BRENDON WOODS (CA SBN #189910)
Public Defender

RAHA JORJANI (CA SBN #240941)
Managing Immigration Attorney
LYDIA SINKUS (CA SBN #321559)
Immigration Attorney
KELSEY MORALES (CA SBN #312362), *Designation of Counsel for Service*
Immigration Attorney
Office of the Alameda County Public Defender
312 Clay Street, 2nd Floor
Oakland, CA 94607
Telephone: 510 268-7429
Facsimile: 510 268-7462
Email: kelsey.morales@acgov.org

Pro Bono Attorneys for Petitioner

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JUAN CUEVAS GUZMAN,

Petitioner,

v.

TONYA ANDREWS, in official capacity, Facility Administrator of Golden State Annex; ORESTES CRUZ, in official capacity, Field Office Director of ICE's San Francsico Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE, KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; PAM BONDI, in official capacity, Attorney General of the United States,

Respondents.

Case No. 1:25-cv-01015-KES-SKO

REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Immigration Habeas Case

Date: September 5, 2025
Time: 11:00AM
Court: Hon. Kirk E. Sherriff

Petitioner submits this reply to Respondents' oppositions to his motion for a temporary restraining order. *See* ECF No. 8, Respondents' Opposition to Motion for Temporary Order (hereinafter "Opp."); ECF No. 10, Respondents' Supplemental Opposition to TRO Motion (hereinafter "Supp. Opp.").

REPLY TO RESPONDENT'S FACTUAL ARGUMENTS

In their opposition, Respondents state that Mr. Cuevas Guzman's removal proceedings were "dismissed" after he filed an application for a U visa. Opp. at 2. That is incorrect. Rather, an Immigration Judge ("IJ") administratively closed Mr. Cuevas Guzman's proceedings to await the adjudication of his visa with U.S. Citizenship and Immigration Services ("USCIS"). *See* Declaration of Lydia Sinkus (hereinafter "Sinkus Decl.") at ¶ 5; Exhibit ("Exh.") H, Order Granting Administrative Closure.[1] "Administrative closure is a procedure by which an IJ or the BIA temporarily removes a case from the active calendar or docket as a matter of administrative convenience and docket management." *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 889 (9th Cir. 2018). "Administrative closure does not result in a final order, and the Department may always move to recalendar the case or seek immediate review of the decision." *Id.* at 981.

REPLY TO RESPONDENT'S LEGAL ARGUMENTS

I. Respondents' Procedural Arguments Against Granting Injunctive Relief Fail.

Respondents contend that the Court should deny Mr. Cuevas Guzman's request for injunctive relief here on two procedural grounds, because of alleged delay in seeking injunctive relief and because it is an "inappropriate request for an ultimate determination on the merits." Opp. at 4-5. Both arguments fail.

[1] Petitioner resubmits Exhibits B, H, and K of the Sinkus Declaration, as it appears they are illegible in the original filing. *See* Declaration of Kelsey Morales.

First, Respondents' argument that Mr. Cuevas Guzman cannot seek emergency relief because he did not challenge the government's violations of his constitutional and statutory rights sooner is rich. The government perpetrated the actions at issue in this litigation; it ought to be prepared to take "immediate action" to justify its conduct. Opp. at 1. The government also offers no authority for the proposition that if unconstitutional conduct is not challenged immediately, it must be permitted to proceed unabated while litigation lumbers along. Moreover, a portion of the government's violative conduct occurred merely a few weeks before the filing of the instant petition, on July 22, 2025, when he was denied a bond hearing by the IJ. *See* Exhibit L, IJ Order. The fact that Mr. Cuevas Guzman sought to remedy his unlawful detention by bringing his claim before the agency first should not be held against him.

Second, many courts, including this Court, have properly rejected the government's argument that the requested injunctive relief—immediate release and an order enjoining redetention absent notice and an opportunity to be heard before a neutral adjudicator as to the necessity of detention—is an inappropriate request for an ultimate determination on the merits. *See e.g.*, *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025) (recognizing that "awarding temporary relief of the kind requested here does not constitute a final judgment on the merits in this case or foreclose further litigation of the issues raised in petitioner's habeas petition"); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *7 n.7 (E.D. Cal. Aug. 14, 2025) (distinguishing *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992)).

