UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OLIVER ELOY MATA VELASQUEZ,

Petitioner-Plaintiff,

v.

STEPHEN KURZDORFER, in his official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; JOSEPH FREDEN, in his official capacity as Deputy Field Office Director of the Buffalo Federal Detention Facility; TODD LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents-Defendants.

Case No. 25-cv-00493 (LJV)

PETITIONER'S SUPPLEMENTAL MEMORANDUM OF LAW REGARDING ADDITIONAL CASES CITED BY THIS COURT

Pursuant to the Court's order, ECF 59, Petitioner-Plaintiff Oliver Eloy Mata Velasquez respectfully submits this supplemental brief regarding the applicability of (1) *Y-Z-L-H v. Bostock*, No. 3:25-cv-00965, ECF 30 (D. Or. July 9, 2025) (order granting petition for habeas corpus), and (2) *U.S. ex rel. Paktorovics v. Murff*, 260 F.2d 610 (2d Cir. 1958) to this case. For the reasons stated below, both cases directly support Oliver's claims.

ARGUMENT

I. *U.S. EX REL. PAKTOROVICS V. MURFF Y-Z-L-H V. BOSTOCK* SUPPORT OLIVER'S CONSTITUTIONAL CLAIMS.

The Second Circuit's decision in *Paktorovics* is directly-applicable, binding precedent holding, contrary to the government's arguments, that parolees like Oliver are entitled to due process before they can be re-detained. The petitioner in *Paktorovics* was a Hungarian national paroled into the United States with his family for humanitarian reasons pursuant to the same statute as Oliver—8 U.S.C. § 1182(d)(5). *See* 260 F. 2d at 611–12. Paktorovics came to the United States to seek asylum following a directive issued by the President of the United States noting the plight of the thousands of Hungarians who had "fled their homes to escape Communist suppression." *Id.* at 611–13. He did not possess a visa—a fact known by U.S. officials at all times. *Id.* at 612. Less than nine months after he was paroled into the United States, the government revoked his parole "and he was ruled to be deportable on the sole ground of his failure to produce the visa which everyone knew all along he did not possess." *Id.* at 611–12.

Based on these "circumstances under which the Hungarian refugees were paroled into the United States," the court found that "in order to bring Section 212(d)(5), 8 U.S.C. § 1182(d)(5), into harmony with the Constitution, a hearing is required prior to the revocation of parole when this section is applied to persons situated in the United States as is appellant in the case at bar." *Id.* at 614. The court emphasized that the summary process the government applied to the appellant, "if upheld,

may be disastrous to the balance of the 30,000 odd Hungarian parolees" because "any one or all of this large number of Hungarians who fled from the might of Soviet Russia must leave our shores on the mere say-so of a Government official, however, unreasonable or capricious this say-so may be." *Id.* at 612. The Second Circuit therefore held that prior to revoking humanitarian parole "there must be a hearing which will give assurance that the discretion of the Attorney General shall be exercised against a background of facts fairly contested in the open." *Id.* at 615.

Oliver's case is materially indistinguishable from the petitioners' in *Paktoroviks*. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."). Here too, Oliver is entitled to a hearing prior to his re-arrest and the corresponding revocation of his parole. Nearly seventy years later, the facts of the Paktorovics petitioner's plight and government's summary actions are remarkably similar to this case. Oliver was paroled into the United States under the same statutory authority providing for humanitarian parole. *See* Answer at ¶¶ 40. Like in *Paktorovics*, government officials also knew Oliver lacked entry documents when he arrived at the border and still granted him parole. (ECF 25-4 at 5–6). Oliver also fled a repressive regime to come to the United States in accordance with formal procedures publicly announced by the Executive branch. In October 2022, the Department of Homeland Security established a formal parole process for certain Venezuelans. *See* Implementation of a Parole Process for Venezuelans, 87 FR 63507-01, 2022 WL 10510227 (Oct. 19, 2022). This federal policy stated that "[t]he case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian reasons faced by so many Venezuelans subject to the repressive regime of Nicolas Maduro." *Id.* Thus, Oliver "was invited here pursuant to the announced foreign policy of the United States." *Paktorovics*, 260 F.2d at 614. And while a new administration may wish to change course, Oliver's engendered reliance interest, and his compliance with everything that the Executive Branch asked of him, entitles him to more than summary arrest and detention "on the mere say-so of a

Government official."[1] *Id.* at 612; *see also Singh v. Andrews, et al.* No. 25-CV-00801, ECF 15 at 12 (E.D. Cal. July 11, 2025) (holding that the government's justification for detention "does not address facts specific to petitioner. 'The law requires a change in relevant facts, not just a change in the government's attitude.'" (quoting *Valdez*, 2025 WL 1707737, at *3 n.6)).

