


**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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Gurpreet Singh SANDHU (A# )	:
	:
<i>Petitioner,</i>	:
	:
v.	:
	:
John TSOUKARIS, in his official capacity as Newark, NJ	:
Field Office Director, Immigration and Customs	:
Enforcement, Enforcement and Removal Operations;	:
	:
Warden, Delaney Hall Detention Facility, and	:
	:
Kristi NOEM, in her official capacity	:
as United States Secretary of Homeland Security;	:
	:
<i>Respondents.</i>	:
	X

Case No. 2:25-cv-14607

REPLY TO ANSWER

Petitioner, Gurpreet Singh Sandhu (“Petitioner” or “Mr. Sandhu”), by his undersigned counsel, respectfully submits this Reply to Respondents’ Answer to the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241, Doc. # 5 (“Answer”), in accordance with the portion of the Court’s Order to Answer, Doc. #3. providing that “within fourteen (14) days of receipt of the answer, Petitioner may file a reply to answer.” Doc. #3 at 2.

The Answer centers primarily on an oft-rejected and meritless legal theory regarding the purported ineligibility for release on bond of those who (allegedly) entered the United States without inspection. It does so despite the fact that this legal theory was not relied upon by DHS when they detained Petitioner or by the Immigration Judge (“IJ”) who declined to release Petitioner on bond. Moreover, the theory is urged here based on a purportedly undisputed fact

(Petitioner’s alleged entry without inspection) that Petitioner would indeed have disputed in his petition if it had been the basis for his detention.

When Respondents finally turn to the specific issues raised by this petition in this case, they misconstrue Petitioner’s statutory argument, which contends not that the term “Attorney General” can never mean the Secretary of Homeland Security in the immigration context, but only that the meaning of the term should not change in an unnatural way between different phases of the same bond process. With respect to Petitioner’s constitutional argument, Respondents unreasonably seek to apply precedents regarding an initial bond hearing to the situation of someone who was already granted bond, without even acknowledging the distinction. These unconvincing arguments should be rejected, and the petition should be granted.

I. Respondents’ Reliance on 8 U.S.C. § 1225(b) Goes Beyond the Decision Below, Relies on Disputed Facts, Has Been Repeatedly Rejected and Lacks Merit

Respondents devote the bulk of their Answer to arguing that Petitioner is properly detained without a bond hearing under 8 U.S.C. § 1225(b) because of his purportedly undisputed entry without inspection. Doc. # 5 at 1-4, 7-16. There are several serious problems with this argument.

A. The Suggestion that Petitioner is Subject to 8 U.S.C. § 1225(b) Was Not Relied Upon by the Immigration Judge or by DHS in Detaining Petitioner

First, as Respondents acknowledge in their Answer, the argument relying on 8 U.S.C. § 1225(b) was rejected by the IJ in Petitioner’s 2025 bond proceedings. That is,

At a bond hearing on July 14, 2025, ICE argued that Petitioner is an “applicant for admission” and, therefore, subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Ex. L (Bond Memorandum) at 1. The IJ disagreed and held that Petitioner is detained under 8 U.S.C. § 1226(a). Id. at 1–2.

Doc. #5 at 6. DHS’s initial actions in re-detaining Petitioner also were not based on this argument.

The Warrant of Arrest provided with Respondents’ Answer, Doc. #5-10, and the Notice of Custody

Determination provided with the petition and again with the Answer, Docs. # 1-8, 5-11, clearly state that Petitioner was being detained under INA § 236, that is, 8 U.S.C. § 1226(a).

The general rule, however, is that “an administrative order cannot be upheld unless the grounds upon which the agency acted are those upon which its action can be sustained.” *SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943); accord *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). Moreover, as the Third Circuit has explained, “The corollary to [the *Chenery*] rule is that the basis of an administrative action “must be set forth with such clarity as to be understandable.”” *Wang v. Att’y Gen.*, 423 F.3d 260, 270 (3d Cir. 2005) (quoting *SEC v. Chenery Corp.*, 332 U.S. at 241).

