IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LAURIE GERMAIN, Petitioner, v. WARDEN, ERO EL PASO CAMP EAST MONTANA, et al., Respondents.	Case No. 3:26-CV-02151-LS Agency File No. [redacted] **PETITIONER'S TRAVERSE**

I. INTRODUCTION: THE RETURN RESOLVES THE FACTUAL DISPUTES IN PETITIONER'S FAVOR

Respondents' Response (ECF No. 3) argues at length about persons who "entered the United States illegally." Resp. 1. It closes its due process discussion by asserting that "Petitioner's entry and presence in the United States has been unlawful." Resp. 22. Respondents' own exhibits refute both statements. Their Form I-213 records that Ms. Germain entered "[b]y air conveyance at MIA/KMIA - Miami International Airport" on September 17, 2023, under "HHP-Haitian Humanitarian Parole." ECF No. 3-1 at 1, 3. Their Notice to Appear alleges, as the government's own charging allegation, that she "w[as] paroled into the United States at MIAMI AIRPORT on or about SEPTEMBER 17 2023." ECF No. 3-2 at 1 (allegation 3). The United States authorized her travel, inspected her at a port of entry, and released her into the country. Whatever else is disputed in this case, her entry was the opposite of illegal, and the Response's contrary premise should be disregarded wherever it appears.

The Return's exhibits do more than correct that premise. They supply, from the government's own records, nearly every fact the Petition pleaded on information and belief:

1. The categorical termination. The NTA alleges that "DHS has terminated the parole for CHNV and their immediate family members, effective June 12, 2025." ECF No. 3-2 at 1 (allegation 4). That is the categorical action the Petition described. Pet. ¶¶ 35-38. The Response itself cannot say which happened to Ms. Germain individually: it pleads that her parole "expired and/or was terminated" on that date. Resp. 8. Under *Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026), the distinction does not matter, which is why the Petition pleaded it in the alternative.

2. No criminal history. "The subject has no criminal history." ECF No. 3-1 at 3. The government's words, from its own systems checks run the morning of the arrest. *Id.* at 2.

3. The stop was not directed at her. The I-213 narrative records that on August 3, 2026, at approximately 6:30 a.m., ICE ERO Buffalo "was targeting" another person, surveilled that person's residence, watched a silver Toyota registered to that person leave the driveway, followed it, and activated emergency lights to stop it. ECF No. 3-1 at 2. Ms. Germain was a passenger. Nothing in the narrative attributes the stop, or any suspicion, to her. Pet. ¶¶ 51-53 pleaded exactly this on report and belief; the government's record now establishes it.

4. The arrest was in Rochester, New York, not anywhere near this District. The warrant's certificate of service records service at "Rochester NY" on August 3, 2026. ECF No. 3-3. Respondents then moved her through the Buffalo Federal Detention Facility, ECF No. 3-1 at 3, planned to house her at the Mahoning County Jail in Youngstown, Ohio, id. at 4, and ultimately transported her to El Paso, while her removal proceedings

remain at the Buffalo Immigration Court, with a hearing set for September 10, 2026. ECF No. 3-2 at 4.

5. Community ties the Petition could not yet document. The I-213 records that she was employed as a delivery driver from February 1, 2026 through the day of her arrest, held a New York driver's license, claimed no gang affiliation, and was in good health. ECF No. 3-1 at 2-3.

6. The Return identifies and produces no individualized custody assessment. Its four-page I-213 records Ms. Germain's clean criminal history, her employment, her license, her address, and the parole database result, and contains no flight-risk assessment, no danger assessment, and no custody analysis. ECF No. 3-1. The narrative proceeds from the database result to custody without identifying any individualized determination. The Return was Respondents' opportunity to produce the justification for revoking her liberty; they produced none.

On these facts, supplied by Respondents, the Petition's two due process counts stand established unless the Response's legal arguments defeat them. As shown below, they do not.

II. CORRECTIONS TO THE RECORD

Candor requires four corrections to the Petition, each occasioned by facts that were in Respondents' exclusive possession when the Petition was verified and that their Return has now supplied.