Indeed, granting injunctive relief and ordering Mr. Cuevas Guzman's release does not, as the government alleges, *see* Opp. at 5, deprive the Court of complete briefing on the merits of the petition; rather, his release will "return him to the status quo ante— 'the last uncontested status

which preceded the pending controversy.'" *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2411010, at *8 (E.D. Cal. Aug. 20, 2025). *See also Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *5 (E.D. Cal. July 11, 2025) ("In similar detention cases, other courts have considered the last uncontested status to be the moment prior to an unlawful detention.").

II. Mr. Cuevas Guzman Is Likely to Succeed, or, at a Minimum, Presents Serious Questions, on His Constitutional and Statutory Arguments that His Detention Without Process is Illegal.

A. This Court and many others have determined that redetention of noncitizens like Mr. Cuevas Guzman without notice and process before a neutral adjudicator violates due process.

Respondents claim that, in seeking a pre-deprivation hearing, Petitioner asks this "Court to invent a new procedural rule." *See* Opp. at 6. But Respondents ignore the multitude of cases, including from this Court, holding that detention of individuals at liberty—whether through a grant of bond (like Mr. Cuevas Guzman) or a grant of parole—without notice and an opportunity to be heard by a neutral adjudicator as to the necessity of their detention violates due process. *See e.g. Arzate*, 2025 WL 2411010, at *7-*8 (E.D. Cal. Aug. 20, 2025) ("[A] *pre*-deprivation hearing was required to satisfy due process") (emphasis in original) (citing cases).

Further, these courts have soundly rejected Respondents' argument that *Morrisey* and its progeny are inapplicable to noncitizens like Mr. Cuevas Guzman. *Id.* That is because "just like a parolee, noncitizens are entitled to the protections of the Due Process Clause." *Arzate*, 2025 WL 2411010, at *5. *See also Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). Indeed, "[g]iven the civil context, [a noncitizen's] liberty interest is arguably

greater than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

Respondents further argue that this "new rule" would afford noncitizens "greater procedural protection than criminal defendants" and that "the petitioner cannot demand greater procedural protections than criminal defendants." Opp. at 6. This is plainly incorrect. As a civil detainee, Mr. Cuevas Guzman is entitled to "more considerate treatment" and "greater liberty protections" than those who are criminally detained. *Jones v. Blanas*, 393 F.3d 918, 931-32 (9th Cir. 2004). As such, this Court and others have held that "decisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of noncitizens in immigration custody." *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) (emphasis in original). Indeed, as stated by District Court Judge Rita Lin in *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *6 (N.D. Cal. July 17, 2025), "[i]f a parolee serving out a sentence for a violent crime, and subject to highly restrictive conditions of release, has a sufficiently strong liberty interests to be entitled to a hearing prior to re-incarceration, then a non-citizen freed from civil detention on bond likely has a similar entitlement."

Respondents argue that Mr. Cuevas Guzman received sufficient process because after he was arrested he was "afforded multiple opportunities to appear before an immigration judge" and therefore that "ample opportunity to address his detention." Opp. at 7. Notably, Respondents concede that *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976), governs the due process analysis, and waive arguments that the first and third *Mathews* factors favor Mr. Cuevas Guzman. *Id.* As to the *Mathews* second factor (risk of erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards), Respondents'

sole argument that Mr. Cuevas Guzman had opportunities to address his detention before the Immigration Court ignores the fact here that the IJ erroneously determined that she lack statutory jurisdiction to review his detention, *infra* Section I.B.2, thereby depriving Mr. Cuevas Guzman of even post-deprivation custody review. Allowing a neutral arbiter to consider and review the necessity of detention here on the merits "would significantly reduce the risk of erroneous deprivation." *Arzate*, 2025 WL 2411010, at *6 *citing Guillermo M. R.*, 2025 WL 1983677, at *4.

B. Alternatively, Mr. Cuevas Guzman is likely to succeed on his statutory claim that his detention without a bond hearing violates the Immigration and Nationality Act.