Neither DHS in detaining Petitioner, nor the IJ in declining to release Petitioner on bond, acted on the basis that Petitioner was an applicant for admission subject to mandatory detention under § 1225(b)(2). The Warrant of Arrest and the Notice of Custody Determination state that Petitioner was being detained under INA § 236, that is, 8 U.S.C. § 1226(a), and the IJ so found. The only inkling of Respondents’ current theory below was a *post hoc* litigation position raised by DHS counsel at the bond hearing after Petitioner had already been re-detained, a position which was rejected by the IJ. Thus, it violates *Chenery* for Respondents to rely on this argument here.

B. Respondents’ Theory Regarding 8 U.S.C. § 1225(b) Relies on Purportedly Uncontested Facts Regarding Petitioner’s Entry that Petitioner Would Contest if Necessary But Had No Occasion to Contest in the Petition

Even if Respondents may argue that *Chenery* does not apply with full force in the habeas context, it is at least inappropriate for Respondents to rely on the purportedly undisputed fact of Respondent’s entry without inspection, *see* Doc. #5 at 4, 14, when Petitioner had little reason to dispute that fact in his habeas petition given that it had not been relied upon to detain him.

Contrary to Respondents’ suggestion in their Answer, Petitioner does not “claim[] to have unlawfully entered the United States without inspection.” Doc. #5 at 4. In the portion of the petition cited by Respondents as support for this proposition, Petitioner simply alleges: “Mr. Sandhu was

born in December of 1984 in India. On information and belief, he has resided in the United States since approximately June of 2000, that is, since he was under the age of 16.” Petition, Doc. #1 at 3 ¶ 11. This allegation, which did not address the manner of entry given its apparent lack of relevance to the basis for Petitioner’s detention, is not inconsistent with our position, which could be addressed at an evidentiary hearing if necessary (though we do not believe it should be necessary), that Petitioner’s manner of entry into the United States would qualify as an admission under *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). That is, although Petitioner lacked a visa to enter the United States, we believe, and would seek to prove if necessary (although it should not be necessary here) that Petitioner was mistakenly allowed to enter the United States by an immigration officer who was aware of his existence as a juvenile passenger in a car. We have not claimed, as Respondents suggest, that Petitioner entered without inspection

The only other source Respondents cite for Petitioner’s purported entry without inspection is the allegation in the 2012 Notice to Appear. *See* Doc. #5 at 4 (citing Ex. B (2012 NTA), at 1). The Notice to Appear does indeed allege this. *See* Doc. #5-2 at 2. Indeed, we note in the interest of full disclosure that the “A” annotation on the Notice to Appear next to this allegation may well indicate that years ago, when this allegation was not relied upon him to detain him without bond, Petitioner’s then-counsel admitted the allegation in Petitioner’s removal proceedings. But any such admission would not be sufficient basis for Respondents to rely in these current proceedings on the suggestion that Petitioner could not have disputed the allegation of entry without inspection in the current context now that it is supposedly highly relevant to his bond eligibility.

If necessary, we could address the factual details of Petitioner’s entry into the United States from Canada in an amended petition or an evidentiary hearing, but we respectfully submit that this

should not be necessary. Even if one ignores the *Chenery* problem with Respondents' position, and even if one ignores the underlying factual dispute, Respondents' legal theory is untenable.

C. Respondents' Argument Regarding 8 U.S.C. § 1225(b) Lacks Merit and Has Been Repeatedly Rejected by Judges in This District and Elsewhere

