

1 Hillary Walsh
2 NEW FRONTIER IMMIGRATION LAW
3 550 W. Portland St.
4 Phoenix, AZ 85003
5 hillary@newfrontier.us
6 623.742.5400 o
7 888.210.7044 f

8
9 *Attorney for Petitioner-Plaintiff*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
289
290
291
292
293
294
295
296
297
298
299
299
300
301
302
303
304
305
306
307
308
309
309
310
311
312
313
314
315
316
317
318
319
319
320
321
322
323
324
325
326
327
328
329
329
330
331
332
333
334
335
336
337
338
339
339
340
341
342
343
344
345
346
347
348
349
349
350
351
352
353
354
355
356
357
358
359
359
360
361
362
363
364
365
366
367
368
369
369
370
371
372
373
374
375
376
377
378
379
379
380
381
382
383
384
385
386
387
388
389
389
390
391
392
393
394
395
396
397
398
399
399
400
401
402
403
404
405
406
407
408
409
409
410
411
412
413
414
415
416
417
418
419
419
420
421
422
423
424
425
426
427
428
429
429
430
431
432
433
434
435
436
437
438
439
439
440
441
442
443
444
445
446
447
448
449
449
450
451
452
453
454
455
456
457
458
459
459
460
461
462
463
464
465
466
467
468
469
469
470
471
472
473
474
475
476
477
478
479
479
480
481
482
483
484
485
486
487
488
489
489
490
491
492
493
494
495
496
497
498
499
499
500
501
502
503
504
505
506
507
508
509
509
510
511
512
513
514
515
516
517
518
519
519
520
521
522
523
524
525
526
527
528
529
529
530
531
532
533
534
535
536
537
538
539
539
540
541
542
543
544
545
546
547
548
549
549
550
551
552
553
554
555
556
557
558
559
559
560
561
562
563
564
565
566
567
568
569
569
570
571
572
573
574
575
576
577
578
579
579
580
581
582
583
584
585
586
587
588
589
589
590
591
592
593
594
595
596
597
598
599
599
600
601
602
603
604
605
606
607
608
609
609
610
611
612
613
614
615
616
617
618
619
619
620
621
622
623
624
625
626
627
628
629
629
630
631
632
633
634
635
636
637
638
639
639
640
641
642
643
644
645
646
647
648
649
649
650
651
652
653
654
655
656
657
658
659
659
660
661
662
663
664
665
666
667
668
669
669
670
671
672
673
674
675
676
677
678
679
679
680
681
682
683
684
685
686
687
688
689
689
690
691
692
693
694
695
696
697
698
699
699
700
701
702
703
704
705
706
707
708
709
709
710
711
712
713
714
715
716
717
718
719
719
720
721
722
723
724
725
726
727
728
729
729
730
731
732
733
734
735
736
737
738
739
739
740
741
742
743
744
745
746
747
748
749
749
750
751
752
753
754
755
756
757
758
759
759
760
761
762
763
764
765
766
767
768
769
769
770
771
772
773
774
775
776
777
778
779
779
780
781
782
783
784
785
786
787
788
789
789
790
791
792
793
794
795
796
797
798
799
799
800
801
802
803
804
805
806
807
808
809
809
810
811
812
813
814
815
816
817
818
819
819
820
821
822
823
824
825
826
827
828
829
829
830
831
832
833
834
835
836
837
838
839
839
840
841
842
843
844
845
846
847
848
849
849
850
851
852
853
854
855
856
857
858
859
859
860
861
862
863
864
865
866
867
868
869
869
870
871
872
873
874
875
876
877
878
879
879
880
881
882
883
884
885
886
887
888
889
889
890
891
892
893
894
895
896
897
898
899
899
900
901
902
903
904
905
906
907
908
909
909
910
911
912
913
914
915
916
917
918
919
919
920
921
922
923
924
925
926
927
928
929
929
930
931
932
933
934
935
936
937
938
939
939
940
941
942
943
944
945
946
947
948
949
949
950
951
952
953
954
955
956
957
958
959
959
960
961
962
963
964
965
966
967
968
969
969
970
971
972
973
974
975
976
977
978
979
979
980
981
982
983
984
985
986
987
988
989
989
990
991
992
993
994
995
996
997
998
999
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1879
1880
1881
1882
1883
1884
1885<br

1 **I. INTRODUCTION**

2 This case presents a paradigmatic violation of procedural due process: ICE's summary re-
3 detention of a trafficking survivor who demonstrated extraordinary compliance and voluntarily
4 returned after unlawful removal—all without any hearing or evidence of changed circumstances.
5 Petitioner Francisco Roblero had already secured his freedom when an Immigration Judge found
6 he posed no danger or flight risk in 2019, setting bond at \$25,000. For over five years, he lived
7 peacefully in the community as the primary provider for his three U.S. citizen children. Yet ICE
8 now claims unreviewable authority to disregard that judicial determination, abruptly taking
9 Petitioner back into custody without a single new fact or hearing simply because his removal
10 order became final.