First, the Petition alleged that no Notice to Appear had been served on Petitioner and that no removal proceeding was pending. Pet. ¶¶ 8, 54, 94. The Return establishes that an NTA and warrant were served on Ms. Germain in person on August 3, 2026, the day of her arrest, and that a hearing is set for September 10, 2026 in Buffalo. ECF Nos. 3-1 at 1, 3-2, 3-3. Counsel had

received no charging document, and none had been provided in response to inquiry, when the Petition was filed; Ms. Germain was served while in custody, with the warrant read to her in English, a language her sworn asylum application states she does not speak fluently, even as Respondents' own NTA certificate, executed the same day, records that oral notice was provided in Creole. Compare ECF No. 3-3 (English) with ECF No. 3-2 at 3 (Creole). Petitioner accepts the Return's documents and corrects the allegations accordingly. The correction does not weaken the Petition; it changes which regulatory door is closed. Now that removal proceedings have been commenced, 8 C.F.R. § 1003.19(h)(2)(i)(B) supplies the exclusion Respondents' own authority enforces, and Respondents' merits brief confirms their position that no bond forum exists. Resp. 16 (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)).

Second, the Petition alleged on information and belief that the arrest occurred in Ohio. Pet. ¶ 66. The belief traced to her later transfer through Ohio; the Return establishes the arrest occurred in Rochester, New York. ECF No. 3-3. Third, the Petition, following her self-prepared asylum application, described the port of entry as Fort Lauderdale; the I-213 records Miami International Airport. ECF No. 3-1 at 3. Both are Florida ports of entry; nothing turns on the difference. Fourth, the detention arithmetic is no longer bounded but exact: Ms. Germain has been detained since August 3, 2026.

One record note: Respondents' caption identifies the Warden of the El Paso Service Processing Center, while the ICE Online Detainee Locator at filing placed Ms. Germain at ERO El Paso Camp East Montana. Whichever El Paso facility currently holds her, her immediate custodian is before the Court and intra-district custody does not affect jurisdiction or venue.

III. THE EN BANC STAY ORDER DOES NOT BAR ADJUDICATION OF THIS PETITION

Respondents lead with the argument that this Court is "barred" from granting relief, or should hold this case in abeyance, because the en banc Fifth Circuit stayed the district court judgments in *Sosnava Rodriguez* pending rehearing. The argument proves far less than Respondents claim.

The order Respondents quote granted "Appellants' opposed motion for stay of *the district court judgments* pending rehearing en banc." Resp. 4 (quoting *Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL 2104747, at *1 (5th Cir. July 21, 2026)) (emphasis added). A stay of three identified judgments in three consolidated appeals is what it says it is. It is not an injunction addressed to every district judge in the circuit, and the paraphrase Respondents borrow from Palles Franco, that the court of appeals "stayed all judges in this circuit from granting any habeas petitions," Resp. 2, adds words that appear nowhere in the order Respondents themselves quote. District courts remain obliged to adjudicate the habeas petitions before them. 28 U.S.C. § 2243 commands a court to "summarily hear and determine the facts, and dispose of the matter as law and justice require," and the writ's office "is a swift and imperative remedy in all cases of illegal restraint." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

Trump v. Boyle holds that interim orders "inform how a court should exercise its equitable discretion in like cases." Resp. 4-5 (quoting 145 S. Ct. 2653, 2654 (2025)). This is not a like case in the respects that matter. The consolidated *Sosnava* appeals presented the prolonged-detention question for petitioners who entered without inspection: whether § 1225(b)(2)(A) detention becomes unconstitutional after ninety days without a hearing. All three consolidated petitioners entered the United States without inspection and were detained after traffic stops; the panel framed the question presented as whether such detainees are entitled to a hearing at some point during prolonged detention. Ms. Germain's lead claim is different in kind. She is a port-of-entry parolee

whom the government itself released, and Count One challenges her re-detention without notice, hearing, or any individualized determination, under the Morrissey line this District has applied in *Marceau*, *Rodriguez v. Bondi*, and *Molina-Sanchez*. The three judgments the July 21 order stayed arose from that entry-without-inspection, prolonged-detention litigation, not from this posture, and a stay calibrated to a facial ninety-day framework says nothing about a re-detention claim that was complete at arrest. Boyle counsels attention to pertinent differences, and the differences here are pertinent.