Respondents' legal position that 8 U.S.C. § 1225(b) applies to mandate detention without bond of those who long ago entered the United States without inspection lacks merit and has been rejected by multiple judges in this District. *See Patel v. Almodovar*, Civil Action No. 25-15345, 2025 WL 3012323 (D.N.J. Oct. 28, 2025) (Wigenton, U.S.D.J.), at *2-*4; *De Fatima Lomeu v. Soto*, No. 25cv16589 (EP) (D.N.J. Oct. 23, 2025) (Padin, U.S.D.J.), at *-4-*8; *Bethancourt Soto v. Soto*, No. 25-cv-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025) (O'Hearn, U.S.D.J.), at *2-*7; *Macancela Buestan v. Chu*, Civil Action No. 25-16034 (MEF), 2025 WL 2972252 (D.N.J. Oct. 21, 2025) (Fabiarz, U.S.D.J.), at *1; *Castillo v. Lyons*, No. 25-cv-16219 (MEF), 2025 WL 2940990 (D.N.J. Oct. 10, 2025) (Fabiarz, U.S.D.J.), at *1; *Zumba v. Bondi*, Civ. No. 25-cv-14626 (KSH), 2025 WL 2753496 (Hayden, U.S.D.J.), at *5-*9. As these decisions explain, the detention of those who entered without inspection years ago and are not currently arriving in the United States is governed not by 8 U.S.C. § 1225(b), but rather by 8 U.S.C. § 1226(a), which allows for release on bond.

Indeed, Respondents' position regarding the purported applicability of 8 U.S.C. § 1225(b) to those who entered without inspection long ago has been rejected by numerous district courts across the United States. *See, e.g., Martinez Lopez v. Larose*, Case No.: 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D.Cal. Oct. 30, 2025), at *4-*6; *Puga v. Ass't Field Office Dir., Krome North Svc. Processing Ctr.*, CASE NO. 25-24535-CIV-ALTONAGA, 2025 WL 2938369 (S.D. Fla Oct. 15, 2025), at *3-*5; *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025), at *5-*8; *Chavez v. Kaiser*, Case No. 25-cv-06984-LB, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025),

at *4-*5; *Buenrostro-Mendez v. Bondi*, Civil Action No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025), at *3; *Hyppolite v. Noem*, 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025), at *7-*12; *Belsai D.S. v. Bondi*, No. 25-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025), at *5-*7; *Quispe v. Crawford*, Civil Action No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025), at *4-*6; *Lepe v. Andrews*, ___ F.Supp.3d ___, , No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025), at *3-*7; *Roman v. Noem*, No. 25-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025), at *1-*3, *6; *Giron Reyes v. Lyons*, ___ F. Supp. 3d ___, No. 25-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025) at *1-*2, *4-*5; *Chogllo Chafra v. Scott*, 2:25-cv-00437-SDN, 2:25-cv-00438-SDN, 2:25-00439-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025), at *5-*9; *Beltran Barrera v. Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025), at *2-*5; *Hasan v. Crawford*, No. 25-1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025), at *5-*9; *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025), at *4; *Vasquez v. Feeley*, Case No. 2:25-cv-01542-RFB-EJV, 2025 WL 2676082 (D. Nev. Sept. 17, 2025), at *11-*16; *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025), at *2-*3; *Lopez Santos v. Noem*, No. 25-1193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025), at *3-*5; *Sampaio v. Hyde*, No. 1:25-cv-11981-JFK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025), at *8 n.11; *Pizarro Reyes v. Raycraft*, Case No. 25-cv-12546, 2025 WL 2609245 (E.D. Mich. Sept. 9, 2025), at *4-*8; *Jimenez v. FCI Berlin, Warden*, No. 25-326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025), at *3-*10; *Lopez Benitez v. Francis*, ___ F. Supp. 3d ___, 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025), at *3-*9; *Martinez v. Hyde*, ___ F. Supp. 3d ___, Civil Action No. 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025), at *2-*8.

