Prior Release on an Order of Release on Recognizance or Parole - for immigrants detained in Texas, Louisiana, or Mississippi

A noncitizen's case may be distinguishable from the Fifth Circuit's en banc decision in *Sosnava Rodriguez v. Vergara*, No. 26-50183, 2026 WL 3181188 (5th Cir. Oct. 23, 2026), if the petitioner was previously released from immigration custody on either (1) an order of release on recognizance under 8 U.S.C. § 1226(a), or (2) parole pursuant to 8 U.S.C. § 1182(d)(5).

In *Sosnava Rodriguez*, the en banc Fifth Circuit held that noncitizens seeking admission into the United States are generally only entitled to the procedures established by Congress and carried out by the Executive branch. 2026 WL 3181188, at *5 (affirming that "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, *are* due process of law) (emphasis in original, quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020)). Both Congress and the Executive branch have provided for a robust process that must be followed before a person can be re-detained. Statute and regulations govern the lawful revocation of both an order of release on recognizance and the lawful revocation of parole.

1. **Noncitizens Released on an Order of Release on Recognizance Under 8 U.S.C. § 1226(a) (Form I-220A)**

Under the statute, if release is granted under 8 U.S.C. § 1226(a), the government has discretion to revoke that custody determination. *See* 8 U.S.C. § 1226(b). However, the prior release can only be revoked by an authorized official, as explicitly enumerated under 8 C.F.R. § 1236.1(c)(9). *See, e.g.*, *Hernandez v. Mullin*, No. CIV-26-837-G, 2026 WL 2318740, at *6 (W.D. Okla. June 5, 2026), report and recommendation adopted, No. CIV-26-837-G, 2026 WL 2302460 (W.D. Okla. Aug. 10, 2026) (granting release because order of release on recognizance not lawfully revoked under statute and regulation); *Castro De Santiago v. Mullin*, No. 26-CV-00186-CYC, 2026 WL 2969460, at *2 (D. Colo. Oct. 2, 2026) (granting release because custody not revoked by authorized official, collecting cases); *Singh v. Noem*, 824 F. Supp. 3d 1197, 1211–13 (D.N.M. 2026) (granting release under due process required by statutory provisions of § 1226).

Additionally, after a custody determination has been made under § 1226(a), any revocation decision may be made only when warranted by a change in an individual's specific facts and circumstances. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance"); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *4 (D. Me. Aug. 29, 2025), *appeal dismissed sub nom. Sicha v. Bernal*, No. 25-2062, 2025 WL 4706317 (1st Cir. Dec. 16, 2025) (granting release and noting that under § 1226(b) "DHS similarly 'require[s] a showing of changed circumstances' even 'where the previous release decision was made by a DHS officer.'") (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)); *Jimenez v. Bostock*, No. 3:25-CV-00570-MTK, 2025 WL 2430381, at *5-6 (D. Or. Aug. 22, 2025) (concluding re-detention arbitrary and capricious because "[n]othing in the record suggests that anything about his circumstances have changed since Petitioner was released on his own recognizance, and Respondents offer no evidence or argument to the contrary"); *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 939 (N.D. Cal. 2025) (concluding that absent evidence of flight risk or danger, "subjecting Petitioners to civil immigration detention [under § 1226(b)] does not bear a reasonable relation to the statutory

purposes motivating it"); *cf.* 8 C.F.R. § 1236.1(c)(8) (establishing flight risk and danger to the community as standard for release under § 1226(a)); 8 C.F.R. § 1003.19(e) (requiring changed circumstances for subsequent bond redetermination).

The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), also does not foreclose this claim. Once a noncitizen has been released under § 1226(a), courts have held that the government may not shift detention authority back to § 1225. *See, e.g.*, *O.A.C.S. v. Wofford*, No. 1:25-CV-01652-DAD-CSK (HC), 2025 WL 3485221, at *3 (E.D. Cal. Dec. 4, 2025) (explaining that once the government has chosen to release a noncitizen under § 1226(a), they may not re-detain that person under § 1225); *Martha C.G.P. v. Blanche*, No. CV 26-2308, 2026 WL 1329577, *2 (D. Minn. May 13, 2026) (same); *Andrés Felipe C.C. v. Blanche*, No. 26-CV-3220, 2026 WL 2137334, *3-4 (D. Minn. July 24, 2026) (same).

2. Noncitizens Released on Parole Under 8 U.S.C. § 1182(d)(5)

Under the statute, Respondents may only return a paroled noncitizen to custody following a determination that "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A). Similarly, the regulations provide that, even upon its expiration, parole may only be revoked "upon the accomplishment of the purpose for which parole was authorized" or if "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United. States." 8 C.F.R. §§ 212.5(e)(1), (2)(i). Accordingly, courts across the country have concluded that "just as a grant of parole requires an individualized review, revocation of parole requires a case-by-case assessment to comply with the statute." *Kenzhebaev v. Noem*, 820 F. Supp. 3d 647, 656–57, 658 n.5 (W.D. Mich. 2025) (ordering release and collecting cases); *see also Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1137–38 (D. Or. 2025) (explaining that the parole statute "has a mandatory requirement—parole may be terminated or revoked only when in the Secretary's opinion the parole's purposes have been met"); *Garcia Castillo v. Bullock*, No. 3:26-cv-01166, Dkt. 22 at *9 (M.D. Tenn. Sept. 29, 2026) (granting habeas despite expired parole where "the Government failed to comply with the applicable statutory and regulatory requirements when it purported to revoke the Petitioner's parole"); *Arias v. Larose*, No. 3:25-CV-02595, 2025 WL 3295385, at *4 (S.D. Cal. Nov. 25, 2025) (ordering release despite expired parole where there was no "real-time" determination "that the purpose of parole has been served").

In the alternative, if a court does not grant a petitioner release on one of the above grounds, the court may hold an appropriate case in abeyance pending the Supreme Court's decision in *Rhoney v. Barbosa da Cunha* (No. 26-104), which will impact the Fifth Circuit's precedent in both the *Buenrostro* and *Sosnava Rodriguez* cases.