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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Sergio MEDRANO, Petitioner-Plaintiff, v. PAM BONDI, U.S. Attorney General; KRISTI NOEM, Secretary, United States Department of Homeland Security; CALEB VITELLO, Director, U.S. Immigration and Customs Enforcement; MOISES BECERRA, San Francisco Field Office Director, U.S. Immigration and Customs Enforcement; RON MURRAY, Warden of Mesa Verde ICE Processing Center, Respondents-Defendants.	Case No. 1:25-cv-00166 **PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

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Petitioner, Mr. Sergio Medrano, through undersigned Counsel, hereby submits this Opposition to Respondents' Motion to Dismiss. Dkt. 12.

INTRODUCTION

Mr. Medrano brought this case to challenge his unlawful and prolonged twenty-two-month incarceration by the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) in an immigration jail without the possibility for even a bond hearing where a neural adjudicator could determine the necessity of his continued incarceration. Dkt. 1. In other identical or substantially similar cases, this Court has ordered the government to provide a bond hearing where the government bears the burden to establish that the petitioner is a danger or flight risk by clear and convincing evidence. *See, e.g., Eliazar v. Wofford*, et al., No. 1:14-cv-01032-EPG-HC, 2025 WL 711190 (E.D. Cal. Mar. 5, 2025); *see also Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048 (E.D. Cal. Sept. 8, 2023). The Court should do the same here.

Rather than engage with Mr. Medrano's arguments or address this Court's recent decisions in *Eliazar* and *Singh*—which are on all fours with Mr. Medrano's petition and complaint—Respondents raise irrelevant issues in an attempt to misdirect the focus of the Court's inquiry. For example, Respondents erroneously claim that Mr. Medrano has failed to exhaust administrative remedies. But the statute under which Mr. Medrano is detained, 8 U.S.C. § 1226(c), requires mandatory detention, and "authorizes release only in narrow circumstances not applicable here." *Doe v. Becerra*, 732 F.Supp.3d 1071, 1079 (N.D. Cal. 2024); *see also Nielsen v. Preap*, 586 U.S. 392, 392 (2019); 8 U.S.C. § 1226(c)(4) (permitting release of only cooperating witnesses and their family members in exceedingly limited circumstances). And neither the Immigration Judge (IJ) nor the Board of Immigration Appeals (BIA) has the jurisdiction or authority to rule on the constitutionality of the statutes they administer, which is why Mr. Medrano brought his constitutional as-applied challenge to this Court. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (*AADC*) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

Furthermore, Respondents' assertion that Mr. Medrano should seek parole pursuant to 8 U.S.C. § 1182(d)(5) is baseless. That procedure exists for noncitizens detained pursuant to 8 U.S.C. § 1226(b), *not* 8 U.S.C. § 1226(c). Dkt. 12 at 3 (recognizing Mr. Medrano is held subject to mandatory custody, per 8 U.S.C. § 1226(c)); 8 C.F.R. § 212.5(b) (stating that parole may be granted to noncitizens confined pursuant to provisions of 8 U.S.C. § 1226(b)); *compare to* 8 C.F.R. § 236.1(c)(1)(i) (stating, "no [noncitizen] described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2)[1] of the Act."). Even if Respondents' claim that Mr. Medrano could seek parole under 8 U.S.C. § 1182(d)(5) were accurate, which it is not, that provision sets forth a process that is entirely discretionary, with discretion vested in the same agency—ICE—charged with removing him from the United States. For this reason, courts throughout the country, including the Ninth Circuit, have found that 8 U.S.C. § 1182(d)(5) provides no actual due process protection. *See, e.g., Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (holding parole is "not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention"); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996) (due process not satisfied by parole review; instead, it requires an "impartial adjudicator" to review detention since, "[d]ue to political and community pressure, the INS . . . has every incentive to continue to detain"). The Court should therefore reject Respondents' frivolous argument.

Finally, Respondents seek to resurrect an issue regarding the burden of proof that has long been put to rest. Fifteen years ago, in *Singh v. Holder*, the Ninth Circuit held that, when a noncitizen has been subjected to mandatory prolonged incarceration, the government must establish, at a hearing before a neutral decisionmaker, the necessity of their continued incarceration by clear and convincing evidence. 638 F.3d 1196, 1208 (9th Cir. 2011). More recently, this Court and an overwhelming majority of others have properly concluded the same. *See Singh*, 2023 WL 5836048, *10-11 ("The Court will follow the 'overwhelming majority of courts that have held that the government must justify the continued confinement of a

[1] Following the passage of the Laken Riley Act, subsection (c)(2) has been reordered as subsection (c)(4). Laken Riley Act, Pub. L. No. 119-1 § 2, 139 Stat. 3 (2025).

noncitizen detainee under § 1226(c) by clear and convincing evidence that the non-citizen is a flight risk or a danger to the community."); *Eliazar*, 2025 at *9-10 (same); *Lopez v. Garland*, 631 F. Supp. 870, 882 n.9 (E.D. Cal. Sept. 29, 2022) (same). The Court should therefore decline Respondents' invitation to reconsider precedent and this Court's own decisions.

