 2025." ECF No. 9. The Court issued this directive after observing that Respondents' earlier response failed to address Petitioner's allegation that his parole had been revoked without notice. Respondents' supplemental brief makes clear that Respondents did not provide Petitioner with notice of the termination of his parole as required by regulation. Buried in the Respondent's 8 page response is the fact that Respondents also failed to produce a copy of Petitioner's parole revocation document. Accordingly, neither this Court nor Petitioner can inspect the revocation document and inquire as to its sufficiency.

2. Instead of producing the evidence ordered by the Court, Respondents advance a novel theory of notice: none is required. Respondents instead advance a novel theory of constructive notice: that notice is satisfied because DHS declared in the Federal Register that publication alone constitutes legally sufficient notice. Specifically, Respondents quote the Federal Register notice stating:

"DHS has determined that publication of this notice in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance."

Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13618 (Mar. 25, 2025), Section VI. [emphasis added]

3. Contrary to Respondents' circular and self-serving position, "[it] is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S.

(1 Cranch) 137, 177 (1803). Respondents' publication in the Federal Register does little to disturb nearly two centuries of precedent. This Court, not DHS, determines whether Respondents have effectuated notice as a matter of law.

4. When the Government grants conditional liberty and later withdraws it, due process concerns are heightened because the individual suffers a "grievous loss" of liberty. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)(regarding parole revocation hearings generally.)

5. Failure to afford proper notice of parole termination violates the governing regulatory framework (8 C.F.R. § 212.5(e)(2)), the statutory parole authority (8 U.S.C. § 1182(d)(5)(A)), and the Due Process Clause of the Fifth Amendment (U.S. Const. amend. V).

6. This notice-defect independently supports Petitioner's argument that an arbitrary deprivation of physical liberty has occurred and that habeas relief is warranted.

7. As a threshold matter, Respondents' reliance on the Federal Register notice terminating the "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" ("CHNV") parole program does not apply to Petitioner's parole. The rule Respondents cite governs a distinct sponsor-based parole process and does not address the discretionary humanitarian parole granted to Petitioner.

8. Moreover, even if the CHNV rule were applicable, it would not relieve Respondents of their obligation to provide individualized written notice of parole termination as required by 8 C.F.R. § 212.5(e)(providing that parole "shall be terminated upon written notice to the alien.")

II. THE CHNV PAROLE PROGRAM IS DISTINCT FROM PETITIONER'S PAROLE

9. As a threshold matter, the Federal Register rule upon which Respondents rely concerns a specific immigration program: the "Processes for Cubans, Haitians, Nicaraguans, and Venezuelans" ("CHNV") parole program. The CHNV program was not a humanitarian parole process through which individuals could request parole at a port of entry. Instead, it was a

sponsor-based advance travel authorization system administered through USCIS. Under that program, a U.S.-based sponsor filed Form I-134A with USCIS. USCIS would vet the sponsor and beneficiary. The beneficiary would receive advance travel authorization prior to travel. The beneficiary then would travel to the United States, present themselves for inspection, and be paroled into the United States pursuant to that program. Participation in the CHNV program required the use of USCIS online systems and sponsor-based filings. Citations regarding Form I-134A on the USCIS website are limited. As of the filing of this Reply, the USCIS websites states as follows:

“Release Date 01/28/2025

Due to the Jan. 20, 2025 Executive Order, Securing Our Borders, USCIS is pausing acceptance of Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, until we review all categorical parole processes as required by that order.”

USCIS <https://www.uscis.gov/newsroom/alerts/update-on-form-i-134a> (last retrieved 03/03/2026)

10. Petitioner did not receive parole through the CHNV program. Based on information and belief, Petitioner does not even have a USCIS account. Petitioner presented himself at a port of entry and requested humanitarian parole. Petitioner’s Form I-94 identifies his Class of Admission as “DT”, which corresponds to discretionary parole granted for humanitarian reasons or significant public benefit. The I-94 further confirms that Petitioner was paroled into the United States on October 13, 2023 and authorized to remain until October 11, 2025. Indeed, Respondents’ own Form I-213 records do not identify the CHNV program as the basis for Petitioner’s parole. Similarly, the NTA states that the Respondent is

“an immigration not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.”

ECV Num. 1 Exh 2

11. If Respondent's assertion that the parole in question was procured through the CHNV Program, then the Petitioner would have been in possession of an entry document prior to his application for admission. Much of the Respondent's claim rests on this unsubstantiated assumption.

III.

