UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEYSAM KHABAZHA,

Petitioner,

v.

PAUL ARTETA, *et al.*,

Respondents.

Case No. 25 Civ. 5279 (JMF)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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The government respectfully submits this memorandum of law in opposition to the second amended petition ("SAP") for writ of habeas corpus filed by petitioner Meysam Khabazha ("Petitioner") on July 24, 2025. ECF No. 18.

PRELIMINARY STATEMENT

Petitioner is an applicant for admission from Iran who was apprehended by officers of the U.S. Department of Homeland Security ("DHS") shortly after he unlawfully crossed the United States/Mexico border near Calexico, California. Because he is an alien who entered the United States without inspection or admission, was apprehended within 100 miles of the border and within 14 days of an illegal entry, and deemed inadmissible at that time, DHS had the discretion either to place Petitioner into § 1229a removal proceedings or to issue an expedited removal order. Due to a lack of bedspace and Petitioner's then-present medical needs, United States Customs and Border Protection ("CBP") opted at that time to place Petitioner in § 1229a removal proceedings and release him in the interim on his own recognizance.

In June 2025, U.S. Immigration and Customs Enforcement ("ICE") made an individualized determination for Petitioner and decided to revoke his release and to re-detain him under 8 U.S.C. § 1226(a) for the pendency of his removal proceedings. Petitioner was the subject of a targeted arrest at his residence, and he was arrested without incident. Following his arrest, he was informed that he was eligible to seek custody redetermination by an Immigration Judge, which he did. At his custody redetermination hearing, he was ordered released on bond and conditions by the Immigration Judge, and he posted bond the next day and was released by ICE. Although the Immigration Judge later vacated his bond order, ICE exercised its discretion and agreed to maintain Petitioner's release on the same terms as ordered by the now-vacated bond order, and ICE further

agreed not to redetain Petitioner during the pendency of his removal proceedings unless he violates the conditions of his release or a final order of removal is entered.

Since his release, Petitioner filed a second amended habeas petition seeking to overturn the supervision conditions originally ordered by Immigration Judge and currently maintained by ICE, namely an ankle monitor and regular check-ins. He asserts that ICE lacked authority to detain him in the first place, and thus, the additional conditions violate his constitutional rights. But all of Petitioner's claims fail. He has received all the process that is due, and more, and Petitioner has not demonstrated that his detention is unlawful.

BACKGROUND

Petitioner is a native and citizen of Iran who unlawfully entered the United States on or about November 23, 2022. Declaration of Lukasz Kubicz dated August 1, 2025 ("Kubicz Decl."), ¶¶ 3, 4. Petitioner was detained by CBP, and he was transported to a regional medical center because he required medical treatment. *Id.* ¶ 4. On November 28, 2022, CBP served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him with removability pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 5. The NTA advised Petitioner to appear before an immigration judge in New York, New York, for a hearing scheduled for April 10, 2023. *Id.* & Ex. H. After completing processing, CBP released Petitioner on his own recognizance due to lack of bed space at the border. *Id.* ¶ 5 & Exs. I–K.

On June 22, 2025, ICE's Enforcement Removal Operations ("ERO") conducted an individualized review of Petitioner's immigration matter and determined that Petitioner was amenable to immigration enforcement. *Id.* ¶ 6. This was the first re-evaluation of Petitioner's

custody status since 2022, and the agency exercised its discretion under 8 U.S.C. § 1226(b) to revoke Petitioner's Order of Release and target him for rearrest. *Id.* The next day, June 23, ERO revoked Petitioner's order of release on recognizance and completed an arrest operation for which Petitioner was the target. *Id.* ¶ 7. Following his arrest, ICE served Petitioner with a new Warrant of Arrest and Notice of Custody Determination, informing him that he would be detained pursuant to Immigration and Nationality Act § 236(a), 8 U.S.C. § 1226(a), pending a final administrative order in his case. *Id.* ¶¶ 7, 8 & Exs. L, M. That notice also informed him that he was eligible to seek custody redetermination by an immigration judge. *Id.* & Ex. M.

