UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JUAN A. VILLATORO,

Petitioner,

v.

YOLANDA PITTMAN, *et al.*,

Respondents.

CASE NO: 2:25-CV-13472-MCA

Hon. Madeline Cox Arleo

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS AND FOR DECLARATORY RELIEF

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PRELIMINARY STATEMENT

Petitioner Juan A. Villatoro is a longtime lawful permanent resident and father of three U.S. citizen children who Immigration and Customs Enforcement ("ICE") apprehended and re-detained without warning outside his home while on his way to work. The government focuses on its authority to detain Mr. Villatoro, but it never addresses the core of his claim—that after years of successful supervision, the government abruptly changed course without any notice or process. In fact, Mr. Villatoro only learned the basis for the government's detention when the government filed its opposition brief in this matter in September. The government's position—detain now and explain later—plainly violates the Due Process Clause, as well as the Administrative Procedure Act ("APA") and the Immigration and Nationality Act ("INA"). Due process, at a bare minimum, requires the government to advance a valid reason for detention and provide an opportunity to be heard prior to that detention, neither of which were satisfied by detaining Mr. Villatoro outside his home and keeping him detained for months without explanation.

ARGUMENT

I. Regardless of the Government's Statutory Authority to Detain Mr. Villatoro, It Must Comply with Due Process and Failed to Do So Here.

The government's argument that it can detain Mr. Villatoro, a lawful permanent resident, at any time, without any explanation, violates the basic protections of Due Process. Due Process constrains governmental actors from depriving individuals of their liberty interests, , and its fundamental requirement "is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976) (internal quotation omitted); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (explaining that freedom from imprisonment by government detention "lies at the heart of the liberty that" is protected by the Due Process Clause);

see also Resp't Opp. at 8.[1] That protection extends to individuals like Mr. Villatoro, who are released on supervision. *See, e.g.*, *Zhu v. Genalo*, — F. Supp. 3d. — , 2025 WL 2452352, at *5 (S.D.N.Y. Aug. 26, 2025) (collecting cases).

The government focuses its position on its "broad discretion," under 8 U.S.C. § 1226(a) to detain Mr. Villatoro, but cites no law indicating it can exercise discretion without any notice or opportunity to be heard. In fact, the government's only legal support for its Due Process position is a "but see" cite to a Western District of New York decision that admonished the government for confusing the right to challenge revocation of an order of supervision with the right not to be detained without adequate—in fact, without *any*—process. *See* Resp't Opp. at 9 (citing *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025). As the court stated, "[t]*he right to be free from detention can never be dismissed as discretionary.*" *Ceesay*, 781 F. Supp. 3d at 166 (emphasis added). That statement rings true here—constitutional safeguards must apply regardless of the government's substantive authority to detain someone. Otherwise, "[h]ow [could] anyone feel safe from being swept up and put in jail or deported simply based on being targeted by the government?" *Id.* The court's holding and reasoning in *Ceesay* is consistent with numerous other courts who have found that detaining noncitizens who are on supervision without notice or an opportunity to be heard violates the requirement of 8 C.F.R. § 241.4(l) [2] and Due Process. *See e.g.*,

[1] A noncitizen is "accorded a generous and ascending scale of rights as he increases his identity with our society." *Osorio-Martinez v. Attorney General*, 893 F.3d 153, 168 (3d Cir. 2018) (quoting *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5 (1953)). Mr. Villatoro—a lawful permanent resident who has lived in the United States for more than two decades, raised U.S.-citizen children, maintained steady employment, and built deep community ties—is entitled to heightened due-process protections and heightened procedural safeguards. *See Sharkey v. Quarantillo*, 541 F.3d 75, 86–87 (2d Cir. 2008).