For these reasons, as well as those more fully explained below, this Court should deny Respondents' Motion to Dismiss, Dkt. 12, and grant Mr. Medrano's petition for writ of habeas corpus and complaint for declaratory and injunctive relief or, in the alternative, grant his motion for a temporary restraining order. *See* Dkt. 1, 3.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Mr. Medrano is a native of Mexico who was born on October 8, 1994. *See* Dkt. 1-1, Declaration of Johnny Sinodis dated Feb. 10, 2025 (First Sinodis Decl.) at Exhibit (Exh.) A. He was brought to the United States in or around 1999, when he was four years old. Mr. Medrano's son, daughter, and wife are all U.S. citizens. *Id.* at Exhs. A, C-E. Prior to his current detention, Mr. Medrano lived in a home in Santa Barbara, California with his sister. He provided regular care to his U.S. citizen son, supporting him both financially and emotionally. He was employed at an animal feed warehouse, where he managed inventory, orders, and deliveries. *Id.* at Exh. B.

Mr. Medrano grew up in a neighborhood dominated by gang activity. *Id.* At a young age, he was diagnosed with ADHD but could not continue taking his medications due to their high cost. *Id.* His family simply could not afford to provide him with the treatment that he needed. *Id.* Mr. Medrano struggled in school and had great difficulty exercising sound decision-making and judgment.

To make matters worse, because of the overwhelming presence of gang members and gang activity in his neighborhood, police identified Mr. Medrano as an affiliated member, years before he ever actually was. He was frequently targeted for questioning and searches, which led to several arrests and minor infractions that did not carry any immigration consequences. *Id.*[2] These include two arrests for riding his bicycle on the sidewalk and one for riding it without a

[2] Respondents assert that Mr. Medrano has "committed violent acts against family members," but the record is devoid of any evidence or information to support this claim. Dkt. 12 at 2 n.3.

light. *Id.*

On October 23, 2014, when he was twenty years old, Mr. Medrano was arrested for vandalism. Several months later, on February 9, 2015, he pleaded guilty to misdemeanor vandalism under California Penal Code (PC) § 584(b)(2)(a) with a gang enhancement under PC § 186.22(D). He was sentenced to 120 days in jail, three years of probation, and $300 in restitution.

On March 3, 2015, ICE served Mr. Medrano with a Notice to Appear and initiated removal proceedings, alleging that he was removable as a noncitizen present in the United States who had not been admitted or paroled pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at Exh. G.

On April 23, 2015, an IJ granted Mr. Medrano bond in the amount of $10,000, which he paid. Two years later, on June 27, 2017, ICE detained Mr. Medrano for a second time and cancelled his bond the following day. Shortly thereafter, on August 1, 2017, an IJ again ordered Mr. Medrano to be released on a bond in the amount of $12,500.

Several years later, on April 5, 2019, Mr. Medrano pleaded guilty to assault with a deadly weapon in violation of PC § 245(a)(1) and admitted as true a gang enhancement under PC § 186.22. *Id.* at M. He received credit for time served and was placed on probation. ICE did not take him into custody at this time.

On June 4, 2021, Mr. Medrano pleaded guilty to carrying a dirk or dagger in violation of PC § 21310. *Id.* at N. Following his change of plea hearing, the District Attorney (DA) granted him a *Cruz* waiver and released him on an order of own recognizance so that he could say goodbye to his daughter, son, and family members. *See People v. Cruz*, 44 Cal.3d 1247, 1254 (1988). If the DA believed that Mr. Medrano was a danger or flight risk, they would not have exercised their discretion to grant a *Cruz* waiver. Several weeks later, on July 30, 2021, Mr. Medrano appeared before the criminal court judge for sentencing and was ordered to serve two years in prison for violating PC § 245(a)(1) (the conviction he received on April 5, 2019), two years in prison for violating PC § 21310 (to run concurrent with his aggravated assault conviction), and five years for the gang enhancement. *Id.* In total, Mr. Medrano served two

years in custody and was released early from prison on June 22, 2023.

During his prison sentence, Mr. Medrano left his gang and publicly renounced gang life. First Sinodis Decl. at Exh. B. He made this decision despite the great danger that it carried. Prison officials thereafter placed him into segregated housing in recognition of the fact that he could be killed for walking away from the gang, especially because Mr. Medrano has gang tattoos in prominent locations all over his body.

On June 22, 2023, ICE incarcerated Mr. Medrano upon his release from prison. *See id.* at Exh. G. He has been subjected to mandatory incarceration under 8 U.S.C. § 1226(c) without the possibility of a bond hearing since that time due to his PC § 245(a)(1) conviction, which the Ninth Circuit has held to be a crime involving moral turpitude (CIMT). *Safaryan v. Barr*, 975 F.3d 976 (9th Cir. 2020) (finding PC § 245(a)(1) to be a CIMT).

Importantly, Mr. Medrano explains that his daughter's birth served as a defining moment, convincing him that he needed to leave gang life and become more devout in his spirituality, two goals that he has since achieved. *See* First Sinodis Decl. at Exh. B. If released from custody, Mr. Medrano intends to become a parishioner at his cousin's Catholic church in Santa Barbara.

Furthermore, prior to his incarceration in 2021, Mr. Medrano had participated in an outpatient recovery program called Project Recovery, a program to which he intends to return upon his release. *Id.* He regularly attended meetings and was tested to confirm that he was maintaining his sobriety; his prior alcohol use was a result of being introduced to alcohol in his home as a child by his father. Mr. Medrano was also actively pursuing his secondary education, which was interrupted by his detention during COVID-19 lockdowns. *Id.* Mr. Medrano intends to return to this upon his release as well.

