

1 BRENDON WOODS (CA SBN #189910)
Public Defender
2 RAHA JORJANI (CA SBN #240941)
Managing Immigration Attorney
3 KELSEY MORALES (CA SBN #312362)
Immigration Attorney
4 Office of the Alameda County Public Defender
5 312 Clay Street, 2nd Floor
6 Oakland, CA 94607
Telephone: 510 268-7429
7 Facsimile: 510 268-7462
Email: kelsey.morales@acgov.org

8
9 *Pro Bono Attorneys for Petitioner*

10 U.S. DISTRICT COURT FOR THE
11
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 RICARDO AGUILAR GARCIA,

15 Petitioner,

16 vs.

17 POLLY KAISER, Acting Field Office Director
18 of San Francisco Office of Detention and
Removal, U.S. Immigration and Customs
19 Enforcement, U.S. Department of Homeland
20 Security;

21 TODD M. LYONS, Acting Director,
22 Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

23 Kristi NOEM, Secretary, U.S. Department of
24 Homeland Security; and

25 PAM BONDI, Attorney General of the United
26 States;

27 Respondents.

Case No.: 3:25-cv-05070-JSC

IMMIGRATION HABEAS CASE

PETITIONER'S SUPPLEMENTAL BRIEF
IN RESPONSE TO COURT'S ORDER OF
SEPTEMBER 12, 2025

28 PETITIONER'S SUPPLEMENTAL BRIEF IN RESPONSE TO COURT'S ORDER OF
SEPTEMBER 12, 2025

1 On September 12, 2025, this Court ordered Petitioner to file supplemental briefing
2 addressing the issue of whether Petitioner's detention is still governed by Section 1226 given that
3 mandate has now issued in his Ninth Circuit case. He now timely responds to the Court's Order.
4

5 **A. The Shift In Petitioner's Detention Authority from 8 U.S.C. § 1226(a) to 8 U.S.C. §**
6 **1231 Has No Impact On His Constitutional Claims.**

7 Petitioner concedes his detention is no longer governed by 8 U.S.C. § 1226(a). His
8 detention is currently governed by section 1231, which applies to noncitizens with final removal
9 orders. 8 U.S.C. § 1231.

10 However, Petitioner's habeas claims are constitutional – not statutory – and are not
11 impacted by any shift in ICE's detention authority. Neither of Petitioner's two causes of action
12 rest on the statutory authority under which he would be held if detained. Instead, Petitioner
13 argues he maintains a liberty interest in his current freedom, and that the Fifth Amendment's Due
14 Process Clause mandates that detention serve a legitimate purpose – to mitigate flight risk and/or
15 prevent danger to the community – neither of which would be served by Mr. Aguilar Garcia's
16 detention. ECF No. 1. Furthermore, that Mr. Aguilar Garcia has been out on an ICE bond for
17 well over *six years now* entitles him to certain procedural protections before he can be re-
18 detained. *Id.*
19
20

21 Effectively, the shift in Petitioner's detention authority does not change the fact that like
22 the liberty interest of the parolee discussed in *Morrissey* -- Petitioner's liberty interest "enables
23 him to do a wide range of things open to persons" who are not in custody including to live at
24 home, work, attend church, and "be with family and friends and to form the enduring
25 attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). And just as the
26 Supreme Court has found that "[t]he parolee has relied on at least an implicit promise that parole
27
28

1 will be revoked only if he fails to live up to the parole conditions,” so too has Petitioner relied on
2 the promise of being out of custody unless his re-detention has been legally justified. *Id.* In light
3 of this reliance, the Supreme Court reasoned that “the liberty of a parolee, although
4 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
5 a grievous loss on the parole and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
6 valuable and *must* be seen as within the protection of the [Constitution].” *Id.* (emphasis added).
7