8 C.F.R. § 212.5(e)

"SHALL BE TERMINATED UPON WRITTEN NOTICE TO THE ALIEN"

12. Respondents' theory of constructive notice cannot be reconciled with the regulation governing termination of parole. Congress authorized the parole of applicants for admission in INA § 212(d)(5)(A), codified at 8 U.S.C. § 1182(d)(5)(A). The statute provides that the Secretary of Homeland Security may temporarily parole a noncitizen into the United States "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.*

13. The statute further provides that parole is temporary and that "when the purposes of such parole shall... have been served the alien shall forthwith return or be returned to the custody from which he was paroled." *Id.* Although the statute establishes the authority and circumstances under which parole may end, it does not prescribe the procedures by which revocations occur. Those procedures are supplied by the implementing regulation, 8 C.F.R. § 212.5(e).

14. The governing regulation provides a clear procedural framework for termination of parole. Section 212.5(e) distinguishes between two situations. First, parole may terminate automatically when the parolee departs the United States or when the authorized parole period expires. In those limited circumstances, the regulation provides that termination occurs automatically and no written notice is required. This case does not fall into that category.

15. Petitioner's parole had not expired. Petitioner's Form I-94 reflects that his parole was authorized until October 11, 2025. The Government instead asserts that his parole was terminated months earlier in April 2025. Because the Government claims that parole was terminated before its natural expiration, the termination falls under the second category described in § 212.5(e). That provision states:

“[i]n cases not covered by paragraph (e)(1)... parole shall be terminated upon written notice to the alien ...”

Id.

16. Respondents' reliance on generalized Federal Register publication cannot satisfy this regulatory requirement. The regulation does not authorize termination through generalized publication or constructive notice. Instead, it expressly requires written notice to the individual parolee.

17. The parole regulation also affords special consideration to Cuban nationals, like the Petitioner. Paragraph (h) states:

“any national of Cuba or Haiti who was paroled into the United States on or after October 10, 1980, shall be considered to have been paroled in the special status for nationals of Cuba or Haiti.”

8 C.F.R. § 212.5(h).

18. This regulatory classification implements a statutory framework created by Congress. The Refugee Education Assistance Act of 1980 recognizes Cuban and Haitian nationals who were paroled into the United States as a distinct humanitarian class. *See* Refugee Education Assistance Act of 1980, Pub. L. 96-422, § 501(e), 94 Stat. 1799 (1980) (codified at 8 U.S.C. § 1522 note). It would appear that Petitioner's Parole determination is regarded as being in special status pursuant to Paragraph (h). Respondent's brief is silent on this issue.

19. Against this backdrop, Respondents' theory that parole may be terminated for individual parolees through generalized Federal Register publication cannot be reconciled with the governing regulatory structure. The parole regulations require individualized parole determinations, individualized parole revocations, and written notice to the parolee when parole is terminated prior to its expiration.

20. Respondents' constructive notice theory would effectively nullify the explicit notice requirement contained in 8 C.F.R. § 212.5(e)(2) and cannot be squared with the regulatory framework governing parole termination.

21. Additionally, that same regulation cannot be interpreted as mandating detention.

IV. 8 C.F.R. § 212.5(e)(2)

"SHALL AGAIN BE RELEASED ON PAROLE"

22. Respondents contend that Petitioner is subject to mandatory detention based on Petitioner's status as a parolee. That position cannot be reconciled with the governing parole regulation itself. Even where parole has been terminated, the regulation expressly contemplates that continued detention is not automatic. Rather, the regulation recognizes that circumstances may arise in which removal cannot be promptly executed and provides a mechanism for release in those circumstances.

23. Specifically, 8 C.F.R. § 212.5(e)(2) provides that after parole termination and the initiation of removal proceedings, 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." This language is mandatory. The regulation directs that the noncitizen "shall again be released on parole" when removal cannot be effectuated within a reasonable period of time.

24. This provision directly contradicts Respondents' theory that detention is categorically mandatory. The regulation itself recognizes that detention following parole termination is not absolute and instead provides that renewed parole is the default outcome when removal cannot be executed within a reasonable time. Continued detention is permitted only if an authorized official determines that the public interest requires it. 8 C.F.R. § 212.5(e)(2).

25. Respondents' assertion that Petitioner is subject to mandatory detention therefore conflicts with the plain text of the governing regulation. The regulatory framework does not impose categorical detention following parole termination; instead, it expressly contemplates renewed parole when removal cannot be promptly accomplished. Respondents' theory of mandatory detention cannot be squared with their own regulation.

V.
NOTICE REQUIREMENTS
UNDER DUE PROCESS

26. Respondents' theory of constructive notice fails not only under the governing parole regulation, but also under the Due Process Clause of the Fifth Amendment. (U.S. Const. amend. V). Where the Government grants conditional liberty and later seeks to withdraw it through detention, due process requires procedures reasonably calculated to inform the affected person of the deprivation and its basis.