On July 7, 2025, an immigration judge held a custody redetermination hearing at Petitioner's request and ordered Petitioner's release on bond in the amount of $1,500.00, with ankle monitoring and regular check-ins at DHS discretion. Declaration of Towana T. Love dated August 1, 2025 ("Love Decl."), ¶ 4 & Ex. A. Petitioner posted bond and was released from ICE custody on July 8, 2025. *Id.* ¶ 5. Per the bond order, ICE exercised its discretion to place Petitioner on an ankle monitor and required periodic check ins under its Intensive Supervision Appearance Program ("ISAP"). *Id.* & Exs. B–E.

On July 15, 2025, Petitioner filed a motion to ameliorate the conditions of his release with the Immigration Judge, specifically the conditions set by ICE—the ankle monitor and periodic check-ins. *Id.* ¶ 7. The next day the Immigration Judge *sua sponte* redetermined Petitioner's eligibility for custody redetermination, issued an order finding Petitioner to be ineligible for bond, denied the motion to ameliorate, and vacated his July 7 bond order. *Id.* & Exs. F, G. However, notwithstanding the vacatur of the bond order, ICE agreed to honor the terms of Petitioner's release as originally ordered by the Immigration Judge, namely, $1,500 bond and ICE "may, at its discretion require [Petitioner] to wear an ankle monitor at all times and may require [Petitioner] to

check in at regular intervals." *Id.* ¶ 8 & Ex. A. ICE also agreed that it will not redetain Petitioner during the pendency of his removal proceedings unless he violates the conditions of his release or a final order of removal is entered. *Id.*; *see also* ECF No. 15.

Since his release on bond on July 8, Petitioner has participated in two check-ins with ICE, one virtual, and one in person. Love Decl. ¶¶ 6, 9. His next check-in is scheduled to occur on or about August 19, 2025. *Id.* ¶ 12. Petitioner has requested, and ICE ERO has declined at this time, to remove his ankle monitor on at least two occasions. *Id.* ¶¶ 10, 11. To date, Petitioner has not provided ERO or ICE's ISAP contractor with any medical documentation in conjunction with his requests to remove his GPS ankle monitoring device. *Id.* ¶ 13.

In his second amended habeas petition, Petitioner asserts three counts, asserting that his redetention on June 23 violated his substantive and procedural due process rights, as well as the Fourth Amendment. ECF No. 18, ¶¶ 47–54. He seeks his "unconditional release from custody on conditions equivalent to those that existed prior to his June 23, 2025 detention." *Id.* Prayer for Relief ¶ c.

ARGUMENT

I. PETITIONER'S CHALLENGE TO HIS ARREST AND REDETENTION IS MOOT BECAUSE PETITIONER HAS BEEN RELEASED FROM IMMIGRATION DETENTION

Petitioner cannot maintain his habeas corpus challenge to his redetention following his release from immigration detention — initially after he was granted bond by an immigration judge, and later maintaining his freedom on ICE's own discretionary authority. Petitioner is no longer "detained" under the immigration laws, even if subject to supervision conditions, and no exception to mootness applies.