Paktorovics, which this Court cited approvingly in *Clerveaux v. Searls*, remains a touchstone in the due process analysis for paroled noncitizens challenging their detention. 397 F. Supp. 3d 299, 322 (W.D.N.Y. 2019); *see also Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326, 1345 (2d Cir. 1992), *cert. granted, judgment vacated on other grounds sub nom. Sale v. Haitian Centers Council, Inc.*, 509 U.S. 918 (1993) (citing *Paktorovics* in a case involving the interdiction of boats sailing from Haiti to support of the proposition that because "affirmative actions by the Executive Branch and Congress can fairly be said to have established a reasonable expectation by the 'screened in' plaintiffs in not being wrongly repatriated; we believe this expectation to be protected by the due process clause."). In *Clevereaux*, this Court held that noncitizens paroled into the United States have due process rights and concluded that "there is indeed a risk of erroneous deprivation of Clevereaux's liberty interest under the [parole] procedures used thus far and available to him." 397 F. Supp. 3d at 314–15. And here, there is an even higher risk of erroneous deprivation because, unlike the petitioner in *Clerveaux*, no criminal conviction or other changed circumstance relevant to flight and danger motivated Oliver's rearrest. Moreover, the government's decision to issue blanket revocations of the parole granted to Venezuelans, Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 FR 13611-

[1] The sole difference of note is that the petitioner in *Paktorovic* sought—in challenging parole revocation—further process to challenge his inadmissibility. *Id.* at 612. But here, Oliver does not seek admission—he seeks only release from unconstitutional detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty that Clause protects.").

01. 2025 WL 894696 (Mar. 25, 2025), including Oliver, means that any attempt to secure release through ICE's limited parole procedures would be futile.

The government has urged this Court to find that Oliver has no constitutional right to challenge his detention, relying almost exclusively on *Dep't of Homeland Sec. v. Thuraissigiam* 591 U.S. 103 (2020). Here, *Y-Z-L-H* is instructive. The court there rejected the government's argument that *Thuraissigiam* suggests noncitizens lawfully paroled into the country lack the ability to challenge the government's later decision to re-detain them. No. 3:25-cv-00965 ECF 30 at p. 22–27; *see also* ECF 60 at 2–3 (explaining why *Thuraissigiam* does not bar Oliver's claims). The court in *Y-Z-L-H* distinguished the petitioner from *Thuraissigiam* finding the petitioner—like Oliver—"does not seek the opportunity to remain lawfully in the United States, but merely seeks release from custody—the traditional purpose of the habeas writ" and because the petitioner—again like Oliver—complied with lawful immigration procedures, was not apprehended "just inside the border," has lived in the United States for a significant period of time, has connections to the United Staes, and has been granted work authorization. *Id.* at 25.

Y-Z-LH joins a growing list of courts that have ordered the release of noncitizens like Oliver who were arrested attending immigration court proceedings. *See, e.g., Chipantiza-Sisalema v. Francis, et al.*, No. 25-CV-05528, ECF 10 at 5 (S.D.N.Y. July 13, 2025) (finding that the petitioner's due process rights were violated because "ICE summarily detained Chipantiza-Sisalema pursuant to an agency policy of arbitrary detention without affording her notice or opportunity to be heard."); *Singh*, No. 25-CV-00801, ECF 15 at 10 (holding that *Thuraissigiam* did not bar relief because "petitioner's Motion does not challenge any determination regarding his admissibility into the United States; the Motion concerns only a challenge to his detention pending removal proceedings." (citing *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170–72 (W.D. Wash. 2023)); *Pinchi, v. Noem, et al.*, No. 25-CV-05632, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, 2025 WL 1707737, *5 (S.D.N.Y. June 18, 2025)