Respondents raise three arguments as to why Mr. Cuevas Guzman is ineligible for a bond hearing under 8 U.S.C. § 1226(a). Each argument fails.

1. Mr. Cuevas Guzman is not an applicant for admission.

Respondents argue that because Mr. Cuevas Guzmen entered the United States without admission he is a an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Supp. Opp. at 2. This argument ignores the plain language of the statute and the facts in this case.

There is no dispute that Mr. Cuevas Guzman was arrested by a warrant in 2011. *See* Exhibit C. The warrant, contained in Form I-200, is dated December 5, 2011. *Id.* It is clearly labeled: "Warrant for Arrest of Alien." *Id.* The warrant states that detention is "authorized by section 236 of the Immigration and Nationality Act." *Id.* That same day, DHS issued a Notice of Custody Determination stating that pursuant to 8 U.S.C. § 1226 and 8 C.F.R. § 1226, Mr. Cuevas Guzman should be released on a $10,000 bond pending a final determination by an IJ in his case. Exhibit E. Petitioner sought IJ review of this custody determination permitted under the statute and on December 20, 2011, the an IJ provided him a $6,000 bond. Exhibit F. More recently, on

December 6, 2024, the government issued another warrant for Mr. Cuevas Guzman. *See* Exhibit I. This warrant similarly states that detention is authorized by INA § 236. *Id.* Therefore, the record here clearly establishes that the government has consistently treated Mr. Cuevas Guzman as subject to § 1226.

Respondents allege for the first time in their supplemental briefing that the hearing Mr. Cuevas Guzman received in 2011 was "at the discretion of the Executive Branch" because "[i]n 2011, like today, Cuevas was subject to § 1225(b)(2)(A)." Supp. Opp. at 3. But there is "nothing in the record to reflect that hypothesis." *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) (stating that "the Court cannot credit [the government's] speculation" that § 1225 was applicable to the noncitizen where the none of the documents authorizing the noncitizen's arrest and release "suggest anything to that effect"). What is clear from the record is that (1) Mr. Cuevas Guzman *was* designated for treatment under § 1226(a) in 2011 and 2024; (2) in 2011, the government did not designate him as an "applicant for admission" in issuing the Notice to Appear, and (3) the government detained him under § 1226 in 2011 and 2025. *See* Exhibits B, C, E, and I. "These facts, taken together, can support only one conclusion—that [Mr. Cuevas Guzman] was not mandatorily detained as a noncitizen 'seeking admission' under § 1225(b), but rather as someone 'already in the country,' pursuant to Respondents' discretionary authority under § 1226(a)." *Lopez Benitez*, 2025 WL 2371588, at *5 (internal citations omitted).

Further, the plain text of the INA makes clear that a person inside the United States, arrested by a warrant, like Mr. Cuevas Guzman, is detained under § 1226(a). The opening sentence of § 1226(a) states: "(a) Arrest, detention, and release – *On a warrant* issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien

is to be removed from the United States." (emphasis added). By contrast with § 1226(a), the word "warrant "does not appear anywhere in § 1225. Congress's specific reference to a "warrant" in § 1226(a) indicates that a person arrested pursuant to a warrant is detained subject to § 1226(a), not § 1225. Likewise, Congress's decision not to omit the word "warrant" entirely from § 1225 indicates that individuals subject to § 1225 are amenable to warrantless arrests. This clear statutory language shows that Mr. Cuevas Guzman—who was arrested by a warrant—is detained under § 1226(a) and thus entitled to a bond hearing.

Other courts to consider this issue have agreed that arrest by warrant subjects a person to INA § 236(a) detention—and thus makes them eligible for a bond hearing. *See e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) ("Interpreting Section 1225(b)(2) to mandate Gomes' detention in these circumstances would contravene Congress's intent that Section 1226(a)'s discretionary detention framework apply to all noncitizens arrested on a warrant except those subject to Section 1226(c)'s carve-out."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025) ("A plain reading of this exception implies that the default discretionary bond procedures in Section 1226(a) apply to a noncitizen who, like Rodriguez, is present without being admitted or paroled but *has not been* implicated in any crimes as set forth in Section 1226(c)").