Courts have consistently held that a petition for writ of habeas corpus, brought by an alien pursuant to 28 U.S.C. § 2241, is rendered moot once the alien petitioner is released from immigration detention, under a variety of scenarios. *See, e.g.*, *Leybinsky v. U.S. Immigration and Customs Enforcement*, 553 F. App'x 108 (2d Cir. 2014) (habeas petition moot upon petitioner's release by ICE); *Pierrilus v. U.S. Immigration and Customs Enforcement*, 293 F. App'x 78, 79 (2d Cir. 2008) ("[P]etitioner's challenge to the length of his detention is moot as a result of his release from DHS custody."); *Remy v. Chadbourne*, 184 F. App'x 79, 80 (2d Cir. 2006) (dismissing as moot an appeal from the dismissal of a habeas petition challenging detention where ICE released the alien from detention during the appeal); *Edwards v. Ashcroft*, 126 F. App'x 4 (2d Cir. 2005) (habeas petition challenging detention rendered moot upon release from custody); *Abzerazzak v. Feeley*, No. 21-CV-6443-FPG, 2022 WL 170404, at *1 (W.D.N.Y. Jan. 18, 2022) ("As a general matter, district courts in this Circuit to have considered the issue have found that where an alien challenging his detention under 28 U.S.C. § 2241 is released during the pendency of his Petition under an order of supervision, the Petition is rendered moot." (internal quotation marks omitted)); *Chocho v. Shanahan*, 308 F. Supp. 3d 772, 776–77 (S.D.N.Y. 2018) (holding that petition was moot after petitioner was released from custody and granted a one-year administrative stay of removal); *Samuda v. Decker*, No. 17 Civ. 9919 (VEC), ECF No. 13 (S.D.N.Y. Mar. 28, 2018) (holding that habeas petition was moot after petitioner was released under parole); *Pierre-Paul v. Sessions*, 293 F. Supp. 3d 489, 493 (S.D.N.Y. 2018) (holding that habeas petition was moot subsequent to petitioner's release); *Osias v. Decker*, No. 17 Civ. 2786 (VEC), 2017 WL 3432685 (S.D.N.Y. Aug. 9, 2017) (holding that petition was moot subsequent to petitioner's release from custody); *Pena v. Lynch*, No. 16 Civ. 5075 (RA), 2017 WL 2799613, at *1 (S.D.N.Y. June 26, 2017) (holding that petition was moot subsequent to petitioner's removal); *Brea v. Mechkowski*,

156 F. Supp. 3d 423, 424 (S.D.N.Y. 2016) (holding that petition was moot once petitioner was released on bond pursuant to order of the immigration court, even though the government reserved its right to appeal the bond decision to the Board of Immigration Appeals); *Soorsattie v. Shanahan*, No. 15 Civ. 7595 (JGK), 2015 WL 6742334, at *1 (S.D.N.Y. Nov. 3, 2015) (dismissing as moot habeas petition where alien was released from detention, concluding that "the petitioner no longer has a redressable injury"); *German v. Green*, No. 15 Civ. 4691 (WHP), 2015 WL 7184992 (S.D.N.Y. Oct. 30, 2015) (petition moot once alien was no longer detained); *Watson v. Orsino*, No. 13 Civ. 1631 (LGS), 2013 WL 4780033, at *1 (S.D.N.Y. May 31, 2013) ("The district courts in this Circuit to have considered the issue have found that where an alien challenging his detention under 28 U.S.C. § 2241 is released during the pendency of his petition under an order of supervision, the petition is rendered moot.") (quotation omitted); *Jackson v. Holder*, 893 F. Supp. 2d 629, 631 (S.D.N.Y. 2012) ("When a habeas petitioner challenges solely his detention, but is subsequently released prior to removal, courts routinely dismiss the petition as moot, finding no persisting case in controversy."); *Rauf v. Shanahan*, No. 11 Civ. 7755 (JGK), 2012 WL 1864312, at *1 (S.D.N.Y. May 21, 2012) ("When a habeas petitioner challenges only the lawfulness of his or her detention, and the petitioner is subsequently released from detention, the petition is rendered moot and should be dismissed."); *Karamoke v. U.S. Homeland Sec.*, No. 09 Civ. 4089 (GBD) (JCF), 2009 WL 2575886, at *1 (S.D.N.Y. Aug. 20, 2009) ("When a habeas petitioner challenges solely his detention, but is subsequently released prior to removal, courts routinely dismiss the petition as moot, finding no persisting case in controversy."); *Masoud v. Filip*, No. 08 Civ. 6345 (CJS) (VEB), 2009 WL 223006, at *6 (W.D.N.Y. Jan. 27, 2009) ("Because the only relief [the petitioner] sought from this Court was release from DHS custody, his habeas petition became moot

upon his release under an order of supervision, which terminated his custodial detention."). Thus, any challenge to his arrest and redetention is moot.[1]

