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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

LUIS DAVID GARCIA-AYALA,

Petitioner,

vs.

TONYA ANDREWS ET AL.,

Respondents.

Case No. 2:25-cv-02070-DJC-JDP

**PETITIONER'S REPLY TO
GOVERNMENT'S OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

Petitioner, Luis Garcia-Ayala, respectfully submits this reply in support of his motion for a temporary restraining order (TRO). Respondents' opposition is based on the claim that the Petitioner has failed to demonstrate a likelihood of success on the merits. That claim has no reasonable support. Many cases – not disputed or distinguished by the Government – establish convincingly that Mr. Garcia-Ayala is likely to succeed on the merits of his claims. Furthermore, Mr. Garcia-Ayala should be granted immediate relief. The Respondents suggest that if any relief is granted in this case, Mr. Garcia-Ayala should remain in detention until a hearing before an

1 immigration judge can be arranged. Any such delayed relief would be insufficient as it
2 circumvents the constitutional issue at hand, fails to preserve the status quo ante, and does not
3 account for the very powerful liberty interests that are being irreparably injured. Mr. Garcia-
4 Ayala should be released immediately.

5 ARGUMENT

6
7 1. The Government argues that Mr. Garcia-Ayala is currently detained under
8 §1225(b)(1),¹ that such detention is mandatory, and that thus “Garcia-Ayala cannot succeed on
9 the merits” of his case. Dkt. No. 11, Resp’t Opp to Mot. for TRO at 4 (Opp.). That argument has
10 no merit. In the first place, as the Supreme Court and the Board of Immigration Appeals have
11 recognized, Mr. Garcia-Ayala is not subject to mandatory detention under the Immigration and
12 Nationality Act (INA); an individual subject to detention under §1225(b)(1) can be released
13 under §1182(d)(5)(A). *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018); *Matter of Q. Li*, 29 I&N
14 Dec. 66, 69 (BIA 2025). Thus, there is no basis for the Government’s argument that “[b]ecause
15 detention is required, Garcia-Ayala cannot succeed on the merits of his TRO.”

16 Nor do the cases cited by the Government—*Lopez-Contreras v. Oddo*, 2025 U.S. Dist.
17 LEXIS 144127, 2025 WL 2104428 (W.D. Pa. July 28, 2025) and *Abdul-Samed v. Warden*, 2025
18 U.S. Dist. LEXIS 142973, 2025 WL 2099343 (E.D. Cal. July 25, 2025)—support the
19 Government’s argument that Mr. Garcia-Ayala “cannot succeed on the merits.” In *Lopez-*
20 *Contreras*, the court in Pennsylvania held that the petitioner was not entitled to a bond hearing
21 because “[c]ompliance with the applicable INA statutes and DHS regulations satisfies procedural
22 due process.” 2025 U.S. Dist. LEXIS 144127, *12. The court failed to apply the *Mathews*
23 analysis to determine what is required as a matter of due process under the Constitution. *See*
24 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). That is inconsistent with Ninth Circuit case law.
25 *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 993-995 (9th Cir. 2017) (applying *Mathews*);
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28 ¹ All code references are, unless otherwise noted, to 8 U.S.C.
PETITIONER’S REPLY TO GOVERNMENT’S OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER - 2

1 *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011) (same). The Government offers no reason
2 why this Court should change course, *see Doe v. Becerra*, 2025 U.S. Dist. LEXIS 37929, *14,
3 2025 WL 691664 (E.D. Cal. Mar. 3, 2025) (applying the *Mathews* test); *Galindo Arzate v.*
4 *Andrews et al.*, Case No. 1:25-cv-00942-KES-SKO (E.D. Cal. Aug. 4, 2025) (attached as Exhibit
5 1) (same), and follow the court in Pennsylvania when doing so runs contrary to Ninth Circuit
6 case law.

7
8 In *Abdul-Samed v. Warden*, the court noted that detention under 1225(b)(1) is mandatory
9 (except that individuals can be released on parole under §1182(d)(5)(A)) but further held that a
10 bond hearing was required under the constitution as a matter of procedural due process. 2025
11 U.S. Dist. LEXIS 142973, *17-18. As in *Abdul-Samed*, there is no basis for the Government to
12 claim that because the statute requires mandatory detention, there is no likelihood of success on
13 the constitutional argument. Indeed, in *Abdul-Samed* the petitioner was successful on his
14 procedural due process argument. 2025 U.S. Dist. LEXIS 142973, *23.