Jennings v. Rodriguez, 583 U.S. 281 (2018), supports Petitioner's reading of the statutory text. *See Rodriguez*, 779 F. Supp. 3d at 1258 ("[T]he Supreme Court's opinion in *Jennings* also lends some support to Rodriguez's proposal for harmonizing Sections 1225 and 1226."). As described by the *Rodriguez* court:

> In *Jennings*, the Court framed its discussion of Section 1225 as part of a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a noncitizen seeking to enter the country is admissible." 583 U.S. at 287. Then, when discussing Section 1226, *Jennings*

> describes it as governing "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." *Id.* at 288. The Court then summarizes the distinction as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)."

Rodriguez, 779 F. Supp. 3d at1258 (emphasis in original). As noted in *Jennings*, the statutory framework is understood as § 1225(b)(2) applying to those near the border who are about to cross it or have recently crossed it. It does not apply to individuals like Mr. Cuevas Guzman.

Additionally, Respondents fail to respond and therefore waive any challenge to Mr. Cuevas Guzman's arguments that the government's reading of § 1225 as requiring mandatory detention for any type of "applicant for admission":

- Renders § 1226(c) meaningless, as § 1226(c) already specifically addresses the detention of those who entered without inspection. For example, it refers to those inadmissible under § 1182(a)(6)(A)—present without being admitted—and charged with, arrested for, or convicted of certain enumerated crimes. *See* § 1226(c)(1)(E)(i)-(ii). In other words, being present without admission is *not* enough to require mandatory detention under § 1226(c)(1)(e); one must also be implicated in a certain crime. *Lopez Benitez v. Francis*, 2025 WL 2371588, at *11 ("There would be little need for such a carveout requiring detention of certain criminal noncitizens if § 1226(a) were intended to authorize the categorical detention of any noncitizen unlawfully present inside the country."). The government's reading would render this subsection surplusage—an absurd result that this Court must avoid. *See Corley v. United States*, 556 U.S. 303, 314 (2009) (stating that "one of the most basic interpretive canons ... [a] statute should be construed so that effect

is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.").

- Ignores the plain text of § 1225(b)(2), which applies to only those "seeking admission." TRO Motion at 21. "Respondents' selective reading of the statute—which ignores its 'seeking admission' language—violates the rule against surplusage and negates the plain meaning of the text." *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025).

2. Mr. Cuevas Guzman has not had a bond hearing.

The Court should reject Respondents' argument that Mr. Cuevas Guzman has already "been given all of the procedural protections of a § 1226(a) bond hearing." Supp. Opp. at 3. Respondents do not dispute that, at the sole hearing Mr. Cuevas Guzman received, the IJ determined that she did not have jurisdiction to hold a custody hearing. *See* Exhibits L and V. In so holding, the IJ necessarily did not consider whether Mr. Cuevas Guzman was a present danger or unmitigable flight risk under *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Yet, this inquiry is at the heart of the procedural protections provided by INA § 236(a).

Due process requires more than just a nominal hearing; it requires due consideration of the arguments presented. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *14 (D. Ariz. Aug. 11, 2025) (determining that a noncitizen "was not afforded any hearing, or procedural safeguards, that balanced her protected liberty interest with the government's interest in immigration enforcement" where, like here, the IJ determined they lacked jurisdiction to provide a bond hearing).

//

//

3. Waiting for the Board to issue a decision is neither required nor prudent.

Respondents' final argument—that any challenge to the jurisdictional denial of a § 1226(a) bond hearing should be raised before the BIA, *see* Supp. Opp. at 4—also fails. As an initial matter, the government speaks out of both sides of its mouth when, in one filing, it argues that Mr. Cuevas Guzman did not seek this Court's intervention fast enough, *see* Opp. at 7-8, and in the other, it suggests Mr. Cuevas Guzman must wait even longer in detention for the BIA to weigh in, *see* Supp. Opp. at 4. Furthermore, to the extent that Respondents suggest that the BIA, not this Court, has jurisdiction over his statutory claim, that argument is plainly wrong. *See Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (recognizing that habeas review over constitutional claims or claims of law survives 8 U.S.C. § 1226(e)'s jurisdiction stripping provision).