8 Other courts in this district have previously rejected the government’s arguments that a
9 shift in detention authority undermines a noncitizen’s constitutional claims. *See Doe v. Becerra*,
10 No. 23-cv-01890-AMO, 2023 WL 6541863, at *4 (N.D. Cal. Oct. 6, 2023). In *Doe*, the
11 government argued a habeas petition was moot because of a change in detention authority, from
12 8 U.S.C. § 1226(c) to § 1231. *Id.* at *2, 4. The court there rejected the government’s argument,
13 explaining that
14

15 the Court **finds that the shift in the statutory basis governing Doe’s**
16 **detention does not negate his constitutional rights nor substantively**
17 **change the applicable due process analysis.** While statutory justification for
18 Doe’s detention has shifted, nothing has changed as a practical matter – his
19 time behind bars continues to increase without any showing by Respondents
20 that his civil detention is necessary to achieve the Government’s non-punitive
21 ends. As the Ninth Circuit has explained, that is a constitutional problem
22 regardless of which statute currently applies. *See Rodriguez v. Marin*, 909 F.3d
23 252, 256 (9th Cir. 2018)

24 *Id.* (emphasis added).

25 Like the petitioner in *Doe*, Mr. Aguilar Garcia will suffer a violation of his constitutional
26 rights if he is re-detained without notice and a hearing before a neutral adjudicator has determined
27 that his re-incarceration is legally necessary and justified based on reviewable evidence. To
28 abandon such minimum safeguards is to invite Petitioner’s arbitrary detention and to disregard his

1 constitutionally protected interest in continuing to avoid physical restraint; a liberty interest he has
2 come to know and rely on for over six years.

3 Notably, district courts have repeatedly determined that the issuance of a removal order
4 does not negate constitutional challenges. *See e.g., Espinoza v. Wofford*, No. 24-cv-01118-SAB-
5 HC, 2025 WL 1556590, at *7 (E.D. Cal. June 2, 2025) (finding that the shift in detention authority
6 from 1226(c) to 1231(a) did not impact petitioner’s “as-applied constitutional challenges to the
7 fact of his ongoing and prolonged detention”); *De La Rosa v. Murray*, No. 23-cv-06461-VC, 2024
8 WL 2646470 at *1-2 (N.D. Cal. April 8, 2024) (granting habeas petition and ordering bond
9 hearing for noncitizen with petition for review pending and denied stay of removal); *Guillermo*
10 *M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at *2, 10 (N.D. Cal July 17, 2025)
11 (requiring pre-deprivation hearing for individual with a final removal order whose detention
12 would be governed by 1231(a)).
13
14

15 In one New York District Court case, the Court unequivocally found that the constitutional
16 right to due process does not waiver depending on whether or not a noncitizen is subject to a final
17 removal order.
18

19 This case raises the question of whether a noncitizen subject to a final order
20 of removal and released on an order of supervision is entitled to due process
21 when the government decides—in its discretion—to revoke that release.
22 The Court answers that question simply and forcefully: Yes. Noncitizens,
23 even those subject to a final removal order, have constitutional rights just
24 like everyone else in the United States. *See Zadvydas v. Davis*, 533 U.S.
25 678, 693, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001). And while the United
26 States Department of Homeland Security (“DHS”) might want to enforce
27 this country’s immigration laws efficiently, it cannot do that at the expense
28 of fairness and due process. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68, 74 S. Ct. 499, 98 L. Ed. 681 (1954);
Torres-Jurado v. Biden, 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023).
As the framers recognized centuries ago, fair process—not just the correct
outcome—matters. After all, without due process, there is no way to tell
whether the result is in fact correct.

1 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025).