15 2. The Government argues that because Garcia-Ayala has not been in custody for a
16 prolonged period, “no such constitutional questions entitle him to release.” Opp. 5. But the only
17 case cited in support of that claim is the Pennsylvania case of *Lopez-Contreras*, which, as
18 explained above, is inconsistent with Ninth Circuit case law and with the approach taken by this
19 Court in *Doe v. Becerra* and *Galindo Arzate*. The Government apparently intends to suggest that
20 the *Mathews* test—which has been used to determine whether prolonged detention violates due
21 process—applies *only* in the context of prolonged detention. But the Government offers no
22 support for that proposition, and indeed there is none. To the contrary, there are many cases
23 holding that where a noncitizen has been released from immigration custody and has not
24 committed any criminal offense, the Constitution *requires* a pre-deprivation hearing before the
25 government can lawfully take the person into detention. *See* cases cited at Petitioner’s Motion
26 for TRO, Dkt. No. 4, at 12. The Government has not responded to these cases and therefore has
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1 not undermined Mr. Garcia-Ayala's claim that he has a strong likelihood of success on his claim
2 for release from detention.

3 3. The Government recognizes that this Court has "taken a different path" than the court
4 in Pennsylvania and applies the *Mathews* test to determine whether a pre-deprivation hearing is
5 required. *See Doe*, 2025 U.S. Dist. LEXIS 37929, at *8. However, in discussing the *Mathews*
6 test, the Government misapplies the analysis.

7 First, the Government claims that Mr. Garcia-Ayala has a "lowered liberty interest." Opp.
8 5. The Government cites no authority for that proposition and simply disagrees with this Court's
9 previously expressed view. *See Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 (petitioner who was,
10 like Mr. Garcia-Ayala, released from custody after a positive credible fear determination, has "a
11 powerful interest [...] in his continued liberty"); *Galindo Arzate*, at *6-7.

12 With respect to weighing Mr. Garcia-Ayala's liberty interest, the Government claims that
13 the interest should be discounted because he was not released on "humanitarian" parole (or, the
14 Government says, at least the effect of the release is "unclear"). Opp. 5-6, citing *Ortega-Gonzalez*,
15 501 F.3d 1111, 1115-16 (9th Cir. 2007). Here, the Government makes an obvious mistake
16 regarding what statute Mr. Garcia-Ayala is detained under. In *Ortega* the noncitizens were
17 detained under §1226(a); they obtained release on conditional parole as authorized under
18 §1226(a)(2)(B). A person subject to detention under §1226(a) can be released under
19 §1226(a)(2)(B) on conditional parole, which is distinct from release on parole under
20 §1182(d)(5)(A). *Id.* However, *Ortega* stated clearly that a person like Mr. Garcia-Ayala who is
21 subject to detention under §1225(b)(1) is released "for urgent humanitarian reasons or significant
22 public benefit" under 8 U.S.C. §1182(d)(5)(A). *Id.* at 1116. As the Board of Immigration Appeals
23 stated in *Matter of Q. Li*, for a person subject to detention under §1225(b)(1), "[t]he *only*
24 exception permitting the release [of the noncitizen] is the [humanitarian] parole authority
25 provided by 8 U.S.C. §1182(d)(5)(A)." 29 I&N Dec. 66, 69 (BIA 2025) (emphasis added). Thus,
26 there is no basis to discount Mr. Garcia-Ayala's liberty interest on the basis of the claim that he
27

1 was not released under “humanitarian” parole. *See generally Foucha v. Louisiana*, 504 U.S. 71,
2 80 (1992) (“freedom from bodily restraint has always been at the core of the liberty protected by
3 the Due Process Clause”); *Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (the interest in
4 being free from imprisonment “is the most significant liberty interest there is”).