(holding that "ICE's newfound strategy to attempt to dismiss ongoing immigration court proceedings in support of an argument that they can thereby arrest and detain individuals already paroled before the court is unlawful."). Those cases in turn reinforce the applicability of *Paktorovics*'s central due process holding. *See Valdez*, 2025 WL 1707737 at *3–5; *Pinchi*, 2025 WL 1853763 at *2–4; *Singh*, ECF 15 at 11; *Chipantiza-Sisalema*, ECF 10 at 4.[2]

II. *Y-Z-L-H v. BOSTOCK* SUPPORTS OLIVER'S ADMINISTRATIVE PROCEDURE ACT CLAIMS.

The court's recent ruling and order in *Y-Z-L-H* also supports Oliver's argument that this Court may order Oliver's release because his arrest violated the Administrative Procedure Act ("APA"). *See* No. 3:25-cv-00965, ECF 30 at 27–34 (ordering release of noncitizen whose purported parole termination violated the APA because it was arbitrary and capricious and not in accordance with law); ECF 23 at 12–24; ECF 54 at 6–9.

The facts in *Y-Z-L-H* are very similar to those here. As in this case, the petitioner in *Y-Z-L-H* was released from custody at the port of entry so that he could apply for asylum and other relief, was issued work authorization, and yet was arrested leaving his immigration court hearing by "five or six ICE agents in masks," who "did not provide any explanation about where they had taken [the p]etitioner, where they were going, or why they had arrested [the p]etitioner." No. 3:25-cv-00965, ECF 30 at 2–3, 9–11, 12–13. There too, the IJ granted the government's motion to dismiss the petitioner's Section 240 proceedings, even though the government did not describe any "changed circumstances" in the petitioner's case or "articulate any other reasons for seeking dismissal." *Id.* at 11–12. Like Oliver,

[2] *Singh* and *Chipantiza-Sisalema* both rely on *Valdez*, undercutting the government's position here that *Valdez* was wrongly decided. *Singh*, ECF 15 at 12; *Chipantiza-Sisalema*, ECF 10 at 7 ("Because 'Respondents' ongoing detention of [petitioner] with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates her due process right,' her petition must be granted.") (quoting *Valdez*, 2025 WL 1707737, at *4) (cleaned up).

he too received a blanket "Notice of Termination of Parole" that did not reference the facts of his specific immigration case. *Id.* at 9–11.

The *Y-Z-L-H* petitioner brought a challenge to his detention on the grounds that, *inter alia*, the termination of his parole violated the APA. *See id.* at 5, 5 n.2. The government conceded there that the petitioner's detention was unlawful if the termination of his parole was unlawful. *Id.* at 27. The court in *Y-Z-L-H* granted the petitioner's petition and ordered his immediate release from custody holding that the government's purported termination of the petitioner's parole was arbitrary and capricious because it (1) failed to meet the statutory and regulatory requirements of the INA and (2) constituted a change in the agency's position without adequate explanation. *Id.* at 32–34.

While the APA claims raised in *Y-Z-L-H* differ from those raised here, the Court's analysis supports Oliver's arguments that he should be released because his arrest was arbitrary and contrary to law. As the *Y-Z-L-H* court recognized, an agency's reversal of its prior policy can only survive arbitrary and capricious review when it provides an adequate explanation for the change that considers and rationally connects all the facts found and choices made. *Id.* at 27–28, 32–33. There, as here, the government failed to provide "record evidence of an articulation by the agency of *any* reason for the change to terminate [the p]etitioner's parole, let alone a 'rational basis for its decision.'" *Id.* at 33 (citation omitted). For this reason, the court held that the termination of the petitioner's parole was "arbitrary and capricious and a violation of the APA." *Id.* Similarly, in Oliver's case, the government failed to provide record evidence of an adequate and reasoned explanation for reversing its prior policy of limiting arrests in and around immigration courthouses; on this basis alone, this Court may order Oliver's release from unlawful detention flowing from his unlawful arrest at immigration court after an immigration hearing. *See* ECF 23 at 12–16; ECF 54 at 6–7.