2
3 These decisions align with Supreme Court precedent. Although Congress has
4 authorized—and in some cases mandated—custody for certain noncitizens, detention both during
5 pending removal proceedings and after a removal order must comport with the Constitution. *See*
6 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (considering due process limits on post-final order
7 detention under 8 U.S.C. § 1231(a)).
8

9 In fact, Courts have recognized the need to avoid “unnecessary cruelty,” and to “allow
10 and provide for an orderly departure. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d at 167 (quoting
11 *Ragbir v. Sessions*, 2018 WL 623557 at *3 (S.D.N.Y. Jan. 29, 2018)). Ultimately, “[t]he
12 government does not have carte blanche to enforce the law, even the immigration law, in any
13 manner that it chooses... .” *Id.* at 168.
14

15 In *Ceesay*, the Court focused in part on the fact that the government had promised
16 petitioner an “opportunity to prepare for an orderly departure,” then detained petitioner without
17 notice at a scheduled ICE check-in. *Id.* at 170. The court found that the government could not
18 “now renege on the promise such that its words meant nothing.” *Id.* Similarly here, on March 19,
19 2025, Petitioner was placed under an order of supervision. His order of supervision stated:
20 “Because the agency has not affected effected your deportation or removal during the period
21 prescribed by law, it is ordered that you be placed under supervision and permitted to be at large
22 under the following conditions... .” ECF No. 1-1 at p. 15. The enumerated conditions were that
23 Mr. Aguilar Garcia appear at any requested or scheduled appointments, appear for any medical
24 or psychiatric examinations, provide certain information to agency as requested, comply with
25 travel restrictions, comply with address change notifications, and assist DHS in obtaining any
26
27
28

1 necessary travel documents. *Id.* The notice provides further conditions in an addendum, including
2 not associating with gang members and not committing crimes while on the order of supervision.
3 ECF No. 1-1 at p. 17. The notice then specifies that *any violation of these conditions may result*
4 *in you being taken into Service custody* and you being criminally prosecuted. *Id.*

5
6 The government has not alleged, let alone proven, that Petitioner has violated any terms
7 of his order of supervision, yet argues Petitioner can be re-detained. ECF No. 17 at p. 11. But
8 such a position renders meaningless the terms of Petitioner's Order of Supervision and the
9 promise of remaining "at large" absent violations of that order. As the Court put it in *Cesay*,
10 particularly when dealing with the liberty of human beings, "[t]he constitution commands better."
11 *Cesay* at 169 (internal citations omitted).

12
13 **B. Finality of Petitioner's Removal Order Is Relevant, But Not To The Question Before**
14 **This Court.**

15 Petitioner has been ordered removed and that removal order is now final. Petitioner does
16 not argue that issuance of mandate in his Ninth Circuit appeal is irrelevant, only that it is
17 irrelevant to the question pending before this Court: whether Petitioner is owed the minimum
18 process of notice and a bond hearing before any re-detention.

19
20 Should DHS provide notice that they believe Petitioner should be re-detained and should
21 a pre-deprivation hearing be held, the fact of mandate having issued can be raised by the
22 government as a factor to be considered at such a hearing. *See Matter of Andrade*, 19 I&N Dec.
23 488, 490 (BIA 1987) ("A respondent with a greater likelihood of being granted relief from
24 deportation has a greater motivation to appear for a deportation hearing than one who, based on a
25 criminal record or otherwise, has less potential of being granted such relief."). Issuance of
26 mandate and finality of Petitioner's removal order may be relevant in a pre-deprivation bond
27
28

1 hearing (as would his pending motion to reopen and request for a stay of removal with the BIA¹),
2 but they are not relevant to the question of whether due process requires such a hearing.

3 The finality of a removal order is also relevant to DHS's ability to effectuate Petitioner's
4 removal from the United States. Petitioner has not asked this Court for an order enjoining his
5 removal. He has only asked that he not be subject to the physical, emotional, financial, and
6 psychological harms of re-detention unless a neutral adjudicator has found the imposition of such
7 severe harms to be legally justified. Petitioner has established that his detention would not only
8 directly and irreparably harm him, but also his U.S. Citizen family members. He has shown that
9 his re-detention would harm his U.S. Citizen wife who suffers from Lupus – a rare, serious, and
10 chronic illness – and directly relies on his support and care. ECF No. 1 (¶¶ 20-21, 33, 38); ECF
11 No. 3 (TRO) (pp. 3-5); ECF No. 20-1 (p. 2). He has also shown that his re-detention would harm
12 his five-year-old child, who is also medically compromised, and who relies on him for support.
13 ECF No. 20-1 (p. 2).