5
6 4. In spite of its claim that the basis for Mr. Garcia’s release from detention is “unclear,”
7 Opp. 6, the Government does recognize that the sole and exclusive manner for releasing a person
8 held in detention under §1225(b)(1) is by humanitarian parole under §1182(d)(5)(A). Opp. 6,
9 citing *Jennings*, 583 U.S. at 302; *Matter of Q. Li*, 29 I&N Dec. 66, 69 (BIA 2025). Thus, it is
10 clear that Mr. Garcia was released under the parole provisions of §1182(d)(5)(A). And the
11 Government has no response to Mr. Garcia-Ayala’s argument that DHS’s termination of parole
12 was unlawful. *See* Motion for TRO, Dkt. No. 4, pp. 8-9. For that reason alone, Mr. Garcia-Ayala
13 is likely to succeed on the merits of his claims.²

14 5. Moreover, the Government has offered no argument to undermine case law holding
15 that where a person has been at liberty and has been living peaceably and lawfully in the United
16 States, *before* that person is taken into custody he is entitled to a pre-deprivation hearing. *See*,
17 *e.g. Harman Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *4 2025 WL 1918679 (E.D. Cal.
18 7/11/2025); *Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *11, 2025 WL 1853763 (N.D. Cal.
19 7/4/2025); *Garcia v. Bondi*, 2025 U.S. Dist. LEXIS 113570, *10, 2025 WL 1676855 (N.D. Cal.
20 6/14/2025). Thus, as things currently stand, Mr. Garcia-Ayala is likely to succeed on the merits
21 of his argument that he was taken into detention unlawfully because he was not provided with a
22 pre-deprivation hearing. *See also Doe*, 2025 U.S. Dist. LEXIS 37929, *6 (“the result does not
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26 ² The Government’s reliance on *Navarrete-Leiva v. Current or Acting U.S. AG*, 2024 U.S. Dist.
27 LEXIS 226045 (E.D. Cal. 2024), is misguided. The petitioner in that case was apprehended at
28 the border and was not released from detention. That case had nothing to do with termination
of parole or what is required by procedural due process for a person who has been living
lawfully in the community for a number of years.

1 appear to be doubtful [...]; due process clearly requires that Petitioner be given a hearing before
2 his bond is revoked”).

3
4 6. Furthermore, the Government has no cogent response to Petitioner’s argument that
5 under 28 U.S.C. §2243, where a person is held in detention in violation of the Constitution or
6 laws of the United States, the habeas court has the authority to and should order the person to be
7 released immediately. Instead, relying on *Fraihat v. USCIS*, 16 F.4th 613, 642 (9th Cir. 2021);
8 *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065-66 (9th Cir. 2008); and *Mansoor v. Figueroa*, 2018
9 WL 840253, *4 (S.D. Cal. 2018), the Government argues that release should be delayed pending
10 a final administrative decision by the Immigration Judge and any appeal to the Board of
11 Immigration Appeals.³

12 In *Fraihat*, the Ninth Circuit considered an injunction issued during COVID designed to
13 reduce the prison population and compel the release of “significant numbers” of detainees. In
14 that context, the Ninth Circuit stated that “release of detainees is a remedy of last resort.” 14 F.4th
15 at 642. The Ninth Circuit said nothing to undermine Mr. Garcia-Ayala’s claim that, as a person
16 taken into detention unlawfully, §2234 authorizes immediate release and he should be granted
17 such release.

18 In *Prieto-Romero*, the petitioner had not encountered ICE previously; he was taken into
19 custody under §1226(a), given a bond hearing before an immigration judge, and the immigration
20 judge established a bond amount. Under those circumstances, the court did not reach the merits
21 of the petitioner’s due process argument but rejected the argument because he could not show
22 prejudice. 534 F.3d at 1066 (“[w]e need not resolve the issue [regarding the appropriate burden
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24
25 ³ Mr. Garcia-Ayala has a very real concern that even if there is a prompt hearing before an
26 immigration judge, and even if the immigration judge orders release, the Government can
27 unilaterally decide to keep him in detention during an appeal to the BIA. 8 C.F.R.
28 §1003.19(i)(2) (DHS can obtain automatic stay of the IJ’s decision by filing a notice of intent
to appeal to the BIA). An appeal to the BIA would likely last for six to nine months, and
perhaps even a year or longer.