[2] *See* 8 C.F.R. § 241.4(l)(1) (Revocation of release), which provides in full: "(l) Revocation of release — (1) Violation of conditions of release. Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the

Zhu, 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025) ("ICE's failure to follow its own regulations and provide Petitioner with notice or an interview [before revoking supervision] violated Petitioner's procedural due process rights."); *Savane v. Francis*, — F. Supp. 3d. —, , 2025 WL 2774452, at *8 (S.D.N.Y. Sept. 28, 2025) (finding Due Process violation where no notice was provided prior to revoking immigration parole); *see also Lopez Benitez v. Francis*, —— F. 3d —— –, 2025 WL 2371588, at *10 (S.D.N.Y. Aug. 13, 2025) ("[B]efore the Government may exercise such discretion to detain a person, § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *Pinchi v. Noem*, —— F.Supp.3d ——, 2025 WL 2084921, at *5-*7 (N.D. Cal. July 24, 2025) (granting preliminary injunction and release where government detained noncitizen without explanation and holding post-detention bond hearing was inadequate remedy).

Here, ICE provided no notice at all to Mr. Villatoro. Respondents' answer to this habeas petition was the first explanation as to how Mr. Villatoro's single missed check-in with ICE for health-related reasons over a year ago (with follow ups to ICE via email) constituted a "failure" to report to the ICE Newark Field Office, and how that failure automatically violated his Order of Recognizance ("OREC") and deactivated him from the Compliance Reporting Terminal ("CART") program. *See* Resp't Opp. at 4. Had Mr. Villatoro's counsel been notified, Mr. Villatoro could have explained the circumstances surrounding this "failure," including that he was unable to travel that day due to medical complications, sent an email shortly thereafter attempting to check-in, and continued to check-in via email for months. *See* Exhibit G, ICE Release Documents

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conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."

from May 2, 2023; Exhibit I, Emails to Department of Homeland Security ("DHS"); Exhibit J, Copy of August 2024 missed check-in email from Mr. Villatoro to ICE; Counsel Decl. at ¶¶ 21–24, 36. The opportunity (1) to learn that the government sought to detain Mr. Villatoro based on a missed check-in a year ago and (2) to explain the circumstances of that date and subsequent efforts to comply were the bare minimum required by Due Process and the government's own regulations. ICE agents descending on Mr. Villatoro outside his home and seizing him without justification meets neither.

Analysis under the *Mathews* factors—(1) "the private interest that will be affected by the official action" (2) "the risk of an erroneous deprivation of that interest through the procedures used" and (3) the cost to the government (fiscal and administrative) in providing the additional requested procedure—requires the same common-sense conclusion. *Mathews*, 424 U.S. at 335.

Here, the private interest at stake is the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 364 (S.D.N.Y. 2019); *see also Guillermo M. R. v. Kaiser*, — F. Supp. 3d. —, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025) ("Individuals conditionally released from detention have a protected interest in their 'continued liberty.'")

In determining whether the current procedure used poses a risk of an erroneous deprivation of rights, the central inquiry is whether the agency complied with its own regulatory procedures and whether the individual received notice and a meaningful opportunity to respond before being deprived of liberty. *Gudino v. Lowe*, 785 F. Supp. 3d. 27, 45 (2025). The risk of erroneous deprivation is especially high where, as here, ICE fails to provide timely or adequate notice of the basis for custody. *Martinez*, 385 F. Supp. 3d at 364 (finding that the risk of erroneous deprivation

was "extremely high" when the petitioner was provided only a post-detention rationalization); *see also Gudino*, 785 F. Supp. 3d. at 36, 45–47 (holding that the petitioner faced "significant risk of erroneous deprivation" because ICE provided notice "that his release was revoked due to violations of [his] Order of Supervision" nearly a month after he was detained); *cf. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (finding a lower risk of error where the agency complied with regulatory notice and hearing requirements).

Respondents' argument that Mr. Villatoro's procedural due process rights were not violated because he was generally aware that failing to report could result in detention is unavailing. *See* Resp't Opp. at 4, 8–9. Again, it is not the fact that the government may detain Mr. Villatoro that is at issue; it is the manner in which the government did so. The *Gudino* court held that providing notice of revocation and reason *a month after* detention still created a significant risk of erroneous deprivation. *Gudino*, 785 F. Supp. 3d at 45–47. Here, in contrast, ICE provided no notice at all.