Since being detained by ICE on June 22, 2023, Mr. Medrano had several hearings before the Adelanto Immigration Court, culminating with his final Individual Calendar Hearing on January 22, 2024. Since being re-incarcerated on June 22, 2023, Mr. Medrano never sought a continuance of his removal proceedings before the IJ or BIA. Instead, his Individual Calendar Hearing (ICH) spanned four hearing dates—September 25, 2023, November 16, 2023, January

9, 2024, and January 22, 2024. *See* Second Declaration of Johnny Sinodis dated Feb. 25, 2025 (Second Sinodis Decl.).

While in removal proceedings, Mr. Medrano sought protection under the Convention Against Torture (CAT) given the exceedingly high likelihood that he would be subjected to torture at the direction of, or with the consent or acquiescence of, a public official in Mexico due to his prior gang affiliation and gang tattoos that are readily apparent in prominent locations on his body. Mr. Medrano further testified about how his mother was kidnapped and ransomed for money in Mexico, and that his cousin was also murdered by a Mexican cartel.

On January 22, 2024, despite finding that Mr. Medrano provided credible testimony, and even though a country conditions expert concluded that there is a clear probability that Mr. Medrano would be tortured in Mexico, the IJ issued a decision finding Mr. Medrano had not met his burden to obtain deferral of removal under the CAT and ordered him removed to Mexico. First Sinodis Decl. at Exh. J. On February 3, 2024, Mr. Medrano appealed the IJ's decision to the BIA. Mr. Medrano diligently filed his Notice of Appeal with the BIA and did not seek an extension for briefing. Second Sinodis Decl. On April 22, 2024, the BIA affirmed the IJ's decision and dismissed his appeal. *Id.*

On June 3, 2024, Mr. Medrano filed his pending petition for review with the Ninth Circuit. He was issued a stay of removal over the government's opposition, which remains in effect. *See Medrano v. Bondi*, Case No. 24-3474 at Dkt. 2. On July 11, 2024, the government filed a Motion for Summary Disposition, which Mr. Medrano opposed. *Id.* at Dkts. 9, 13, 16. On November 12, 2024, the Ninth Circuit denied the government's Motion for Summary Disposition. *Id.* at Dkt. 17.

Mr. Medrano filed his Opening Brief with the Ninth Circuit on January 22, 2025.[3] After requesting and obtaining a sixty-day extension of time, the government filed its Answering

[3] In their Motion to Dismiss, as in their opposition to Mr. Medrano's motion for a temporary restraining order, Respondents state that Mr. Medrano "sought and obtained several extensions of time, including an unsuccessful[] motion to stay appellate proceedings altogether[,]" in his judicial proceedings before the Ninth Circuit. Dkt. 12 at 2-3. This characterization is incomplete. First, Respondents neglect to explain that, when Mr. Medrano filed his motion to extend time to respond and motion to stay appellate proceedings on July 26, 2024, he was *pro se* and defending against the government's attempt to summarily dismiss his petition for review. Dkt. No. 7-1 at 5. The

Brief on April 21, 2025. *Id.* at Dkt. 31. Mr. Medrano's Reply Brief is due on May 12, 2025. As the Ninth Circuit explains in its Frequently Asked Questions, it typically takes "approximately 4 months from completion of briefing" for oral argument to be heard. *See* United States Court of Appeals, Office of the Clerk, Frequently Asked Questions, https://www.ca9.uscourts.gov/general/faq/; *see also Singh*, 2023 WL 5836048 (finding that the length of future detention weighed in favor of a petitioner with a pending petition for review because, in the Ninth Circuit, oral argument takes place "approximately four months from completion of briefing" and a decision may take a further "three months to a year" after that).

On February 10, 2025, Mr. Medrano filed the instant petition for writ of habeas corpus and a complaint for declaratory and injunctive relief, which brought an as-applied challenge to his prolonged incarceration under 8 U.S.C. § 1226(c) without a bond hearing. Dkt. 1. On that same date, he also filed a motion for a temporary restraining order. Dkt. 3. Briefing on Mr. Medrano's motion for a temporary restraining order concluded on February 25, 2025. Dkt. 3, 7, 8.

On April 15, 2025, Respondents filed their Motion to Dismiss. Dkt. 12. Mr. Medrano's Opposition follows.

As stated above, despite being incarcerated by ICE for more than twenty-two months now, Mr. Medrano has yet to be provided with a constitutionally compliant bond hearing where the government must justify his detention by clear and convincing evidence. Nevertheless, Mr. Medrano has utilized his time at the Mesa Verde ICE Processing Center to better himself and to prepare himself to reintegrate into society once released. On a daily basis, in addition to attending church services, he prays, meditates, and reads the Bible. First Sinodis Decl. at Exh.