As for his present conditions of release, the Supreme Court has carefully analyzed the statutory text of sections 1225 and 1226 and concluded that "the word 'detain' in the relevant statutory provisions" means that an alien is physically in the custody of immigration officials, not merely "the absence of unrestrained freedom." *Jennings v. Rodriguez*, 583 U.S. 281, 307 (2018) (internal quotation marks omitted). Even restraints such as compliance with a curfew, reporting at regular intervals, the possibility of re-detention for violation of conditions, do not make an alien a "detained alien." *Id.* at 308. The Supreme Court expressly rejected the notion that "[a]n 'alien released on bond' would *also* be a 'detained alien.'" *Id.* Speaking directly to the government's discretionary authority under § 1226(b) to revoke release and retain an alien: "It beggars belief that Congress would have given the Attorney General the power to detain a class of aliens who, under the dissent's reading, are *already* 'detained' because they are free on bond." *Id.* at 309; *id.* at 312 ("'Detained' does not mean 'released on bond.'"). Similarly, the Court observed that for the class of aliens subject to mandatory detention under § 1226(c) that requires immigration authorities to "take [them] into custody" whenever they are "released on parole, supervised release, or probation," it would be "implausible" to contend that "aliens 'released on parole, supervised release, or probation' are 'in custody'—and so there would be no need for the Attorney General to take them into custody again." *Id.*

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[1] Petitioner has not argued that any exception to mootness applies, such as capable of repetition but evading review.

Indeed, Petitioner's view that this case is not moot because there is a restraint on liberty not shared by the public generally would mean that *any* individual in removal proceedings would be in "custody" for purposes of habeas jurisdiction. Every individual in removal proceedings is subject to, at a minimum, the requirement to show up at the scheduled immigration court hearings "at particular times and locations" on penalty of "adverse consequences," as Petitioner frames it. But intensive supervision — which ICE has statutory discretion to impose — is not detention, and this Court should dismiss the second amended petition.

II. PETITIONER'S DUE PROCESS CHALLENGES FAIL

A. Statutory framework for detention

For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S.

228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

Moreover, Petitioner's contention that his prior detention violates due process because it was not the least restrictive mechanism for accomplishing legitimate government interests, has been rejected by the Supreme Court. *See Demore*, 538 U.S. at 528 ("[W]hen the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal."). Also without support is his claim that ICE failed to make an individualized assessment to justify his detention. *See* Kubicz Decl. ¶ 6 (noting that ICE "conducted an individualized review of Khabazha's custody status" before it "exercised its discretion" and decided to revoke release and detain him).

In this case, Petitioner's detention is governed by 8 U.S.C. § 1226(a). Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings.[2] *See* 8 U.S.C. § 1226(a)(1) (DHS "may

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[2] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for aliens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

Importantly, at any time, the government may also revoke such a bond, rearrest the alien under the original warrant, and detain the alien. 8 U.S.C. § 1226(b). Thus, in addition to authorizing DHS to arrest and detain aliens as an initial matter, Congress also granted DHS the authority to revoke the bond of a released alien and to place him in detention. The statutory language of 8 U.S.C. § 1226(b) is clear and unambiguous. Consistent with the statutory authority of 8 U.S.C. § 1226(b), the relevant regulations explain that when an alien in immigration detention has been released, "such release may be revoked at any time in the discretion of [certain immigration officers], in which event the alien may be taken into physical custody and detained." 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9). The governing statute does not impose any requirement that there be changed circumstances prior to a re-arrest.

Furthermore, the government's discretionary decision to revoke an alien's release and to detain him is insulated from judicial review. Section 1226(e) provides that:

> The Attorney General's discretionary judgment regarding the application of [§ 1226] shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

Petitioner is thus precluded from challenging ICE's discretionary decision to revoke his release and to redetain him in June 2025, save for constitutional questions or questions of law. *Demore*, 538 U.S. at 516; *cf. Jennings*, 583 U.S. at 295–96 (§ 1226(e) precludes challenges to discretionary judgment or decisions regarding detention or release, but permitting challenge to "statutory framework" as a whole); *Arevalo-Guasco v. Dubois*, 788 F. App'x 25, 27 (2d Cir. Sept. 17, 2019) (challenge to decision in petitioner's individual case regarding detention or release under § 1226 was barred by § 1226(e)); *Velasco Lopez*, 978 F.3d at 850 (§ 1226(e) does not limit habeas jurisdiction over constitutional questions or questions of law).