Abeyance would also be relief in Respondents' favor disguised as neutrality. Every week of abeyance is a week of detention without any review by anyone, which is the injury the Petition alleges. If the Court concludes that the en banc proceedings counsel restraint as to Count Two's no-hearing framework, the proper course is to adjudicate Count One now, or to condition any abeyance on interim release or an interim custody hearing, not to warehouse a detained petitioner while the calendar runs.

IV. BUENROSTRO-MENDEZ DECIDED A STATUTORY QUESTION AND LEAVES THE CONSTITUTIONAL CLAIMS OPEN

Respondents assert that the due process claims are "foreclosed by Buenrostro-Mendez and Avila." Resp. 7. Both decisions construed the statute; neither adjudicated a Fifth Amendment claim. The posture of *Sosnava Rodriguez* itself refutes Respondents' reading: a panel of the Fifth Circuit granted relief on due process grounds after *Buenrostro-Mendez*, and the en banc court has taken the question up. If *Buenrostro-Mendez* had already foreclosed the constitutional claim, there would be nothing for the en banc court to decide. Courts in this District have recognized the same distinction. *See Mendoza v. Noem*, No. 5:26-CV-728-JKP, ECF No. 9, at 7 (W.D. Tex. Feb. 26, 2026); *Hassen v. Noem*, No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 & n.1 (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite*, No. EP-26-CV-00312-DB, 2026 WL 446509, at *2 & n.2

(W.D. Tex. Feb. 10, 2026); *Molina-Sanchez v. Bondi*, No. 1:26-CV-518-RP, ECF No. 6 (W.D. Tex. Mar. 13, 2026).

Respondents' own footnote acknowledges that the Seventh Circuit has concluded the government is unlikely to prevail on the same statutory question. Resp. 2 n.3 (citing Castanon-Nava). The statutory count remains preserved for that split. But the Court need not touch it: the Petition's constitutional counts assume, arguendo, that Respondents are right about the statute. Pet. ¶¶ 130-32; Marceau, 2026 WL 368953, at *2.

V. THE CLAIMS ARE PROCEDURAL, AND CONNECTICUT DEPARTMENT OF PUBLIC SAFETY DOES NOT ANSWER THEM

Respondents' central legal move is recharacterization: because § 1225(b)(2)(A) makes flight risk and danger "irrelevant," any request for a hearing on those facts is said to be a substantive attack on the statute, governed by *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003). The move fails three times over.

First, the facts are not irrelevant under the scheme Respondents administer. A person detained under § 1225(b)(2) remains eligible for release on parole where she "present[s] neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b); 8 U.S.C. § 1182(d)(5)(A). Respondents' own parole regime thus expressly makes security risk and risk of absconding relevant to release, so a determination that Ms. Germain is neither a flight risk nor a danger is not irrelevant to the availability of parole or to the justification for her continued detention. *Molina-Sanchez*, No. 1:26-CV-518-RP, 2026 LX 105089 (W.D. Tex. Mar. 13, 2026). In *Doe*, by contrast, no fact the plaintiff wished to prove could have changed his obligation under the statute. The individualized facts Ms. Germain seeks to establish are not legally immaterial as they were in Doe.

Second, Count One does not ask for a hearing on facts outside the scheme at all. It rests on *Morrissey v. Brewer*, 408 U.S. 471 (1972): liberty once granted, even conditionally, cannot be

revoked without notice and an individualized determination of the need to do so. The fact to be established at the hearing Count One demands is whether any justification exists for revoking the release the government itself granted and maintained for years. This District has held, three times in this calendar year, that this claim survives whatever the statute says. *Marceau*, 2026 WL 368953, at *2; *Rodriguez v. Bondi*, No. EP-26-CV-00292-DB, 2026 WL 523055, at *2 (W.D. Tex. Feb. 25, 2026); *Molina-Sanchez*, ECF No. 6, at 4-5. *Molina-Sanchez* involved a parolee arrested, like Ms. Germain, as a passenger in a stopped vehicle; the court ordered release.