Ninth Circuit ultimately denied the government's motion for summary dismissal on November 12, 2024. *See* Dkt. 8-1 (Declaration of Johnny Sinodis dated Feb. 25, 2025) (Second Sinodis Decl.) at Exh. A (Ninth Circuit Docket Report). Second, Mr. Medrano only sought a stay of proceedings for as long as it took him to find pro bono counsel, which ultimately occurred on August 15, 2024. *Id.* at Exh. B (Motion to Stay Appellate Proceedings). Third, Mr. Medrano only sought *one* extension of time of his Opening Brief. Specifically, on December 5, 2024, his counsel filed a streamlined thirty-day extension of time to file his Opening Brief. *Id.* at Exh. A (Ninth Circuit Docket Report). Mr. Medrano did not seek any other extensions. The government, however, requested and obtained a sixty-day extension of time to file its Answering Brief. *Id.* The government filed its Answering Brief is on April 22, 2025. *See* Third Declaration of Johnny Sinodis dated May 5, 2025 (Third Sinodis Decl.) at Exh. A (Current Docket Report).

B. Every week, he participates in "CRC," a substance use program, and Alcoholics Anonymous. *Id.* He has also worked as a porter, cleaning the detention facility and ensuring that his time is well utilized to benefit those around him. *Id.*; *see also id.* at Exh. K.

Mr. Medrano's letters of support further evidence that he strives to be a positive role model for others at Mesa Verde ICE Processing Center while also providing assistance to those in need, including by helping "monolingual Spanish speakers and illiterate individuals in his dorm" to "sign up for consultations and access legal services[,] fill out form for applications for relief[,] helping them enroll in the facility's religious services and the facility's 'CRC' program, which provides rehabilitative classes[,] interpreting letters from the court and lawyers[,] and assisting individuals with gathering information and evidence relative to their cases." *Id.* at Exh. M. Given his significant transformation over the last four years, community members "wholeheartedly believe [he] will continue to be a positive influence and a productive member of society" who "will work diligently to support his family[.]" *Id.*

LEGAL BACKGROUND

The statute at 8 U.S.C. § 1226 sets out a framework for the detention and release of noncitizens during their removal proceedings. Section 1226(a) creates the "default rule." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). The government may arrest and detain a noncitizen "pending a decision on whether the [noncitizen] is to be removed from the United States" and, "[e]xcept as provided in subsection (c) [of Section 1226] . . . may continue to detain" or "may release" the noncitizen pending removal proceedings. 8 U.S.C. § 1226(a). Section 1226(c) creates a narrow exception to the default rule of bond eligibility. Paragraph (1) of Section 1226(c) provides that the government "shall take into custody any [noncitizen] who" is removable on certain criminal and national security grounds, "when the [noncitizen] is released" from criminal custody. 8 U.S.C. § 1226(c)(1). Paragraph (4) of Section 1226(c) provides that the government "may release a[] [noncitizen] described in paragraph (1) only" in rare circumstances—when "'necessary to provide protection' for witnesses or others cooperating with a criminal investigation, or their relatives or associates"—that are not applicable here. 8 U.S.C. § 1226(c)(4). Thus, Section 1226(c) subjects certain noncitizens to

mandatory detention throughout the individual's proceedings before the IJ and, at least, any appeal to the BIA and the Circuit Courts of Appeals without the individualized bond hearing contemplated by Section 1226(a). That whole process can often take many years, as Mr. Medrano's case shows.

ARGUMENT

I. Administrative exhaustion is not required in this case.

For habeas claims brought under 28 U.S.C. § 2241, exhaustion of administrative remedies is prudential, not jurisdictional. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Each of the disjunctive criteria for waiving the prudential exhaustion requirement is met here. *See* Section I(a)-(b) *infra*; *see also AADC*, 70 F.3d at 1058 (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

Counter to the overwhelming weight of controlling authority, Respondents argue that Mr. Medrano has failed to exhaust his administrative remedies and baldly proffer that remedies are available to him even though pursuing them would be futile. Dkt. 12 at 3 n.4. Respondents well know that Mr. Medrano has a conviction for a CIMT that renders him statutorily ineligible for bond under 8 U.S.C. § 1226(c), Dkt. 12 at 3, yet they would demand he request bond from an IJ or discretionary parole from ICE anyway, *id.* at n.4, and represent to this Court that "his claim of futility . . . is absurd," *id.*; *see also* Dkt. 1 at ¶ 29 (explaining why there are no remedies that need to be exhausted). Respondents are wrong. As explained in *Preap*, "Congress mandated that" noncitizens subject to 8 U.S.C. § 1226(c) "be arrested and detained without a change to apply for release on bond or parole." 586 U.S. at 398. As a result, there are no administrative remedies for Mr. Medrano to exhaust.

a. Because Mr. Medrano is subject to 8 U.S.C. § 1226(c), he is ineligible for a bond hearing before an IJ absent an order from this Court.