Notwithstanding the bar on judicial review of the exercise of discretion, if DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien's ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not provide an alien with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534); *cf. Reno*, 507 U.S. at 306 ("Congress

eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General."). Furthermore, § 1226(a) grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release an alien during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with the DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the noncitizen, who "must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38; *accord Matter of Adeniji*, 22 I. & N. Dec. at 1114. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964).[3]

If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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[3] The Second Circuit has not issued a generally applicable rule with respect to the allocation and quantum of the burden of proof at initial § 1226(a) immigration court bond hearings. Rather, the Second Circuit held only that when an alien demonstrates that his detention has become unreasonably prolonged (in that case, for 15 months) in violation of due process, he is entitled to receive a new bond hearing at which DHS bears the burden of demonstrating by clear and convincing evidence that the alien is either a danger to the community or a flight risk. *See Velasco Lopez*, 978 F.3d at 855.

B. Petitioner's redetention and release on bond and conditions do not violate substantive due process

In Count One, Petitioner argues that his re-detention violated his substantive due process rights because there was no basis for change in his custody status. SAP ¶¶ 47, 48. "In order to establish a violation of a right to substantive due process, a plaintiff must demonstrate not only government action but also that the government action was so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Charles v. Orange Cty.*, 925 F.3d 73, 85 (2d Cir. 2019) (quotation marks and citations omitted); *Guo Hua Ke v. Morton*, No. 10 Civ. 8671 (PGG), 2012 WL 4715211, at *9 (S.D.N.Y. Sept. 30, 2012) ("[T]o trigger a violation of substantive due process, official conduct must be outrageous and egregious under the circumstances; it must be truly 'brutal and offensive to human dignity." (citing *Lombardi v. Whitman*, 485 F.3d 73, 81 (2d Cir. 2007))). Petitioner has not done so.

Petitioner was re-detained by ICE following an individualized determination that he was amenable to immigration enforcement — the first re-assessment of Petitioner's custody status since 2022 and far from shocking the conscience — and as such, there is no substantive due process violation. The government plainly has a legitimate interest in detaining aliens who are in removal proceedings; Congress has expressly permitted it by statute, and the Supreme Court has recognized it. *See Velasco Lopez*, 978 F.3d at 854. The government may seek to ensure that aliens do not abscond and do not commit crimes during the pendency of their removal proceedings. *Id.* And the statute expressly permits the government to revoke such release in its discretion. 8 U.S.C. § 1226(b).

Here, even assuming that ICE's individualized determination somehow did not pass muster, as discussed below, that is precisely what the custody redetermination process before an immigration judge is for. In this case, Petitioner sought and received a timely custody

redetermination hearing within 14 days of his re-detention. At that hearing on July 7, the immigration judge ordered his release on bond and supervision. Petitioner now attempts to bootstrap his challenge to his supervision conditions to his redetention, but any initial harm from the re-detention was dissipated by Petitioner's July 8 release on bond and supervision conditions, only two weeks after he was detained on June 23. Moreover, there can be no serious argument that the bond and supervision conditions themselves violate substantive due process — they do not.[4]

C. Petitioner's redetention and release on bond and conditions do not violate procedural due process

In Count Two, Petitioner argues that his re-detention violates procedural due process, asserting that he was not accorded any pre-deprivation process in the form or "notice or an opportunity to be heard" before he was re-detained and later released on conditions. *See* SAP ¶¶ 49–51. Petitioner's challenge fails.