Moreover, even if Respondents' contention that Due Process was satisfied because Mr. Villatoro could have inferred from his OREC that he would be detained for failing to attend a check in were legally valid (it is not); it is also factually incorrect. Despite the government's assertion that the OREC "made obligations and repercussions clear: noncompliance *will* result in re-detention," Resp't Opp. at 9 (emphasis added), the OREC plainly states that "any violation of these conditions *may* result in you being take into ICE custody," *see* ECF 10-3. The only thing that is "clear" is that someone *may* be taken into custody for a violation. Mr. Villatoro also had no reason to infer from the government's actions that he had failed to comply: after he purportedly missed his August 2024 check-in, Mr. Villatoro promptly notified ICE via email and continued to check in with ICE via email for eleven months without incident. *See* Counsel Decl. at ¶ 20; Exhibit

J. Even as recently as June 3, 2025, when Mr. Villatoro appeared for an in-person Master Calendar Hearing before the Newark Immigration Court, ICE gave no indication that his supervision status was in jeopardy. *See* Counsel Decl. at ¶¶ 25–27.

Finally, courts applying the *Mathews* framework in immigration detention contexts repeatedly recognize that requiring ICE to provide timely notice and an opportunity to be heard does not significantly impair governmental interests. *Gudino*, 785 F. Supp. 3d. at 45–47; *see also Martinez*, 385 F. Supp. 3d at 364 (holding that the government was not harmed by requiring it to provide an individual with the opportunity to solicit counsel, search his papers, and contest detention). This is reflected in the DHS's own regulations, which provide that when release is revoked for an alleged violation of supervision conditions, the noncitizen "will be notified of the reasons for revocation." 8 C.F.R. § 241.4(l)(1). In addition, the *Ceesay* court emphasized that 8 C.F.R. § 241.4 "suggests that noncitizens are entitled to an informal interview when their release is revoked *regardless of the reason*." *Sering Ceesay*, 781 F. Supp. 3d. at 164 (emphasis added). Due process requires government agencies to comply with their own regulations. *See Marshall v. Lansing*, 839 F.2d 933, 943 (3d Cir. 1988).

Mr. Villatoro received no such notice. Instead, after Mr. Villatoro missed a single check-in in August 2024 due to serious medical reasons, he promptly notified ICE via email and continued to report electronically for nearly a year without receiving any warning, adverse action, or indication that his supervision was in jeopardy; rather, ICE re-detained him an entire year later without notice or providing a reason for his re-detention. *See* Counsel Decl. at ¶¶ 20, 29–30; *see also* Exhibit I, J.

ICE's failure to follow its own procedures imposed far greater harm on Mr. Villatoro than any burden the government may have faced by complying with them. Mr. Villatoro was detained

without explanation or notice to him or his counsel. As in *Martinez*, allowing Mr. Villatoro the opportunity to consult with his counsel,[3] search his papers, and contest his detention would not have impeded the government's interests. *Martinez*, 385 F. Supp. 3d at 364; *see* Counsel Decl. at ¶¶ 29–30. Violation of his Due Process rights in this manner requires intervention from this Court and his immediate release.

II. Mr. Villatoro Has Now Exhausted Any Purported Administrative Remedies.

To the extent prudential exhaustion ever required Mr. Villatoro to pursue a custody redetermination hearing before filing this petition challenging his unconstitutional and unlawful detention, there is no longer any such concern: he requested a bond hearing and was denied bond on October 15, 2025. At that hearing, the immigration judge ("IJ") only had jurisdiction to award bond, and could not consider the lawfulness of Mr. Villatoro's detention or his constitutional or statutory arguments. A bond hearing was futile as a remedy to the substantial constitutional and statutory violations raised by his detention. Regardless, the government's position regarding prudential exhaustion is now moot, and there are no remaining exhaustion issues.