Courts do not require that noncitizens held subject to mandatory detention seek a bond hearing before an IJ because doing so would be futile. *See e.g.*, *Sengkeo v. Horgan*, 670 F. Supp. 2d 116, 122-23 (D. Mass. 2009) (collecting cases); *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 740 (D. Minn. 2021); *see also Bermudez v. Gonzalez,* No. CV F 07-00807 LJO DLB HC, 2007 WL 2913938, *2-3 (E.D. Cal. Oct. 4, 2007); *Tam v. I.N.S.*, 14 F.Supp.2d 1184, 1189 (E.D. Cal. 1998) (waiving exhaustion because "petitioner's constitutional interests weigh heavily against requiring him to exhaust administrative remedies."). This is because noncitizens, like Mr. Medrano, "detained under § 1226(c) *do not get a bond hearing*," *Sanchez-Rivera v. Matuszewski*, 2023 WL 139801, *2 (S.D. Cal. Jan. 9, 2023) (emphasis added); *Eliazar G. C.*, 2025 WL 711190, *7 (noting that noncitizens detained under § 1226(c) do "not have a statutory right to a bond hearing"). Furthermore, Mr. Medrano could not present his constitutional as-applied due process challenge to the IJ or the BIA because neither has the authority to adjudicate constitutional claims, *AADC*, 70 F.3d at 1058. The Ninth Circuit has held that, where the administrative remedy would "provide no real opportunity to present" the constitutional issues raise by a noncitizen, requiring exhaustion "makes little sense." *Legalization Assistance Project v. INS*, 976 F.2d 1198, 1203 (9th Cir. 1992); *see also El Rescate Legal Serv. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742 (9th Cir. 1991) (courts customarily decline to apply the prudential ripeness doctrine when exhaustion would be a futile attempt to change a fixed agency position). This Court should hold the same here.

b. The parole process cited by Respondents is inapplicable to Mr. Medrano.

Respondents claim Mr. Medrano must seek discretionary parole while acknowledging, in the same breath, that his custody is mandatory under 8 U.S.C. § 1226(c). Dkt. 12 at 3 n.4. Respondents are incorrect again. Section 1226(c) does not provide for parole at all. To be sure, although a very narrow class of noncitizens held pursuant to 8 U.S.C. § 1226(c) can be *released* from custody via 8 U.S.C. § 1226(c)(4)—when '"necessary to provide protection' for witnesses or others cooperating with a criminal investigation, or their relatives or associates"—none of those circumstances are applicable here. *Preap*, 586 U.S. at 298; *Doe*, 732 F.Supp.3d at 1078-

79; 8 C.F.R. § 236.1(c)(1)(i) (stating, "no [noncitizen] described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act."). In fact, the discretionary parole process cited by Respondents only exists for noncitizens detained under 8 U.S.C. § 1226(b)—a statute that is not implicated here. *See* 8 C.F.R. § 212.5(b) (stating that parole may be granted to noncitizens confined pursuant to 8 C.F.R. § 235.3(b)-(c)); *see also* 8 C.F.R. § 235.3(b)-(c) (providing for parole of noncitizens subject to expedited removal and/or arriving aliens, both of which fall within the scope of 8 U.S.C. § 1226(b)). As this Court is aware (and as Respondents themselves have recognized, Dkt. 12 at 3), Mr. Medrano is confined under 8 U.S.C. § 1226(c) and not § 1226(b). Parole is therefore not available to him.

But even if seeking parole from ICE were an option for Mr. Medrano, it would be inadequate to deal with the constitutional issues he presents and it could not remedy the irreparable harm that he suffers each day he remains detained in an immigration jail. ICE may parole noncitizens "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5 (parole is "generally [] justified only on a case-by-case basis for 'urgent humanitarian reasons' or 'significant public benefit'"). Moreover, parole decisions are solely in the discretion of the Secretary of DHS and are not judicially reviewable, 8 U.S.C. § 1252(a)(2)(B)(ii), although individuals may seek a reconsideration based on changed circumstances, 8 C.F.R. § 212.5. The "term of parole expires 'when the purposes of such parole . . . have been served.'" *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019) (noting limited circumstances under which parole may be granted by statute (quoting 8 U.S.C. § 1182(d)(5)(A))). By its terms, therefore, the parole process does not test the necessity of detention; it contains no mechanisms for ensuring that a noncitizen will be released from detention if their detention does not "bear[] [a] reasonable relation," *Zadvydas*, 533 U.S. at 690, to the government's "legitimate interests in protecting the public [or] in ensuring that non-citizens in removal proceedings appear for hearings," *Hernandez*, 872 F.3d at 990.

Parole also misallocates the burden as it does not require the government to show, by clear and convincing evidence, that Mr. Medrano's continued detention is necessary. In short,

parole review is nothing like the "full-blown adversary hearing" that the Supreme Court has found adequate to justify civil confinement, *see, e.g., United States v. Salerno*, 481 U.S. 739, 750-51 (1987), and it is "not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention," *Rodriguez*, 715 F.3d at 1144; *see also Zadvydas*, 533 U.S. at 692 (suggesting that "the Constitution may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights" (citation and quotation marks omitted)); *St. John*, 917 F. Supp. at 251 (due process not satisfied by parole review; instead, it requires an "impartial adjudicator" to review detention since, "[d]ue to political and community pressure, the INS . . . has every incentive to continue to detain").

II. Mr. Medrano's claim is meritorious and Respondents' arguments for dismissal are meritless.

Mr. Medrano's claim is meritorious as his detention has become prolonged, having now lasted twenty-two months, and the government's interest in continuing to hold him without even providing a bond hearing is *de minimis*. Respondents ignore several recent decisions by this Court ordering bond hearings for noncitizens who have faced prolonged detention and instead lean almost exclusively on *Keo v. Warden of the Mesa Verde ICE Processing Center*, No. 1:24-cv-00919-HBK (HC), 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025), a single decision relying extensively on out-of-circuit precedent. Dkt. 12 at 5-7 (citing *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). While it may be more convenient for Respondents to rely on one favorable case brought by an uncounseled detainee before another court in this District, many of this Court's own decisions, and those of the Ninth Circuit, rebut Respondents' claims. As explained below, Respondents have utterly failed to present any arguments establishing that Mr. Medrano's petition and complaint should be dismissed. To the contrary, precedent and a review of the facts and circumstances of this matter lead to the inevitable conclusion that Mr. Medrano must be provided with a constitutionally compliant bond hearing where the government bears the burden to establish the necessity of his continued detention by clear and convincing evidence.