27. Respondents' position—that publication in the Federal Register is “legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship”—cannot displace constitutional requirements. The Supreme Court has repeatedly held that due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of government action affecting their liberty or property interests. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Constructive notice by

publication is constitutionally inadequate where the Government knows the identity and location of the affected individual and can provide direct notice through reasonable means. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). Here, DHS possessed Petitioner's mailing address, immigration file, and electronic records associated with his parole and pending adjustment application. Under these circumstances, reliance on generalized publication in the Federal Register cannot satisfy the requirement that notice be reasonably calculated to inform the individual whose liberty is being withdrawn. See also *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (due process requires the government to take additional reasonable steps to provide notice when practicable).

28. Furthermore, the Supreme Court's decision in *Morrissey v. Brewer* underscores why notice is constitutionally indispensable when conditional liberty is withdrawn. Although *Morrissey* arose in the context of state criminal parole revocation, the Court's due process analysis turns on the nature of the liberty interest at stake and the "grievous loss" inflicted by termination of conditional freedom. (*Morrissey v. Brewer*, 408 U.S. 471, 480–82 (1972)). The Court held that a parolee's conditional liberty "includes many of the core values of unqualified liberty," and its termination inflicts a "grievous loss" triggering due process protections. (*id.* at 480–82). The same is true here: once DHS granted Petitioner parole and allowed him to live at liberty in the United States, the Government could not terminate that conditional liberty and subject him to detention without constitutionally adequate notice.

29. *Morrissey* also identifies notice as a minimum constitutional requirement. The Court explained that due process requires "prior notice" of the inquiry and the alleged basis for revocation, and that the revocation stage requires "written notice" as a core procedural protection. (*Morrissey*, 408 U.S. at 484–87, 487–89). Respondents do not contend that Petitioner

received individualized written notice that his parole had been terminated prior to its stated expiration date. Instead, Respondents rely on generalized publication. But publication alone is not notice “reasonably calculated” to inform the affected individual that the Government has withdrawn his conditional liberty and will treat him as subject to mandatory detention.

30. Finally, the constitutional defect is reinforced—not cured—by Respondents’ failure to produce the very document the Court ordered them to provide: “evidence of any notice that was issued to Petitioner regarding the termination of his parole status in April 2025.” (ECF No. 9). Where Respondents claim that parole was terminated months before its stated expiration, due process requires that the Government be able to show that Petitioner was actually notified of that action and its operative effect.

VI. PETITIONER’S ORDER OF REMOVAL

31. In their supplemental brief, Respondents inform the Court that an Immigration Judge entered an order of removal on February 24, 2026, which they attach as Exhibit A. Respondents’ Supplemental Brief at 6–7. Respondents raised this development in the course of responding to the Court’s February 27, 2026 Order directing them to produce evidence of notice regarding the alleged termination of Petitioner’s parole. *See* ECF No. 9.

32. The existence of that removal order does not resolve the issue presently before the Court.

33. First, the removal order is not yet final. Respondents acknowledge that Petitioner reserved appeal and that the matter remains within the time period for filing a notice of appeal to the Board of Immigration Appeals. Under the Immigration and Nationality Act, an order of removal becomes final only upon affirmance by the Board of Immigration Appeals or upon expiration of the time for seeking such review. 8 U.S.C. § 1101(a)(47)(B). Because the

administrative process remains ongoing, the Government continues to detain Petitioner under the same statutory detention framework challenged in the Petition.

34. Second, the removal order does not cure the constitutional defect at issue in this case because the issue presented here concerns the legality of Petitioner's detention, not the validity of the removal order itself. This action sounds in habeas corpus, the traditional mechanism for challenging unlawful executive detention. Petitioner does not seek review or vacatur of the Immigration Judge's removal order. Rather, Petitioner challenges the Government's continued deprivation of his physical liberty following the termination of his parole without the written notice required by 8 C.F.R. § 212.5(e) and without constitutionally adequate process.

35. The removal order addresses Petitioner's removability under the immigration laws. It does not resolve the separate constitutional question presented here: whether the Government may continue to detain Petitioner after terminating his previously granted conditional liberty without providing the procedures required by regulation and the Fifth Amendment. Nor does the removal order eliminate this Court's role in reviewing the legality of that detention. Habeas corpus has long served as the mechanism for testing the legality of executive custody independent of the underlying removal proceedings.

36. Moreover, the removal order itself underscores the structural due process problem identified in the Petition. The Immigration Judge's order reflects that the court granted multiple continuances while Petitioner awaited adjudication of his adjustment-of-status application under the Cuban Adjustment Act ("CAA"). The Immigration Court ultimately deemed relief abandoned because Petitioner had not filed an adjustment application with the court. Respondents' Supplemental Brief Ex. A. However, that procedural posture arises from the

jurisdictional framework governing arriving aliens. Immigration Judges lack jurisdiction to adjudicate adjustment-of-status applications filed by arriving aliens, and exclusive jurisdiction over such applications lies with USCIS. See 8 C.F.R. §§ 1245.2(a)(1)(ii), 245.2(a)(1).