ICE is statutorily authorized to arrest and detain aliens under § 1226(a), and such "[d]etention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez*, 978 F.3d at 848. Section 1226(b) expressly and unambiguously permits ICE to revoke release under § 1226(a). "Even after an initial decision whether to detain or release an alien, '[t]he Attorney General at any time may revoke a bond or parole under subsection (a), rearrest the alien under the original warrant, and detain the alien.'" *Huanga v. Decker*, 599 F. Supp. 3d 131, 147 (S.D.N.Y. 2022) (quoting 8 U.S.C. § 1226(b)). There is no indication that "Congress

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[4] Petitioner's reference to the removal of GPS monitoring and intensive supervision in *Orellana Juarez v. Moniz*, __ F. Supp. 3d. __, 2025 WL 1698600, at *5 (D. Mass. 2025), is inapposite. In that matter, the petitioner had already been released pursuant to an immigration judge's order setting bond and conditions of release, and the government imposed additional conditions that deviated from the immigration judge's bond hearing determination. In this case, however, the government is abiding by the immigration judge's order.

intended to constrain the Attorney General to exercise his or her discretion by means of particular procedures." *Id.* Instead, it is the administrative scheme of post-detention bond hearings set forth in the regulations that governs. Moreover, unlike some cases where courts have held that notice and a hearing may be required prior to re-detention after a bond hearing had already been held, Petitioner had never been ordered released on bond by an immigration judge; it was a purely discretionary release in November 2022.

Nearly three years later, ICE revisited that assessment and made a specific, individualized discretionary decision under § 1226(b) to revoke Petitioner's release and re-detain him. ICE specifically went to Petitioner's residence to execute the immigration arrest warrant, and it arrested and detained him under § 1226(a). And after his re-arrest, pursuant to the statutory and regulatory scheme associated with such arrests, Petitioner sought and received a bond hearing before an immigration judge, at which he was granted release on bond and conditions. In other words, Petitioner received the process that he was due, and received the relief he sought in his initial petition, namely, release on bail.[5] *See* ECF No. 3, Prayer for Relief ¶ d. Such post-arrest process, expressly provided for in the statutory and regulatory scheme, satisfies procedural due process. Contrary to the recent decisions in *Valdez*[6] and *Chipantiza-Sisalema*,[7] release under § 1226(a) is not a one-way ratchet.

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[5] The fact that the immigration judge subsequently vacated the bond order does not change the due process analysis because ICE has not detained Petitioner pursuant to that revocation, and it instead has exercised its own discretionary authority to maintain the bond and will not re-detain Petitioner during the pendency of his removal proceedings unless he violates the conditions of his release or a final order of removal is entered.

[6] *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025).

[7] *Chipantiza-Sisalema v. Francis*, 25 Civ. 5528 (AT), 2025 WL 1927931 (S.D.N.Y. July 13, 2025).

Under the three-prong test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the process afforded to Petitioner was constitutionally adequate. While Petitioner has a private liberty interest in being free from imprisonment, the government has implemented a comprehensive scheme of post-deprivation bond hearings that adequately protects the liberty interest from the risk of erroneous deprivation. Indeed, the only articulated difference between Petitioner and *any* alien subject to detention under § 1226(a) is his prior release by CBP on account of lack of bedspace and his then-present medical condition when Petitioner was intercepted near the border in November 2022. Petitioner cannot reasonably contend that his initial six-day detention, with only the possibility of release on bail and conditions, violated due process; it did not. Now, however, Petitioner appears to advance the proposition that ICE cannot revisit CBP's November 2022 decision *at any point in the future* without first providing notice and an opportunity to be heard.