A bright-line rule that detention becomes prolonged at six months is consistent with Supreme Court and Ninth Circuit precedent. *See* Dkt. 1 at ¶¶ 69-70. However, even should this

Court decline to adopt such a rule, Mr. Medrano's continued detention for twenty-two months without a bond hearing inarguably violates due process. *See Martinez v. Clark*, 36 F.4th 1219, 1223 (9th Cir. 2022) ("'prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.'") (vacated on other grounds, 144 S. Ct. 1339 (2024)); *Lopez*, 631 F. Supp. 3d at 884 (finding one year of detention unreasonably prolonged and collecting cases finding shorter periods unreasonably prolonged); *Singh*, 2023 WL 5836048 at *7 (finding twenty-five months of incarceration unreasonably prolonged); *Eliazar G.C.*, 2025 WL 711190 at *7 (finding thirty-two of incarceration unreasonably prolonged). While Respondents seem to question the existence of "so-called as-applied due process violation claims," Dkt. 12 at 6, this Court and others in the District have regularly recognized said claims and granted relief. *See id.*

Respondents also aver that this Court would be contradicting its own precedent in *Keo* by applying a multi-factor balancing test to evaluate the violation of Mr. Medrano's due process rights. Dkt. 12 at 12. But *Keo* itself cites to a plethora of decisions, including three from this District in just the last four months, applying such a test. *Keo*, 2025 WL 1029392 at *5 (citing *Eliazar G.C.*, 2025 WL 711190 (applying *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *Diep v. Wofford*, No. 1:24-cv-01238-SKO (HC), 2025 WL 604744 (E.D. Cal. Feb. 25, 2025) (same); *Romero-Romero v. Wofford*, No. 1:24-cv-00944-SKO (HC), 2025 WL 391861 (E.D. Cal. Feb. 4, 2025) (same)). In this instance, Mr. Medrano's constitutional entitlement to a bond hearing is confirmed by the balance of factors test from *Mathews* (as well as any other test that the Court might deem fit to apply). *See Rodriguez-Diaz v. Garland* 53 F.4th 1189, 1193, 1206 (9th Cir. 2022) (noting that the Ninth Circuit "regularly applied *Mathews* to due process challenge to removal proceedings," and finding "*Mathews* remains a flexible test that can and must account for the heightened government interest in the immigration detention context.").[4]

[4] Even if Respondents had urged the Court to apply a different test (e.g., the factors set out in *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022)), Mr. Medrano would still undoubtedly warrant relief. Per *Lopez*, the Court looks to "the total length of detention to date, the likely duration of future detention, and the delays in removal proceedings caused by the petitioner and the government" to determine whether incarceration under 8 U.S.C. § 1226(c) has become unreasonable. *Id.* As to the first and second factors, Mr. Medrano has been detained without a bond hearing for twenty-two months, and his judicial proceedings before the Ninth Circuit will not be resolved for at

First, the private interest at stake in this case is among the most profound individual interests recognized by our legal system: Mr. Medrano's physical freedom. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty that [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. The Ninth Circuit has characterized the right at stake when a noncitizen is held in immigration detention as "fundamental." *Hernandez*, 872 F.3d at 993. Mr. Medrano, who is being held in "incarceration-like conditions," has an overwhelming interest at stake in this case, regardless of the length of his immigration detention, because "any length of detention implicates the same" fundamental rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec. 22, 2020); *see also Eliazar G.C.*, 2025 WL 711190 at *6.

In *Zadvydas*, the Court interpreted the statute governing detention after a final order of removal to require the release of a noncitizen whose removal is not "reasonably foreseeable." 533 U.S. at 699-701. Mr. Medrano's removal is not reasonably foreseeable as the Ninth Circuit has issued him a stay of removal and his petition for review is pending. *See Nken v. Holder*, 556 U.S. 418, 426 (2009) (setting forth the test for stays of removal, which includes the petitioner's "strong showing that he is likely to succeed on the merits," the likelihood of irreparable harm, whether the stay will substantially inure the other party, and the public interest.). Mr. Medrano has now been detained for twenty-two months without a bond hearing. "Compared to the six-month presumptive period set forth in *Zadvydas* beyond which continued detention becomes prolonged, [Mr. Medrano's twenty-two-month] detention qualifies as prolonged." *Diep*, 2025