The *Y-Z-L-H* court also recognized that "[a]gency action is 'arbitrary and capricious if . . . [it] entirely failed to consider an important aspect of the problem." No. 3:25-cv-00965, ECF 30 at 27 (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). On this second independent basis, this Court may order Oliver's release because the government failed to consider how mass arrests in and around immigration courthouses—similar to the one in which Oliver was subject—will chill noncitizens' access to courts and impede the fair administration of justice, as well as alternative methods to accomplish the government's goals. *See* ECF 23 at 16–17. Further, the court in *Y-Z-L-H* held that release was proper when an agency decision to terminate the petitioner's parole failed to meet statutory and regulatory requirements. No. 3:25-cv-00965, ECF 30 at 29–32. Similarly, here, release of Oliver is proper on a third independent basis because the government's arrest of him exceeded the powers granted to the government under the INA. *See* ECF 23 at 17–24; ECF 54 at 7–9.

The government has argued that Oliver's unlawful arrest—which the government concedes occurred prior to any notice that his parole had been revoked, *see* ECF 41 at ¶¶ 44–45, 47—was made lawful or excusable by the later notice. *See* ECF 42 at 5–6. And the government argues that this Court has no jurisdiction to consider any challenge to the revocation or termination of parole under 8 U.S.C. § 1252(a)(2)(B)(ii). *See id.* As the court in *Y-Z-L-H* held, these arguments fall flat. First, the *Y-Z-L-H* court properly held that § 1252(a)(2)(B) does not preclude judicial review of whether the termination or revocation of parole was performed in accordance with the mandatory procedures that the parole statute requires, 8 U.S.C. § 1182(d)(5)(A). No. 3:25-cv-00965, ECF 30 at 14–27. Accordingly, as Oliver brings claims challenging the unlawful revocation or termination of his parole, *see* Am. Pet. ¶¶ 60 ("Respondents' detention of Oliver is therefore unjustified and unlawful"); 61 (repeating and re-alleging all prior allegations); 63 ("The arrest and detention of

Oliver without an opportunity for Oliver to contest his detention . . . provide insufficient process"), this Court may review the government's unlawful revocation or termination of Oliver's parole.

Second, like the petitioner in *Y-Z-L-H*, the purported termination or revocation of Oliver's parole violated the APA because it was arbitrary and capricious and failed to meet statutory and regulatory requirements. In *Y-Z-L-H*, the petitioner "was paroled into the United States based on," *inter alia*, "his expressed intent to apply for asylum," and "[t]hat was the 'purpose' of his parole." No. 3:25-cv-00965, ECF 30 at 29. Since the petitioner had not been able to pursue his claim for asylum at the time of his parole termination, and the government showed "no evidence, let alone any opinion or finding, to the contrary," the court held in *Y-Z-L-H* that "the purpose of [the p]etitioner's parole had not been served at the time of the purported termination." *Id.* For this reason, the government in *Y-Z-L-H* "fail[ed] to show that the Secretary has complied with the Parole Statute." *Id.* at 30.

Similarly, Oliver was paroled into the country in order to seek asylum, in line with one of the government's ultimate purposes for implementing the parole program for Venezuelans like Oliver. Am. Pet. ¶ 40; ECF 41 ¶ 40; ECF 25-4 at 5–6; Implementation of a Parole Process for Venezuelans, 87 FR 63507-01, 2022 WL 10510227 (Oct. 19, 2022) ("The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the U.S. economy as they do so."). Oliver's Section 240 proceedings, through which he was seeking asylum, were dismissed without prejudice and he has not had a chance to pursue his asylum claims since being paroled into the United States for this purpose. Am. Pet. ¶¶ 43, 48, 51. The government has put forth no evidence, opinion, or finding that Oliver has been afforded a full opportunity to pursue his asylum claim. *See* Am. Pet. ¶ 48 (describing motion to dismiss Oliver's Section 240 proceedings); ECF 25-5 at 3 (the government's motion to dismiss Oliver's Section 240 proceedings); Ex. 1 to Decl. of Amy Belsher (July 14, 2025) (hereinafter

"Belsher Decl."), at 2 (letter from the government to Oliver dated May 28, 2025 purporting to terminate his parole). Therefore, as in *Y-Z-L-H*, the purported termination or revocation of Oliver's parole did not comply with the parole statute.