37. At the same time, USCIS has suspended or delayed adjudication of certain benefits, including adjustment applications relevant to Petitioner's claim for relief. As explained in the Petition, USCIS issued a policy memorandum placing holds on certain benefit adjudications while the agency reviews pending applications. See USCIS Policy Memorandum PM-602-0192 (Dec. 2, 2025). The Immigration Court recognized this reality by granting multiple continuances while Petitioner awaited USCIS action on his CAA-based adjustment application.

38. The resulting procedural posture illustrates the precise structural defect raised in the Petition. Petitioner remains detained while the two administrative bodies capable of adjudicating his claim for relief refuse jurisdiction over it. The Immigration Court cannot adjudicate the adjustment application because Petitioner is classified as an arriving alien. USCIS retains exclusive jurisdiction but has indefinitely delayed adjudication. As a result, Petitioner now faces removal without ever having received a merits determination on the relief Congress specifically made available to Cuban parolees under the Cuban Adjustment Act.

39. Petitioner does not ask this Court to adjudicate or grant adjustment of status under the Cuban Adjustment Act. That determination remains exclusively within the authority of USCIS. The issue before this Court is narrower and arises from the consequences of the current administrative structure. Because the Immigration Court lacks jurisdiction to adjudicate Petitioner's adjustment application and USCIS has indefinitely delayed adjudication of that same application, Petitioner remains detained while no administrative body is presently available to

consider the sole form of relief that could resolve his removability. The constitutional concern therefore does not arise from the merits of Petitioner's adjustment application, but from the prolonged deprivation of liberty caused by a system in which detention continues while no forum will adjudicate the claim for relief that could terminate the basis for that detention.

40. Finally, the existence of a non-final removal order does not eliminate this Court's habeas jurisdiction to review the legality of Petitioner's detention. Habeas corpus has long served as the traditional mechanism for testing the legality of executive detention while removal proceedings remain ongoing. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Because Petitioner continues to be detained without any individualized custody determination and without the notice required by the governing parole regulation, the constitutional issue presented in the Petition remains live and properly before this Court.

41. Indeed, the governing parole regulation itself further undermines Respondents' theory of categorical detention. Even where DHS terminates parole, the regulation expressly recognizes that continued detention is not automatic. 8 C.F.R. § 212.5(e)(2) provides that if removal cannot be executed within a reasonable period of time after parole termination, "the alien shall again be released on parole" unless an authorized official determines that the public interest requires continued custody. This mandatory language directly contradicts Respondents' assertion that parole termination automatically subjects Petitioner to mandatory detention without the possibility of release.

42. Accordingly, Respondents' reference to the February 24, 2026 removal order does not alter the analysis or provide a basis to deny habeas relief.

VII.
CONCLUSION

43. For the reasons set forth in the Petition and this Reply, Respondents have failed to demonstrate that Petitioner's continued detention is lawful. Respondents did not comply with this Court's Order directing them to produce evidence that Petitioner received notice of the termination of his parole. Instead, Respondents advance a theory of constructive notice based solely on publication in the Federal Register. That position cannot be reconciled with the governing regulation, which provides that parole "shall be terminated upon written notice to the alien." 8 C.F.R. § 212.5(e). Nor can it satisfy the requirements of the Due Process Clause, which requires notice reasonably calculated to inform the individual whose liberty is being withdrawn.

44. The Court is therefore left with a record demonstrating that the Government terminated Petitioner's conditional liberty without providing the written notice required by regulation and without constitutionally adequate notice. The subsequent entry of a non-final removal order does not cure that defect, nor does it eliminate this Court's authority to review the legality of Petitioner's detention.

45. Petitioner does not ask this Court to adjudicate his eligibility for adjustment of status or to grant immigration relief. Those determinations remain within the jurisdiction of the administrative agencies charged with administering the immigration laws. The issue before this Court is narrower: whether the Government may continue to detain Petitioner where his parole was terminated without the notice required by regulation and where the administrative structure presently provides no forum capable of adjudicating the sole form of relief that could resolve the basis for his continued detention.

46. Under these circumstances, habeas relief is warranted. Accordingly, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order such relief as is necessary to remedy the unlawful deprivation of Petitioner's liberty, including Petitioner's immediate release from custody or, at minimum, an individualized custody determination consistent with the requirements of due process.

47. This Reply addresses the arguments raised in Respondents' response and supplemental filing. Nothing herein should be construed as limiting or waiving the claims and arguments set forth in the Petition.

RESPECTFULLY SUBMITTED,

/s/ Jesus Dario Elizondo

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