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least another four months. *See Id.* (granting habeas relief and ordering individualized bond hearing for petitioner detained approximately one year and citing cases where detentions of two months, eight months, and eleven months were found unreasonable); *see also* U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions, www.ca9.uscourts.gov/content/faq.php (last visited May 5, 2025) (stating that oral argument in a civil case occurs approximately four months after briefing is completed). The Ninth Circuit has "assumed" that fourteen months of detention without a bond hearing "qualifies as 'prolonged' in a general sense." *Rodriguez-Diaz*, 53 F.4th at 1207. The first two factors therefore clearly favor Mr. Medrano. As to the third factor, since being re-incarcerated on June 22, 2023, Mr. Medrano never sought a continuance of his removal proceedings before the IJ or BIA. Instead, his ICH spanned four hearing dates—September 25, 2023, November 16, 2023, January 9, 2024, and January 22, 2024. *See* Second Sinodis Decl. Following the IJ's decision on January 22, 2024, he diligently filed his Notice of Appeal with the BIA and did not seek an extension for briefing. *Id.* The third factor therefore weighs in favor of Mr. Medrano, as he "is entitled to raise legitimate defenses to removal…and such challenges to his removal cannot undermine his claim that detention has become unreasonable." *Singh*, 2023 WL 5836048 at * 8 (*citing Liban M.J. v. DHS*, 367 F. Supp. 3d 959, 965 (D. Minn. 2019)).

WL 604744, *4. In *Rodriguez-Diaz*, "[t]he Ninth Circuit noted that detentions longer than six months were considered 'prolonged' in cases such as this where 'no individualized hearings had taken place at all.'" *Id.*

In *Singh*, 2023 WL 5836048, this Court found that the length of future detention weighed in favor of a petitioner with a pending petition for review because, in the Ninth Circuit, oral argument takes place "approximately four months from completion of briefing" and a decision may take a further "three months to a year" after that. *Id.* at *8 n.5. Here, the briefing in Mr. Medrano's petition for review has still not been completed—his reply brief is not due until May 12, 2025. *See Medrano v. Bondi*, Case No. 24-3474 at Dkt. 31. Therefore, absent relief from this Court, he can expect to be detained for at least another four months, and up to a year and four months, before he receives a decision in his case. *See Singh*, 2023 WL 5836048 (finding that oral argument takes place "approximately four months from completion of briefing" and a decision may take a further "three months to a year" after that).

Respondents inappropriately seek to blame the length of detention on Mr. Medrano himself, Dkt. 12 at 4, 7 ("Petitioner is properly detained in furtherance of his own goal) (emphasis in original), ignoring this Court's statement in *Singh* that "Petitioner is entitled to raise legitimate defenses to removal ... and such challenges to his removal cannot undermine his claim that detention has become unreasonable." 2023 WL 5836048 at *8 (quoting *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F. Supp. 3d 959, 965 (D. Minn. 2019). As the docket for Mr. Medrano's petition for review and the evidence in this matter show, he has presented substantial defenses to removal which have, to date, resulted in the Ninth Circuit issuing him a stay of removal and also denying the government's motion for summary dismissal. Given the arguments made by Mr. Medrano in his petition for review and his likelihood of success, the reality is that the Ninth Circuit will grant his petition for review and, at a minimum, remand proceedings to the BIA for the entry of a new decision. Absent an order from this Court, he faces the dim and unconstitutional prospect of possibly a year or longer in ICE's custody without even receiving a bond hearing.

Each day Mr. Medrano is detained, both he and his family suffer irreparable harm,

including the deprivation of constitutional rights, emotional distress, and economic hardship. Mr. Medrano's family members remain without a husband and a father. *See Hernandez*, 872 F.3d at 995. Prior to being detained, Mr. Medrano was employed at an animal feed warehouse managing the inventory, orders, and deliveries. First Sinodis Decl. at Exh. F. He was also very involved in his autistic son's upbringing. Even while in detention, he has maintained weekly contact with both of his U.S. citizen children to provide them with a modicum of the emotional support that he did before. Every single day Mr. Medrano is detained is a day that he cannot help or support his family – be that emotionally or financially – and therefore a day he suffers irreparable harm from that also. *See Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec. 24, 2018) ("Although these effects from irreparable harm are the same type of harm any person who is detained may suffer, they are irreparable in nature."). Mr. Medrano's private interest in being free from prolonged incarceration of twenty-two months thus weighs in his favor.

The second *Mathews* factor, which evaluates "the risk of an erroneous deprivation of [Mr. Medrano's] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," 424 U.S. at 335, weighs in favor of Mr. Medrano. Providing him with a bond hearing would decrease the risk of Mr. Medrano being erroneously deprived of his liberty.

"In evaluating the risk of erroneous deprivation in the context of noncitizen detention, the Ninth Circuit has looked to whether the detainee has a statutory right to procedural protections, such as individualized custody determinations and the right to seek additional bond hearings throughout detention." *Singh*, 2025 WL 711190, *6 (quoting *Jensen v. Garland*, No. 5:21-cv-01195-CAS (AFM), 2023 WL 3246522, at *6 (C.D. Cal. May 3, 2023) (citing *Rodriguez Diaz*, 53 F.4th at 1209-10 (finding a small risk of erroneous deprivation where the petitioner was detained under 8 U.S.C. § 1226(a) and thus received numerous procedural protections, including individualized custody determinations and right to seek additional bond

hearings).[5] Here, the value of a bond hearing is high because Mr. Medrano has strong arguments that he should receive bond, and he has been incarcerated for twenty-two-months without even so much as receiving a hearing as to his custody status. Prior to his prison sentence, the DA granted Mr. Medrano a *Cruz* waiver so that he could spend time with his family before turning himself in. Had the DA believed that Mr. Medrano were a danger or a flight risk, he would not have been granted a *Cruz* waiver. Once Mr. Medrano started his prison sentence, he left the gang that he was a part of, at great risk to his own safety, and has found stability and purpose in his faith. If released from custody, he would return to caring for his autistic son, infant daughter, and his U.S. citizen spouse. Accordingly, there is no question that there is great value in a bond hearing before a neutral decisionmaker, as the record evidence demonstrates that he is neither a flight risk nor a current danger. *Singh*, 2025 WL 711190, *7 (applying the second *Mathews* factor and finding that a bond hearing would be valuable where the petitioner had completed courses and programs while in custody).