11 The Government's response focuses on statutory authority while sidestepping the
12 constitutional core of Petitioner's claim. Respondents contend that due process protections vanish
13 the moment § 1226 becomes § 1231, a "constitutional cliff" theory unsupported by Supreme
14 Court precedent. ICE's position that no process whatsoever is due before re-detaining someone
15 who lived peacefully in the community for nearly five years violates fundamental due process
16 and warrants immediate relief.

17 The Court should thus grant Petitioner's modest request: preserve the status quo by
18 restoring his release and requiring ICE to demonstrate changed circumstances before re-
19 detaining him again.

20 **II. PETITIONER'S DETENTION IS PROCEDURALLY UNLAWFUL**

21 The government first contends that this petition is "premature," pointing to statutory
22 removal timelines and *Zadvydas*' six-month presumption of reasonableness. That framing
23 misses the constitutional issue. The violation did not arise from how long Petitioner has been
24 detained, but from the absence of any process before his re-detention began on March 28, 2025.
25 Due process under *Mathews v. Eldridge* requires procedures before liberty is taken away, not
26 speculative safeguards months later. No amount of post-hoc calculation about statutory periods
27 can cure a constitutional deprivation that has already occurred.

1 The government also leans heavily on its statutory authority under § 1231(a)(6),
2 suggesting that no constitutional process is required. But statutory detention power and
3 constitutional due process obligations are distinct. Petitioner does not dispute ICE's general
4 ability to detain individuals following a final removal order. What he challenges is ICE's
5 summary revocation of liberty already granted by a neutral adjudicator, without notice, hearing,
6 or a showing of changed circumstances. The government cannot conflate statutory text with
7 constitutional requirements—the Constitution demands more.

8 This interpretive framework is now clearly established. The Supreme Court has now
9 held that courts must independently interpret statutes under the APA and may not defer to
10 agency interpretations simply because a statute is ambiguous. *See Loper Bright Enterprises v.*
11 *Raimondo*, 603 U.S. 369, 412 (2024) (overruling *Chevron* and confirming that courts must
12 "exercise their independent judgment" in interpreting statutes). The APA codifies this role:
13 courts must "decide all relevant questions of law" and "interpret constitutional and statutory
14 provisions" without deference to the agency. 5 U.S.C. § 706.

15 Petitioner's re-detention without any hearing or determination of materially changed
16 circumstances violates procedural due process, regardless of § 1231(a)(6).

17 The government's opposition hinges on a mischaracterization: it conflates its statutory
18 authority to detain under 8 U.S.C. § 1231(a)(6) with the entirely separate constitutional obligation
19 to provide procedural due process. The government argues the petition is "premature" and
20 provides detailed timeline calculations, but these are legally irrelevant to procedural violations
21 that occurred March 28, 2025. The government also argues that Petitioner's bond was properly
22 cancelled via Form I-391, but this administrative action was issued during ICE's unlawful
23 February removal in violation of court orders.

24 The government's detailed timeline calculations are legally irrelevant to procedural due
25 based on assumptions about agency compliance.

26 The government next asserts that Petitioner's bond was properly cancelled via Form I-391
27 when his removal order became final on February 12, 2025. But that action cannot stand: it was
28 taken in direct conjunction with ICE's unlawful removal that same day, in violation of the Ninth

1 Circuit's stay. Administrative actions performed in defiance of a federal court order are void and
2 cannot provide the foundation for new detention. Even aside from that defect, bond cancellation
3 based on administrative convenience—rather than any individualized finding of changed
4 circumstances—contradicts both *Matter of Sugay* and constitutional due process.

5 The government's response fails to address the procedural protections, if any, provided to
6 Petitioner before his March 28, 2025 arrest. The record reflects no hearing was conducted and no
7 individualized finding was made. Indeed, ICE has identified no materially changed circumstances
8 since November 2019, when an Immigration Judge determined Petitioner posed insufficient flight
9 risk to warrant more than \$25,000 bond.

10 Most critically, the government provides no explanation for its failure to consider the most
11 probative evidence available: Petitioner's voluntary return to the United States following ICE's
12 February 12, 2025 unlawful removal in violation of the Ninth Circuit's stay. An individual
13 genuinely intent on flight would not voluntarily return to face removal proceedings. This absence
14 of procedural safeguards constitutes precisely the type of arbitrary deprivation the Due Process
15 Clause prohibits. Constitutional protections do not evaporate merely because statutory detention
16 authority transitions from § 1226 to § 1231.

17 The government insists that removal is “reasonably foreseeable” under *Zadvydas* because
18 a mandate will issue and Mexico will accept Petitioner. That claim rings hollow in light of ICE's
19 February 12, 2025 removal—executed in direct violation of a federal court stay. Future removal
20 may be “foreseeable” only if ICE adheres to lawful process, and the agency's past disregard for
21 judicial orders undermines any such assurance. In this context, reliance on *Zadvydas* cannot
22 justify re-detention without process.