We respectfully refer the Court to the many persuasive authorities cited above, and will not further lengthen this reply by beating the proverbial dead horse. We note that one of the two district court decisions relied upon by Respondents for support of their position in the text of the Answer is wholly inapposite, concerning an applicant for admission who had been paroled into the United States. Respondents themselves acknowledge that *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025), pertained to a “noncitizen paroled in August 2021”, Doc. #5 at 8. That leaves only *Pena v. Hyde*, Civil Action No. 25-11983-NMG, 2025 WL 2108913 (D. Mass July 28, 2025), plus footnote citations to *Chavez v. Noem*, No. 25-2325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025), and *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), see Doc. #5 at 12-13 n.9. *Chavez* was decided on a motion for TRO and so presumably with less time for deliberation, see *Chavez*, 2025 WL 2730228 at *1. *Vargas Lopez* began its analysis by noting that “The Court’s consideration of this Petition has been hampered by the mistakes made in it” and further stated that “the mistakes made in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief.” *Vargas Lopez*, 2025 WL 2780351 at *1-*2. While the Court’s consideration in *Pena* may not have been similarly hampered by a petitioner’s mistakes or shortness of time as in *Vargas Lopez* and *Chavez*, *Pena*’s relatively summary analysis in July has been overtaken by the veritable tide of persuasive authority since.

Respondents further rely on the BIA’s decision in *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). However, the Supreme Court has made clear that Article III Courts such as this one need not defer to an administrative agency’s interpretation of a purportedly ambiguous statute. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). *Matter of Hurtado*, as well, should be

given little persuasive weight in light of the consensus of many District Court opinions from many different districts that have rejected its conclusion.

Thus, even if Respondents' legal argument regarding 8 U.S.C. § 1225(b) were properly applicable to this case – which, for the procedural and factual reasons discussed above, it is not – it should be rejected yet again here.

II. Respondents Misconstrue Petitioner's Statutory Argument Regarding the Revocation by DHS of a Bond Granted by an Immigration Judge

Respondents assert in their Answer that “Petitioner contends that his detention is unlawful because DHS detained him, while § 1226 vests detention and re-detention authority in the “Attorney General.” Pet. ¶¶ 29–34.” Doc. #5 at 16. This misconstrues Petitioner's statutory argument.

Our point is not that the term “Attorney General” as used in Title 8 of the U.S. Code, also known in large part as the Immigration and Nationality Act (“INA”), cannot sometimes include DHS. The Petition acknowledges that it can. Doc. #1 at 31, ¶ 8 (“the “Attorney General” as used in the INA can sometimes refer to the Secretary of Homeland Security”). The point, rather, is that in the context of the statutory language at issue here, the idea that DHS can revoke a bond initially granted by an IJ, delegate of the Attorney General, involves a highly unnatural reading of the statute that shifts the meaning of the term “Attorney General” between the steps of taking and revoking the same action.

As set out in the petition, Dkt. #1 at ¶¶ 28-29, section 236(a) of the INA, 8 U.S.C. § 1226(a), provides in relevant part that

pending a decision on whether the alien is to be removed from the United States. . . . the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole;

8 U.S.C. § 1226(a). The immediately following subsection 236(b) of the INA, 8 U.S.C. § 1226(b), provides: “The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b).”

On Respondents’ reading of the statute, in circumstances such as those at issue here, the meaning of “Attorney General” abruptly changes between these two related subsections, in regard to the same detained individual. It was an Immigration Judge, a delegate of the actual Attorney General, who previously granted bond to Petitioner under 8 U.S.C. § 1226(a) in 2012 (long after the creation of the Department of Homeland Security in 2003). In that setting, “Attorney General” meant “Attorney General”. Yet, according to Respondents, when the very next section refers to the authority granted to the Attorney General to revoke that bond, it is DHS’s choice whether it wishes to override the decision of the Attorney General or his or her delegate.

This is a highly awkward reading of the statutory language, particularly in the context of a system where it is the delegate of the Attorney General who reviews the decision of DHS to grant or deny bond in the first instance, as occurred here. To see why, it may help to look by analogy to contexts in which the authority of a state court is split into multiple components, so that a statutory reference to that court may subsequently refer to different entities in different contexts, as “Attorney General” does here in the INA. We can look to an example like the Texas Court of Criminal Appeals, which hears appeals in criminal matters while the Texas Supreme Court remains the highest court in other matters, *see, e.g., In re Texas House of Representatives*, 702 S.W.3d 330, 338-339 (Sup. Ct. of Texas 2024), or an example like the Appellate Court of Maryland (formerly

the Court of Special Appeals), a single intermediate appellate court in Maryland, *see Mahai v. State*, 474 Md. 648, 663 (2021), apparently created to exercise a general appellate jurisdiction to relieve the Supreme Court of Maryland (formerly the Court of Appeals of Maryland) of some of its workload but still subordinate to that Supreme Court.