Third, the government's interest here is extremely low, because the interest at stake "is the ability to detain [Mr. Medrano] *without providing him with [a] bond hearing*, not whether the government may continue to detain him." *Eliazar G.C.*, 2025 WL 711190 at *8 (emphasis in original) (quoting *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 765, 777 (N.D. Cal. 2019)). The relief Mr. Medrano seeks is a routine process that the government provides on a daily basis and would impose only a *de minimis* burden on the government. The government has conceded as much in similar cases. *See Eliazar G.C.*, 2025 WL 711190 at *8; *De Paz Sales v. Barr*, No. 19-cv-04148-KAW, 2019 WL 4751894, at *7 (N.D. Cal. Sept. 30, 2019) ("[T]he Government does not argue there are any costs to providing a bond hearing."). The third *Mathews* factor is thus definitively in Mr. Medrano's favor.

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[5] While Respondents may attempt to argue in their Reply that Mr. Medrano can submit a release request to ICE, that would not afford him due process, as ICE is the same agency that has arrested and detained him without the possibility of bond. As the Ninth Circuit has recognized, the risk of erroneous deprivation is high where custody determinations are not made by a neutral arbiter. *See e.g., Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011) (explaining that ICE's custody reviews in another context are not constitutionally adequate because "they do not provide an in person hearing, they place the burden on the [noncitizen] rather than the government and they do not provide for a decision by a neutral arbiter such as an immigration judge"); *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzalez*, 548 U.S. 30 (2006) ("A neutral judge is one of the most basic due process protections.").

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Based on the above, each of the *Mathews* factors weigh in favor of Mr. Medrano. The Court must therefore deny Respondents' Motion to Dismiss and either grant Mr. Medrano's petition and complaint, Dkt. 1, or his motion for a temporary restraining order, Dkt. 3, and issue an order that he be provided a constitutionally compliant bond hearing before a neutral decisionmaker within ten days. At that bond hearing, the government must bear the burden of proof to establish the necessity of Mr. Medrano's continued incarceration because he is a flight risk or a danger to the community by clear and convincing evidence.

III. Supplemental briefing on the burden of proof is unnecessary because it is clear that due process requires the government to bear the burden to establish the necessity of Mr. Medrano's continued confinement by clear and convincing evidence.

Respondents request leave from this Court to file supplemental briefing as to the burden of proof should the Court decide to order a bond hearing. Dkt. 12 at 5 n.6. The Court should reject Respondents' invitation. The law on this issue is settled.

In *Singh v. Holder*, the Ninth Circuit held that the appropriate burden of proof when the necessity of a noncitizen's continued prolonged detention is at stake is clear and convincing evidence. *Id.* at 1203-06. This Court has analyzed this issue repeatedly and correctly concluded that it should join "the 'overwhelming majority of courts that have held that the government must justify the continued confinement of a non-citizen detainee under § 1226(c) by clear and convincing evidence that the non-citizen is a flight risk or a danger to the community.'" *Eliazar G.C.*, 2025 WL 711190 at *10 (quoting *Sanchez-Rivera* , 2023 WL 139801); *see also Lopez v. Garland*, 631 F. Supp. 3d at 882 n.9; *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, *5 (E.D. Cal. June 15, 2023), *report and recommendation adopted*, No. 1:21-CV1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023)). Other courts in this circuit have similarly concluded that a clear and convincing evidence standard applies in circumstances identical or substantially similar to those presented by Mr. Medrano. *See e.g.*, *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1057 (N.D. Cal. Apr. 14, 2021); *Manpreet Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019); *Vargas v. Wolf*, No.

2:19-CV-02135-KJD-DJA, 2020 WL 1929842, at *8 (D. Nev. Apr. 21, 2020); *Rajnish*, 2020 WL 7626414 (N.D. Cal. Dec. 22, 2020).

Because there is no legitimate question about what burden of proof the government ought to bear at a bond hearing where a neutral decisionmaker evaluates whether a noncitizen must remain detained despite having already been incarcerated for a prolonged period, Respondents' request for supplemental briefing should be denied. Further, Respondents could and should have presented any arguments that they believe they have as to the burden of proof in their Motion to Dismiss. Respondents' failure to do so reflects that they lack any viable arguments on this point and also raises the question as to whether they merely seek to delay these proceedings via a meritless request for additional briefing.

CONCLUSION

For the aforementioned reasons, the Court should deny Respondents' Motion to Dismiss. The Court should instead grant Mr. Medrano's petition and complaint for declaratory and injunctive relief or, in the alternative, grant his motion for a temporary restraining order, and issue an order that he be provided a bond hearing within ten days where the government must bear the burden to establish flight risk or danger to the community by clear and convincing evidence.

Dated: May 5, 2025

Respectfully Submitted

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