III. ICE's Re-Detention of Mr. Villatoro is an Arbitrary and Capricious Final Agency Action That Sharply Deviates from its Prior Action Without a Reasoned Explanation or Consideration of Serious Reliance Interests.

An agency action is final and ripe for judicial review under 5 U.S.C. § 704 when the action "mark[s] the 'consummation' of the agency's decision-making process" and the action is "one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Commonwealth of Massachusetts v. Nat'l Insts. of Health*, 770 F. Supp. 3d 277, 303 (D. Mass. 2025); *see also Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). While this Court may not second-

[3] Mr. Villatoro is represented in his immigration case, and his attorney is listed as counsel of record in Mr. Villatoro's immigration proceedings.

guess custody determinations made in the discretion of DHS, it must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A). An "[u]nexplained inconsistency" in agency policy renders the action arbitrary and capricious, and such actions cannot carry the force of law. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

Custody determinations constitute final agency actions for purposes of the APA, and as Respondents assert, "custody decisions are within the sole, nonreviewable discretion of the Secretary of Homeland Security." Resp't Opp. at 11 (citing *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453 (D.N.J. 2004)). Relatedly, Congress explicitly preserved procedural rights for lawful permanent residents seeking habeas relief in 8 U.S.C. § 1252. These include the right to judicial review of inspection determinations for individuals who have not been admitted or paroled, to a hearing in accordance with 8 U.S.C. § 1229a, and to judicial review of any resulting final order of removal pursuant to 8 U.S.C. § 1252(a)(1). *See* 8 U.S.C. § 1252(e)(2)(C), (e)(4)(B). Mr. Villatoro exhausted any remaining avenues to have DHS's custody determination reviewed when an IJ in Adelanto, California denied bond on October 15, 2025. *See Jie Fang v. Director, U.S. Immigration & Customs Enf't*, 935 F.3d 172, 185 (3d Cir. 2019) (finding no prerequisite to finality for jurisdiction under the APA).

Under the change-in-position doctrine, "[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change," "'display awareness that it is changing position,'" and consider "'serious reliance interests.'" *Encino Motorcars*, 579 U.S. at 221–22. Here, however, DHS has offered "barely an explanation" for changing course and arbitrarily re-detaining Mr. Villatoro after ICE released him from custody in 2023 on health-related grounds. *See id.* at 222; *see also* Counsel Decl. at ¶ 20. Mr. Villatoro accrued serious reliance

interests in the two years since his release from ICE custody. He was maintaining employment, supporting his sons both financially and emotionally, and mentoring others at his local church. *See* Counsel Decl. at ¶ 9. ICE re-detained Mr. Villatoro without notice as he left home for work, allowing him no opportunity to arrange for his many familial and personal obligations in his absence. *See* Counsel Decl. at ¶ 29.

DHS alleges it re-detained Mr. Villatoro because he violated reporting requirements under the CART program nearly a year preceding. While DHS was not required "to 'consider all policy alternatives in reaching [its] decision'" to re-detain Mr. Villatoro, it was "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 33, (2020). DHS has failed to adequately explain its rationale for changing course in re-detaining Mr. Villatoro two years following his release, with no changes in circumstances except for an alleged CART reporting lapse, factually disputed, and a heightened immigration enforcement environment. This renders the agency action an "arbitrary and capricious [ ] violation of the APA." *Id.*

IV. ICE's Arbitrary and Unjustified Detention of Mr. Villatoro Violates the Immigration and Nationality Act.

ICE's abrupt and ongoing re-detention of Mr. Villatoro, without explanation or reason, prevents him from meaningfully litigating his various forms of relief against removal, an outcome the Supreme Court has recognized as having profound and severe consequences in one's life. *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) ("Deportation may result in the loss 'of all that makes life worth living.'") (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)).