Third, Wekesa is not to the contrary. It was an unpublished decision about § 1226(c), a statute keyed to specified criminal history, brought by a petitioner who did not dispute that he fell within it and who had never been released. Ms. Germain has no criminal history, on the government's own record, and her claim arises from re-detention after release. The substantive due process discussion in the Response, Resp. 23-26, answers a claim the Petition does not plead. Petitioner seeks notice and a neutral hearing, the classic procedural remedy; she does not ask the Court to hold that she may never be detained no matter what process is provided.

VI. THE ENTRY FICTION DOES NOT REACH A PAROLEE THE GOVERNMENT RELEASED INTO THE INTERIOR FOR YEARS

Respondents' historical argument rests on *Thuraissigiam*, *Mezei,* and *Kaplan v. Tod*. Each is distinguishable, and this District has said so since *Buenrostro-Mendez*. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 682-84 (W.D. Tex. 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *7-*8 (W.D. Tex. Oct. 21, 2025); *Molina-Sanchez*, No. 1:26-CV-518-RP, 2026 LX 105089 (W.D. Tex. Mar. 13, 2026).

Thuraissigiam concerned a person stopped twenty-five yards inside the border, detained immediately, and never released, who challenged the adequacy of his admission procedures. Ms. Germain challenges her custody, not her admission, and she was not stopped at any border: the

government authorized her travel, she arrived by air, and it inspected her, paroled her, and left her at liberty for nearly three years. 591 U.S. 103 (2020). *Mezei* involved exclusion at the threshold of a person held at Ellis Island who was never released into the community. *Kaplan v. Tod* addressed whether a paroled child had been "admitted" for purposes of derivative citizenship; the child was at liberty in a guardian's care, and nothing in *Kaplan* sustains the physical detention of a person, without any hearing, whom the government itself released. *Kaplan v. Tod,* 267 U.S. 228, 45 S. Ct. 257, 69 L. Ed. 585 (1925). Whatever the entry fiction says about the right to be admitted, the Supreme Court has been clear that the Due Process Clause protects every person within the United States against unjustified physical restraint, including those never admitted. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Clark v. Martinez*, 543 U.S. 371, 380 (2005); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

Demore adds nothing here. It sustained brief mandatory detention under § 1226(c) of a petitioner with qualifying criminal convictions who conceded deportability, and it distinguished *Zadvydas* on grounds, definite duration and served purpose, that Respondents cannot invoke for a detention imposed without any individualized process on a person with no criminal history whom they had already determined could live at liberty. And Respondents' duration authorities, addressing whether one month of detention is "premature" for a prolonged-detention claim, miss Count One entirely: a re-detention claim under *Morrissey* is complete at the moment liberty is revoked without process, not after some number of months.

VII. RESPONDENTS' OWN BRIEF ESTABLISHES THAT EXHAUSTION WOULD BE FUTILE

Exhaustion does not bar this Petition, for four reasons. First, section 2241 contains no statutory exhaustion requirement; the doctrine is prudential, with recognized exceptions. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). Second, the agency cannot remedy the violation Count

One alleges: no immigration judge or Board order can supply the notice and individualized determination that were constitutionally required before Ms. Germain's liberty was revoked. Third, the administrative route Respondents gesture at begins with a jurisdictional denial and reviews the antecedent legal classification, not present flight risk or danger; on Respondents' own authority, "Immigration Judges lack authority to hear bond requests or to grant bond" to persons in her claimed posture. Resp. 16 (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)). Fourth, controlling Board authority predetermines that classification question while she remains detained, which is the definition of futility. Courts in this Circuit have excused exhaustion on exactly this ground. *Lorenzo C. P. v. Noem*, No. 1:25-CV-181, 2025 WL 3684859, at *5 (S.D. Tex. Oct. 31, 2025); *Shi v. Lyons*, No. 1:25-CV-274, 2025 WL 3637288, at *4 n.6 (S.D. Tex. Dec. 12, 2025).