Assume that a statute or constitutional provision existed which provided that the Supreme Court of Texas or of Maryland could grant release on bail, and that an adjacent provision stated that the Supreme Court could revoke bail. Assume further that after the creation of the Texas Court of Criminal Appeals or the Appellate Court of Maryland, the general rule was that such references to the Supreme Court could also refer to the Court of Criminal Appeals or the Appellate Court—just as here, the general rule is that a reference to the Attorney General in the INA can include the Secretary of Homeland Security. We would still be surprised to learn that the Texas Court of Criminal Appeals thought itself to have the authority to revoke bail granted by the Texas Supreme Court, and we would be especially surprised to learn that the Appellate Court of Maryland thought itself to have the authority to revoke bail granted by the Maryland Supreme Court.

The situation here is analogous. DHS may properly exercise some of the authority previously exercised by the Attorney General, but it does not stand superior to the Attorney General under the statute. If anything, DHS is subordinate to the Attorney General, since the statute continues to provide that “determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” 8 U.S.C. § 1103(a)(1). It is thus a highly unnatural reading of the statute to suggest that when the Attorney General, or one of the Attorney General’s delegates such as an Immigration Judge, *see* 8 U.S.C. § 1101(b)(4), 8 C.F.R. § 1003.10(a), grants release on bond, DHS may simply revoke that release (because DHS too can be included in statutory

references to the Attorney General) without seeking any prior approval from the Attorney General or his delegates.

This Court should reject that unnatural reading of the statute. Just as a newly created parallel or lower court should not be able to reverse actions taken by another court even if statutory history has led to both courts being given some powers under the name of the former unified court, DHS should not be able to reverse actions taken by delegates of the Attorney General simply because it has succeeded to some of the Attorney General's former powers. Thus, it was inappropriate for DHS to purport to revoke Petitioner's release on bond without any prior involvement by an IJ or other delegate of the Attorney General.

The possibility that DHS may have at one point returned the posted bond to Petitioner or his bondsperson as indicated in the Answer, *see* Doc. #5 at 5 and Doc. # 5-8, does not fundamentally change the result here. If, as we contend, DHS cannot unilaterally revoke a release on bond granted by the Attorney General or his or her delegate, then DHS cannot do this even if it accompanies its action by also deciding to cancel the bond and return the money provided to it. At most, it may be that if the Court were, as we have requested, to "Order that Respondents release Petitioner from custody pursuant to the \$6,000 bond granted to him on October 4, 2012", Doc. #1 at 12 ¶ 45(a), the \$6,000 bond would need to again be posted with DHS prior to such release.

III. Respondents' Opposition to Petitioner's Constitutional Argument Relies Upon Inapposite Case Law Addressing Very Different Circumstances

Respondents assert that Petitioner's due-process claim lacks merit because he has received a bond hearing under 8 U.S.C. § 1226(a), and "it is well settled that the government does not bear the burden of proof at § 1226(a) bond hearings." Doc. #5 at 18. In support, they rely upon *Borbot v. Warden Hudson Cnty. Corr. Facil.*, 906 F.3d 274, 279–80 (3d Cir. 2018), which they describe as "holding that Due Process does not require the government to bear the burden of proof in bond

hearings under 8 U.S.C. § 1226(a)”. Doc. #5 at 18. They acknowledge that under a separate line of cases, “when mandatory detention under 8 U.S.C. § 1226(c), has become unreasonably prolonged, Due Process demands a bond hearing at which the government bears the burden of proof.” Doc. #5 at 18 n.12 (citing cases). They do not acknowledge, however, that there are constitutionally important differences between this case and *Borbot*.