Further, as in *Y-Z-L-H*, in addition to violating the parole statute, the revocation of Oliver's parole violated the implementing regulations of the statute. The regulations permit the termination of parole if the humanitarian reasons and public benefit no longer warrant the noncitizen's presence in the country. 8 C.F.R. § 212.5(e)(2)(i). As the court in *Y-Z-L-H* explained, detention is not in the "public benefit" if the individual has a credible fear of persecution or torture and that they are neither a flight risk nor a danger to the public. No. 3:25-cv-00965, ECF 30 at 30–31. The government "offer[s] no evidence that any authorized official found [Oliver] to be a flight risk or a danger to the public" or that "such an official found that humanitarian reasons do not warrant [Oliver's] presence in the United State," meaning the government has "fail[ed] to show that they complied with either clause of 8 C.F.R. § 212.5(e)(2)(i)." *Id.* at 31; ECF 23 at 3–5; ECF 54 at 8.

Finally, any suggestion that the government has complied with the parole statute and its regulations because it published a Notice in the Federal Register announcing the termination of parole to Venezuelans, *see* Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025), or gave Oliver notice of the purported termination of his parole, *see* Ex. 1 to Belsher Decl., at 2, is plainly wrong on the law. *See Y-Z-L-H*, No. 3:25-cv-00965, ECF 30 at 29, 31–32. In addition to all the other requirements for the proper termination of parole discussed above, the federal regulations also require "written notice to the alien" in order for a parole termination to be effective. 8 C.F.R. § 212.5(e)(2)(i). As Oliver did not receive any written notice from the government until May 28, 2025, the notice requirement of Section 212.5(e)(2)(i) was not possibly met until then. Indeed, the government's position in *Y-Z-L-H* was that "the only requirement was that the Secretary provide 'notice' and that was satisfied by" an

email sent to the petitioner there. No. 3:25-cv-00965, ECF 30 at 30; *see also id.* at 5 ("At the hearing, the Government conceded that if the email sent on April 11th did not lawfully rescind the man's parole, then his arrest on June 5th and subsequent detention by ICE would not be lawful."). But as the *Y-Z-L-H* held, "written notice is a *necessary* but not a *sufficient* condition for compliance with this regulation." *Id.* at 30. As discussed above, the parole termination letter that Oliver received on May 28, 2025 was legally insufficient to terminate his parole. Accordingly, this unlawful termination or revocation of Oliver's parole cannot serve as a basis to justify his re-detention.[3]

For all these reasons, this Court has the authority to, and should, order Oliver's release from unlawful detention, which flows from an unlawful arrest.

CONCLUSION

For the foregoing reasons, Oliver respectfully requests the Court grant preliminary relief.

[3] The government's arguments that it did not violate Oliver's Fourth Amendment rights fail. *See* ECF 61 at 3; ECF 23 at 10–12; ECF 54 at 5; ECF at 1–2. Any suggestion that the termination or revocation of Oliver's parole provided sufficient probable cause for Oliver's arrest—which the government does not assert outright—is misguided because the government never properly terminated or revoked his parole, as discussed herein. Further, the government's contention that there was no Fourth Amendment violation because the agents who arrested Oliver had reasonable suspicion to believe that he was in the United States unlawfully misses the point. *See* ECF 61 at 4. To comply with the Fourth Amendment, the government needed *new* probable cause to *rearrest* Oliver, and could not rely on the same charge of removability they had been aware of when they decided to parole him. ECF 23 at 10–12; ECF at 1–2. *Chi Yuan Chen v. Gonzales*, 224 F. App'x 116 (2d Cir. 2007), is not to the contrary. It clearly articulates that reasonable suspicion is sufficient for the government to "interrogate and temporarily detain" a noncitizen, and that probable cause is necessary for an initial arrest. *Id.* at 117–18 (citation omitted). *Chi Yuan Chen* is therefore inapposite to Oliver's Fourth Amendment claim.

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Respectfully submitted,

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