Finally, if Respondents' argument is construed as an exhaustion argument, exhaustion is prudential and can be waived if, *inter alia*, "administrative remedies are inadequate or not efficacious," or "irreparable injury will result." *Hernandez*, 872 F.3d at 988. This is the case here. As another court has recently recognized, the question Mr. Cuevas Guzman's second claim presents—whether his detention is governed by § 1225(b) or § 1226(a)—is a "question of statutory interpretation [that] belongs to the independent judgment of the courts." *Rodriguez*, 779 F. Supp. 3d at 1251. It would not be efficacious to wait for the BIA to decide the issue when its decision would not be entitled to any deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Moreover, as set forth *infra* Section III, Mr. Guzman Cuevas has established irreparable injury—both the kind present in any case in which "an individual has been detained for months without a bond hearing, and where several additional months may pass before the

BIA renders a decision on a pending appeal" and "uncontested evidence of unique harm to him"—warranting waiver of exhaustion. *Rodriguez*, 779 F. Supp. 3d at 1253-55.

III. Contrary to Respondents' Assertion, the Remaining TRO Factors – Irreparable Harm, and the Balance of Equities and Public Interest—Favor Petitioner's Immediate Release.

The Court should reject Respondents' argument that Mr. Cuevas Guzman waived a showing of irreparable harm based on his detention "by failing to challenge his detention for seven months." Opp. at 7. Respondents do not provide any support for the proposition that a noncitizen can waive such a fundamental interest in their liberty; indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Fifth Amendment's Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Further, this is not a "manufacture[d] exigency" based on Petitioner's "own tactical choices." Opp. at 8. The only "tactical" change that occurred was to that of decades of prior agency practice applying discretionary detention under §1226(a) to noncitizens like Mr. Cuevas Guzman. *Rodriguez*, 779 F. Supp. 3d at 1259. Further, Respondents ignore the fact that Mr. Cuevas Guzman sought release through the agency (which they maintain was appropriate, *supra* Section II.B.3) and timely came to the Court within weeks of the IJ's erroneous determination that she lacked jurisdiction to hold a bond hearing.

Moreover, Respondents fail to recognize that Mr. Cuevas Guzman continues to suffer irreparable injury every day he remains detain in violation of his constitutional and statutory rights. *See* Exh. A; *Hernandez*, 872 F.3d at 995 ("In the absence of an injunction, harms such as these will continue to occur needlessly on a daily basis."). He continues to suffer from his unlawful detention, and such unlawful detention continues to separate him from children, including his adult son who suffers from a serious mental health condition and his teenage

daughter, both of whom do not receive stable shelter from their mother. Exh. A. Lastly, the government's violation of Mr. Cuevas Guzman's constitutional rights suffices on its own as irreparable injury, as "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005).

The Court should also reject Respondents' arguments that the balance of equities and public interest do not favor granting injunctive relief. "The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025). Mr. Cuevas Guzman's criminal history does not alter this analysis, especially here where Mr. Cuevas Guzman was previously granted an IJ bond, the government does not dispute that his criminal history was available to it for years, and that these outdated facts do not capture the current circumstances of significant positive changes in Petitioner's life. Exh. A. Indeed, the government offers no evidence to support this argument. Rather, the evidence shows that the public – his family and members of the community – seeks Mr. Cuevas Guzman's release from custody.

CONCLUSION

For all the above reasons, and for the reasons stated in Petitioner's Motion for a Temporary Restraining Order, this Court should find that Mr. Cuevas Guzman warrants a temporary restraining order and a preliminary injunction ordering that Respondents release him from custody and refrain from re-arresting him until he is afforded a hearing that complies with due process on whether his re-detention is justified, including that the government bear the burden of proof by clear and convincing evidence; or, in the alternative ordering that

Respondents release him from custody if he is not provided a custody redetermination hearing in front of a neutral arbiter within seven days.

Dated: September 2, 2025

/s/ Kelsey Morales
Kelsey Morales
Attorney for Petitioner