The Response's own structure confirms the point. Its Section VI directs Ms. Germain to seek bond from the immigration court, Resp. 26-27, while its Section IV argues the immigration judge cannot grant it, Resp. 16. And its alternative framing, that she "has received a bond determination from an immigration judge that [she] contests," Resp. 26-27, is contradicted by the Return itself, which contains no custody determination of any kind.

VIII. THE APA AND STAY-OF-REMOVAL SECTIONS ANSWER CLAIMS THE PETITION DOES NOT RAISE

The Petition pleads three counts: two under the Fifth Amendment and one under 8 U.S.C. § 1226(a). It pleads no claim under the Administrative Procedure Act, and it requests no stay of removal. The Response's Sections VII and VIII, and its severance request, are addressed to a different petition; portions of the brief likewise refer to "Petitioners" in the plural and to Ms. Germain as "he." The anti-transfer relief the Petition does request preserves the Court's jurisdiction over the person of the petitioner while this action is adjudicated; it does not restrain removal

proceedings, which Ms. Germain is actively engaged in defending, with a hearing on September 10, 2026.

IX. THE RETURN'S OWN DOCUMENTS COMPLETE THE MATHEWS SHOWING

Three features of Respondents' exhibits deserve the Court's attention, because they illustrate why individualized process exists.

First, the NTA. The box checked describes Ms. Germain as "an alien present in the United States who has not been admitted or paroled," while allegation 3 on the same page alleges that she "w[as] paroled into the United States at MIAMI AIRPORT" and allegation 4 alleges the termination of that parole. ECF No. 3-2 at 1. Whatever the checked box means as a description of her claimed status after termination, it cannot be read as evidence that she entered without parole, because DHS's own allegations on the same page expressly establish the opposite historical fact. Respondents' merits brief calls her entry illegal; their charging document alleges the government authorized it.

Second, the warrant. The Form I-200 is dated August 3, 2026, the day of the stop, and its certificate records service on scene at Rochester, after officers had already followed and stopped a vehicle targeting someone else. ECF Nos. 3-1 at 2-3, 3-3. None of the form's five printed probable-cause grounds is marked. ECF No. 3-3. Its certificate records that its contents were read to Ms. Germain in English, while Respondents' own NTA certificate, executed the same day, records that oral notice was provided in Creole. ECF No. 3-2 at 3. A warrant served after the seizure, with none of its stated grounds marked, read in a language other than the one Respondents themselves used for her charging notice, is not individualized process.

Third, the geography. Respondents arrested Ms. Germain in Rochester, New York, venued her removal proceedings in Buffalo, and detain her in El Paso, Texas, while she must defend

herself in Buffalo on September 10, far from the employer and community that would support any custody showing. The private interest side of the Mathews ledger, already at its zenith for physical liberty, only grows on these facts, and the government identifies no interest that a hearing could not accommodate. Resp. passim; Molina-Sanchez, ECF No. 6, at 5.

X. CONCLUSION

The Return establishes authorized travel, inspection at Miami International Airport, DHS parole into the United States, a categorical termination, a clean record on the government's own systems checks, and a stop aimed at someone else, and it identifies no individualized custody determination by anyone. The legal defenses reduce to a stay order that does not say what Respondents say it says, a statutory decision that did not decide the constitutional question, and an entry fiction that has never authorized the government to seize a person it released and hold her without any hearing at all.

Ms. Germain has now been detained since August 3, 2026. Her removal hearing is in ten days, two time zones away. Petitioner respectfully renews the request that the Court grant the writ and order her immediate release under conditions no more restrictive than those preceding her arrest, *Munaf v. Geren*, 553 U.S. 674, 693 (2008); in the alternative, that it order a custody hearing before a neutral decisionmaker within seven days, with twenty-four hours advance notice to counsel, *Gomes v. Garite*, No. EP-25-CV-00663-DCG, 2026 WL 1179617, at *10 (W.D. Tex. Apr. 21, 2026), at which Respondents bear the burden of clear and convincing evidence, Molina-Sanchez, ECF No. 6, at 7; and that it grant the further relief requested in the Petition.

Dated: September 1, 2026