Under the INA, a noncitizen in removal proceedings "shall have the privilege of being represented, at no expense to the Government, by counsel of the [noncitizen's] choosing who is

authorized to practice in such proceedings." 8 U.S.C. § 1229a(b)(4)(A). Additionally, noncitizens "shall have a reasonable opportunity to examine the evidence against [them], to present evidence on [their] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4)(A). Noncitizens have the substantial burden of presenting evidence for applications for relief from removal.[4] 8 U.S.C. § 1229a(c)(4). *See, e.g.*, *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (immigration judges may require corroborating evidence even where testimony is credible).

Judicial review is warranted because ICE's arbitrary and unnecessary re-detention of Mr. Villatoro directly undermines statutory rights under the INA: access to counsel and a reasonable opportunity to prepare and present evidence in support of relief from removal. Mr. Villatoro does *not* have a final order of removal; rather, he has compelling claims for relief, including cancellation of removal, asylum, withholding, and protection under the Convention Against Torture, as well as a pending immediate relative petition (Form I-130) filed by his U.S. citizen son. 8 U.S.C. §§ 1229b(a), 1151(b)(2)(A)(i); Exhibits D, E, F. While Respondents argue that Mr. Villatoro's claims for relief do not preclude detention, arbitrary and unnecessary detention that renders a noncitizen unable to exercise the rights guaranteed by the INA is unlawful. ICE's re-detention of Mr. Villatoro has made it virtually impossible for Mr. Villatoro to adequately communicate with counsel and to prepare and present evidence.

Respondents' reliance on USCIS website instructions on the adjudication process of I-130 petitions is misplaced. *See* Resp't Opp. at 9. Because Mr. Villatoro is in removal proceedings, jurisdiction over his adjustment of status application lies exclusively with the IJ once USCIS

[4] Noncitizens must compile documentary evidence of residence, employment, family ties, and good moral character; obtain corroborating records from multiple government agencies; and often present live testimony from witnesses located in their community.

approves his I-130. 8 C.F.R. 1245.2(a)(1)(i); s*ee* Counsel Decl. at ¶¶ 25–28. At the Master Calendar Hearing on June 3, 2025, in Newark, New Jersey, the IJ set the individual hearing for April 5, 2028. *Id.* Mr. Villatoro would have had three years to prepare, allowing sufficient time for his I-130—the strongest form of relief—to be processed by USCIS and transferred to the immigration court for re-adjustment of status. Due to his detention, however, his individual hearing has been accelerated to occur within months, before the I-130 can be adjudicated, thereby depriving him of his strongest form of relief against removal. ICE's arbitrary actions have unlawfully deprived Mr. Villatoro of the statutory protections Congress embedded in the INA to ensure a fair removal process. The government's re-detention of a noncitizen with active claims for relief—without meaningful access to counsel or adequate time to prepare for trial—violates 8 U.S.C. § 1229a(b)(4) and offends the procedural fairness the statute guarantees.

V. Respondents Offer No Response to Mr. Villatoro's Substantive Due Process Claim and His Entitlement to Release Pending Resolution of His Habeas Petition.

Respondents' answer to this habeas petition fails to address two central claims in Mr. Villatoro's habeas petition: (1) that substantive due process forbids his arbitrary and punitive civil detention, and (2) that he is entitled to release pending resolution of his habeas petition under *Lucas v. Hadden*. *See* ECF 4 at 12–17, 19–21. Those now unopposed claims remain valid and support release. The Court should find Mr. Villatoro's detention violates the Fifth Amendment's substantive due process protections and, at minimum, order his immediate release pending final adjudication of this habeas petition.

CONCLUSION

Mr. Villatoro's ongoing detention violates statutory, constitutional, and administrative protections. This Court should grant the writ and order his release without further delay.

Respectfully submitted,

By: _____ And /s/ Lori A. Nessel
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Dated: October 21, 2025

cc: All Counsel of Record (via ECF)