1 of proving eligibility for bond] because Prieto-Romero cannot demonstrate prejudice”). Because
2 the petitioner had not been previously released by DHS, the question of whether DHS acted
3 lawfully in terminating release or revoking parole did not arise. Similarly, the question of whether
4 the petitioner was entitled as a matter of due process to a pre-deprivation hearing did not arise.
5 In short, *Prieto-Romero* says nothing at all to undermine the decisions in *Harman Singh*, *Pinchi*,
6 and *Garcia* that, where DHS has previously made a determination to release a person, that person
7 is entitled as a matter of due process to a pre-deprivation hearing.
8

9 In *Mansoor v. Figueroa*, 2018 U.S. Dist. LEXIS 23695, *7 (S.D. Cal. 2018), the petitioner
10 was subject to a final order of removal and held in detention under §1231(a)(6). According to
11 Ninth Circuit case law at the time, it was the Government’s duty to automatically schedule a
12 hearing before an IJ every six months. *Id.* at *7, citing *Rodriguez v. Robbins*, 804 F.3d 1060, at
13 1085, 1089 (*Rodriguez III*). The fact of an IJ bond hearing every six months was “[p]aramount
14 to the discussion at bar.” *Id.* Nothing in the *Mansoor* decision undermines Mr. Garcia-Ayala’s
15 argument that under the circumstances of his case, he should not have to wait for an IJ decision,
16 but should be released immediately.

17 Mr. Garcia-Ayala does not gainsay the authority of the court to schedule a bond hearing
18 before an immigration court; in appropriate cases, that is a “workable remedy within the district
19 court’s broad equitable powers.” *Mansoor* at *8. But that does not establish that such a remedy
20 is appropriate in every case. The Government claims that “the only appropriate relief is a bond
21 or other administrative hearing,” but none of the cases cited by the Government support that
22 extreme position, and the Government fails to respond to the argument that under the
23 circumstances of this case Mr. Garcia-Ayala should be released immediately, as has been done
24 in other similar cases. *See, e.g., Harman Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *19,
25 24 2025 WL 1918679 (E.D. Cal. July 11, 2025) (finding that new DHS enforcement priorities
26 are inadequate to justify detention, emphasizing that a “special justification” must outweigh the
27 “individual’s constitutionally protected interest,” ordering petitioner’s immediate release, and
28

1 prohibiting re-detention without a pre-deprivation hearing (emphasis in original)); *Pinchi v.*
2 *Noem*, 2025 U.S. Dist. LEXIS 127539, *10-11, 2025 WL 1853763 (N.D. Cal. July 4, 2025)
3 (ordering petitioner-plaintiff's immediate release to return her to "the last uncontested status
4 which preceded the pending controversy"); *Valdez v. Joyce*, 2025 U.S. Dist. LEXIS 117131, *5,
5 10, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (finding that an individual whose release is
6 sought to be revoked is entitled to due process including notice, a hearing, and the right to testify,
7 and ordering Petitioner's immediate release); *Galindo Arzate* (Exhibit 1) (ordering petitioner's
8 immediate release and enjoining re-detention without first providing a bond hearing where the
9 government bears the burden of proving by clear and convincing evidence petitioner is a flight
10 risk or poses a danger to the community).

11
12 7. The Government's argument that Mr. Garcia-Ayala is not likely to suffer irreparable
13 harm is based on its argument—which is not well founded—that he is not likely to succeed on
14 the merits of his claims. This Court should find that without a restraining order, Mr. Garcia-Ayala
15 is suffering and will continue to suffer irreparable injury. *See* Dkt No. 4-2, Exhs. F-J; *Harman*
16 *Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *22-23, quoting *Warsoldier v. Woodford*, 418
17 F.3d 989, 1001-02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is
18 involved, most courts hold that no further showing of irreparable injury is necessary.").

19 8. Similarly, the Government's argument that the balance of equities and the public
20 interest do not favor Mr. Garcia-Ayala is not well founded. Although there is a public interest in
21 enforcing immigration laws, *Abdul-Samed*, 2025 U.S. Dist. LEXIS 142973, *22, 2025 WL
22 2099343, *8 (E.D. Cal. 2025), the public also "has a strong interest in upholding procedural
23 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the
24 public of immigration detention are staggering." *Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566,
25 *8, 2025 WL 1676854 (N.D. Cal. 2021). In this case, the balance of the equities and the public
26 interest favor an order of immediate release.

CONCLUSION

For the foregoing reasons, Petitioner requests this Court to issue an order directing the Respondents to release him from detention immediately, and that he may not be re-detained unless DHS proves, at a hearing either before this Court or before an immigration judge, by clear and convincing evidence, that he is either a danger to the community or a flight risk.⁴

Dated this 6th day of August 2025.

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⁴ For the reasons explained in the Motion for TRO, Mr. Garcia-Ayala continues to request an order that he not be removed to a third country. The Government has not raised any objection to an order that Mr. Garcia-Ayala not be removed to a third country.