The petitioner in *Borbot* had never been granted release on bond. “Shortly after his arrest, Borbot applied for release on bond. An IJ denied his application after a hearing, finding that Borbot failed to meet his “burden in establishing [that] he does not pose a risk of danger to property.” *Borbot*, 906 F.3d at 276. That determination was upheld by the BIA on appeal, *see id.* “Borbot later requested a redetermination hearing, which the IJ denied on April 13, 2017, finding that there had been no material change in circumstances.” *Id.* At no time did an IJ determine that Borbot merited release on bond.

Here, in contrast, an IJ did determine, in 2012, that Petitioner merited release on bond, as Respondents acknowledge in their Answer. Doc. # 5 at 5; *see* Doc. #5-3 (order granting release on \$6,000 bond), Doc. # 1-4 (same). This puts Petitioner in a very different position than Mr. Borbot.

Respondents are effectively asserting that consistent with due process and fundamental fairness, DHS can, at any time, re-detain a noncitizen who has been granted release on bond by an immigration judge, and by their own fiat place the burden on the noncitizen to once again show that he merits release. They propose no limit on the number of times that DHS could do this, and acknowledge no constraint requiring DHS to demonstrate any change in circumstances or seek authorization from anyone. This is constitutionally untenable, as well as practically absurd.

So far as appears from Respondents’ argument, if Petitioner had prevailed at his 2025 bond hearing before IJ Rastegar, DHS could simply have released Petitioner on that bond and then

turned around and rearrested him, revoked the bond, and forced him to prove his entitlement to release yet again. This cannot be the law.

Yet Respondents provide no compelling reason why the 2012 decision to release Petitioner on bond should be provided any less deference than a hypothetical 2025 decision to do so. They acknowledge that the 2016 order of administrative closure of Petitioner's removal proceedings was not a final judgment in those proceedings, as noted by the IJ. *See* Doc. #5 at 5; Doc. # 5-7. Petitioner thus remains in the same removal proceedings as he was in in 2012, and due process requires that DHS meet some burden to explain why he is not entitled to release on bond now, if he was entitled to it then. They have never done so. Yet they have re-detained him anyway.

Under the basic due process analysis of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), a shifting of the burden of proof to DHS and a requirement of a hearing before, rather than after, re-detention, are both merited here. “[T]he private interest that will be affected by the official action,” *Mathews*, 424 U.S. at 335, is very substantial: it is Petitioner's ability to remain at liberty, with his U.S. citizen wife and child, rather than in a detention facility. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadyvdas v. Davis*, 533 U.S. 678, 690 (2001).

“[T]he risk of an erroneous deprivation of such interest through the procedures used,” *Mathews*, 424 U.S. at 335, is also quite significant, since by definition, the procedures used have resulted in a different outcome than in the previous round of bond proceedings. Similarly, “the probable value . . . of additional . . . procedural safeguards”, *id.*, in the form of requiring DHS to make a showing of flight risk or danger to the community before re-detaining someone who has been granted bond, is evident. Reversing the burden of proof and the timing in this way, relative

to how they stood when bond was originally determined, gives proper respect to the original bond determination by the IJ in 2012, requiring DHS to establish why it should be changed.

In contrast, “the Government’s interest . . . and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail”, *Mathews*, 424 U.S. at 335, are not compelling here. The Government can just as well be held to its own burden of proof in a case involving a noncitizen statutorily eligible for bond who has previously been granted it, as it can be held to its burden of proof in the case of a long-term detainee statutorily ineligible for bond who has never been granted it before, *see German Santos v. Warden Pike County Correctional Fac.*, 965 F.3d 203, 213 (3d Cir. 2020).

Thus, this Court should order Petitioner’s release unless and until Petitioner is provided with a pre-detention hearing at which DHS bears the burden to show the necessity for his re-detention by clear and convincing evidence. *See Qazi v. Albarran*, No. 2:25-cv-02791-TLN-SCR, 2025 WL 2769837 (E.D.Cal. Sept. 29, 2025), at *2-*4.

Respectfully submitted,

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