14 As such, his request to this Court – that he be provided with the basic protections of
15 notice and an opportunity to be heard before the government removes him from his home and
16 places him behind bars – is both reasonable and sound. Personal liberty is “a fundamental
17 interest second only to life itself in terms of constitutional importance.” *Van Atta v. Scott*, 27
18 Cal.3d 424, 435 (1980).

19 Petitioner's detention is not necessary to effectuate removal. As argued in Petitioner's
20 Reply brief, DHS can facilitate removal without re-detention, including allowing an individual to
21

22
23
24
25
26
27 ¹ Petitioner filed a Motion to Stay Removal with the BIA that was received by the BIA via
28 Federal Express Overnight Courier on September 18, 2025.

1 self-remove where appropriate. *See* ECF No. 20 at pp. 8-9 (for example, DHS can issue a “Bag
2 and Baggage” letter – Form I-166 - to allow a non-detained person to present themselves ready
3 for deportation). Any suggestion that detention is the only way for ICE to reliably effectuate
4 removal, is not only unsupported on this record, but is also contradicted by DHS’s own practices.

5
6 **III. The *Mathews* Factors Weigh in Mr. Aguilar Garcia’s Favor Regardless of a Shift
7 in Statutory Detention Authority.**

8 Mr. Aguilar Garcia claims that the Constitution, as applied to his case, requires that he
9 not be re-detained without notice and a hearing at which a neutral decisionmaker can consider
10 the legality of any re-detention. In issuing a Temporary Restraining Order in this case, this Court
11 found that the “three factors relevant to the due process inquiry set out in *Mathews v. Eldridge*,
12 424 U.S. 319 (1976)...support requiring a pre-detention hearing for Petitioner-Plaintiff.” ECF
13 No. 3. The Court found that Petitioner had a substantial private interest in remaining out of
14 custody, that a pre-detention hearing would help protect against a risk of erroneous deprivation,
15 and that the government had a “low” interest in re-detaining Petitioner “in light of the fact that
16 [he] has long complied with his reporting requirements.” *Id.* None of these factors are impacted
17 by any shift in statutory detention authority applicable in this case.
18

19
20 Petitioners interest in remaining out of custody and continuing to support his “stepchild
21 and spouse who both depend upon him...” is unchanged by any shift in detention authority.
22 Similarly a pre-detention hearing that ensures that a person is not incarcerated unless they pose a
23 danger to the community or flight risk helps to protect against erroneous deprivation, regardless
24 of the statutory authority governing any re-detention. Finally, Petitioner has continued to comply
25 with his reporting requirements, as well as other conditions of his supervised release. He has
26 lived in the same city since his release by ICE in 2019. He has diligently pursued his legal claims
27
28

1 with the same counsel for 7 years and has repeatedly been found by DHS not to constitute a
2 danger to the community or flight risk². Just as the three-factor test in *Mathews v. Eldridge*
3 supported issuance of a Temporary Restraining then, so does that same test require issuance of a
4 Preliminary Injunction now.
5

6
7 **CONCLUSION**

8 For the foregoing reasons, Mr. Aguilar Garcia respectfully maintains that the shift in his
9 detention authority has no bearings on the question at issue before this Court.

10 Dated: September 19, 2025

Respectfully submitted,

11 /s/Raha Jorjani

12 Raha Jorjani

13 ALAMEDA COUNTY PUBLIC DEFENDER'S OFFICE

14 *Pro bono attorneys for Petitioner*
15
16
17
18
19
20
21
22
23
24

25
26 ² Petitioner was released by DHS in July 2019 on bond and with electronic monitoring
27 conditions in the form of an ankle bracelet. In February 2022, his ankle bracelet was removed. In
28 March 2025, ICE determined that he could remain at large (out of custody) barring a violation of
the terms of his Order of Supervision. Each of these three actions required a finding that
Petitioner did not constitute a danger to the community or flight risk.