Petitioner received due process in the form of a timely post-detention bond hearing before an immigration judge. As a result of the process afforded to him, Petitioner has already been released on bond and conditions. Petitioner's present liberty interest thus is limited to what he himself admits is at most a "collateral consequence" of his redetention,[8] Mem. at 5, the required periodic check-ins and ankle monitor, originally ordered by the immigration judge and later adhered to under ICE's own discretionary authority. Relief from bond and conditions presents a far less weighty private interest than detention, and Petitioner already had adequate process when

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[8] Petitioner's citation to *Flores Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516 (D. Mass. June 11, 2025), is unavailing. Mem. at 5. In that case, ICE conceded that the petitioner's detention was in "error" because the petitioner had been granted humanitarian parole into the United States, which was still "valid and in effect" at the time of his arrest. *Id.* at *7–*8. By contrast, Petitioner here had no valid status in the United States, and ICE had already revoked his release and issued a warrant for his arrest.

the immigration judge granted release on those terms after evaluating what would be necessary to ensure Petitioner's appearance at future immigration hearings under *Matter of Guerra*. It is no surprise, then, that countless judicial decisions have held that a bond hearing is adequate process, and furthermore, that release on bond moots a habeas petition challenging immigration detention.

Finally, it bears mention that Petitioner appears not to have provided ICE with information about his medical condition in support of his requests to remove his ankle monitor. Love Decl. ¶ 13. Under the terms of the bond order, which ICE is adhering to, ICE has discretion to permit removal of the ankle monitor for medical treatment, if necessary. Because Petitioner has not presented such evidence to ICE, Petitioner is not in a position to complain about a further lack of process.

III. PETITIONER'S REDETENTION DID NOT VIOLATE THE FOURTH AMENDMENT

In Count Three, Petitioner argues that his detention violates the Fourth Amendment, asserting that because CBP previously determined that he could remain at liberty while in removal proceedings, ICE could therefore not re-detain him absent changed or exigent circumstances. SAP ¶¶ 52–54. Petitioner's challenge fails.

The Court should reject Petitioner's Fourth Amendment claim because the Fourth Amendment has no applicability in the context of an administrative arrest in the immigration context. As the Supreme Court explained in *Abel*, there is "overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens such as petitioner." *Abel v. United States*, 362 U.S. 217, 233 (1960). By contrast, "the Fourth Amendment was tailored explicitly for the criminal justice system," and "the Fourth Amendment probable cause determination is in fact only the first stage of an elaborate system, unique in jurisprudence, *designed to safeguard the rights of those accused of criminal conduct.*" *Id.* at 232, 237 (emphasis

added). The Court noted that "civil procedures . . . are inapposite and irrelevant in the wholly different context of the criminal justice system." *Id.; see also id.* at 232, 234 (suggesting, in dicta, that the procedures, substantially similar to those in place today, that govern the initial arrest of aliens and their subsequent detention are a constitutionally valid aspect of civil removal proceedings).

Petitioner's citation to case law dealing with re-arrest in the criminal context, Mem. at 13–14, is similarly inapposite. *Carlson v. Landon*, 342 U.S. 524, 546 (1952) ("[T]he rule in criminal cases is that a warrant once executed is exhausted. This guards against precipitate rearrest."). Here, Petitioner was initially arrested by CBP in November 2022 and released on his own recognizance, *see* 8 U.S.C. § 1226(a)(2)(B), and ICE may revoke such release and return him to custody, *id.* § 1226(b). Petitioner's argument (Mem. at 14) that, under the Fourth Amendment, re-arrest requires a "change in circumstances," is unsupported. *See Salvador F.-G. v. Noem*, No. 25 Civ. 0243, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025) ("Nothing in the statute [§ 1226(b)] or the regulation even hints at a change in circumstances requirement."); *cf. Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196–97 (N.D. Cal. 2017) ("[N]otwithstanding the breadth of [§ 1226(b)'s] statutory language, the [BIA] has recognized an important implicit limitation on DHS's authority. The BIA has held 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*.'" (emphasis added)).[9]

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[9] Indeed, cases such as *Saravia* pertain to whether ICE can re-detain an alien *after* an immigration judge has already ordered release on bond. Here, ICE was revisiting CBP's prior discretionary decision, not that of an immigration judge, and thus *Saravia* is wholly inapplicable.

Simply put, the Fourth Amendment does not apply to Petitioner's release on bond and conditions.

CONCLUSION

For the foregoing reasons, the Court should deny and dismiss the second amended petition for writ of habeas corpus.

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 5,344 words.