23 The government's detailed timeline projections—mandate issuance around October 27,
24 2025, ninety-day removal period expiring January 2026, and six additional months before any
25 *Zadvydas* challenge—assume lawful compliance with court orders that ICE's own conduct
26 contradicts. ICE's February 12, 2025 removal in direct violation of the Ninth Circuit stay
27 demonstrates that the agency's assurances about future compliance lack any credible foundation.
28 When the enforcing agency has already shown willingness to disregard federal court orders in

1 this very case, its detailed timeline calculations become exercises in speculation rather than
2 reliable projections warranting judicial deference.

3 Courts have rejected similar arguments where DHS sought to insulate re-detention from
4 review by invoking post-final-order authority. When confronted with statutory overlap, the Court
5 should look past a *label* (§ 1231) to the *functional reality* of detention. This principle is reinforced
6 by established canons of statutory construction: when a general statute mandates removal and a
7 more specific statute confers protections that necessarily entail deferred removal, the specific
8 governs. See *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974) ("Where there is no clear intention
9 otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the
10 priority of enactment."). Due process requires individualized assessment before revoking liberty
11 previously granted by judicial determination, regardless of which statutory provision authorizes
12 detention.

13 The government's reliance on the July 2025 bond denial cannot remedy the antecedent
14 constitutional violation for multiple dispositive reasons: (1) Under *Mathews v. Eldridge*, post-
15 deprivation hearings cannot retroactively validate initially unlawful detention, 424 U.S. 319, 333
16 (1976); (2) The July hearing occurred only after four months of constitutionally deficient
17 detention had already transpired; (3) The government has adduced no evidence that this
18 determination was predicated upon any changed circumstances rather than the categorical
19 application of post-removal-order presumptions that ignore individualized assessment; (4) Most
20 critically, the flight risk finding ignored the most probative evidence available: Petitioner's
21 voluntary return to the United States after ICE's unlawful February removal. No genuine flight
22 risk would voluntarily return to face removal proceedings after successfully departing the country.
23 This dispositive evidence directly contradicts any rational assessment of flight risk, yet the
24 government provides no indication that the Immigration Judge considered this evidence at all. A
25 flight risk determination that disregards evidence fundamentally inconsistent with flight cannot
26 satisfy constitutional requirements for individualized assessment.

27 Congressional awareness further confirms the impropriety of these practices. The House
28 Appropriations Committee has expressly condemned DHS's removal of trafficking applicants

1 before adjudication. H.R. Rep. No. 116-458, at 54 (2020). While not controlling, this report
2 confirms the statutory scheme's protective purpose and highlights the constitutional defects in
3 ICE's approach to trafficking victims who, like Petitioner, demonstrate extraordinary compliance
4 and voluntary cooperation.

5 In *Argueta Anariba v. Shanahan*, 190 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2016), DHS
6 insisted the petitioner's post-final-order custody placed him squarely under § 1231(a)(6),
7 foreclosing any further bond process. The court disagreed, holding that because removal was not
8 "actively effected" and judicial review remained pending, detention still fell within § 1226 and
9 triggered a bond hearing. *Argueta* thus reinforces two principles directly applicable here: (1) a
10 final order does not itself extinguish the protected liberty interest created by a prior grant of
11 release, and (2) where removal is not meaningfully imminent, continued custody without a fresh,
12 individualized showing violates procedural due process, regardless of which detention statute
13 DHS cites. Those principles squarely rebut Respondents' assertion that § 1231(a)(6) authorizes
14 immediate, unreviewable re-detention of a person who has lived peaceably on bond for nearly
15 five years.

16 The Ninth Circuit has also affirmed that due process requires individualized justification
17 before the government can revoke liberty once granted, even in the immigration context. In
18 *Saravia v. Sessions*, 905 F.3d 1137 (9th Cir. 2018), the court held that when DHS rearrested
19 previously released noncitizen minors, due process required a hearing before a neutral adjudicator
20 within seven days, where the government bore the burden of showing changed circumstances. *Id.*
21 at 1197. Although the government attempts to distinguish *Saravia* on the ground that it involved
22 unaccompanied minors and referenced § 1226(b), the constitutional rule the court applied was not
23 so limited. The Ninth Circuit relied on *Mathews v. Eldridge*, 424 U.S. 319 (1976), and emphasized
24 that "the government's discretion to incarcerate non-citizens is always constrained by the
25 requirements of due process." *Saravia*, 905 F.3d at 1143 (quoting *Hernandez v. Sessions*, 872
26 F.3d 976, 981 (9th Cir. 2017)).

27 What mattered in *Saravia* was not the minor's age or the statutory authority cited by the
28 agency, but the fact that the government had previously found the individual not to be a danger

1 or flight risk and released them accordingly—only to later revoke that liberty without meaningful
2 process. The court characterized this as a revocation of a prior liberty determination, which
3 triggered constitutional protections. *Id.* at 1142–43. That is precisely what has occurred here. An
4 immigration judge determined in 2019 that Petitioner posed no flight risk or danger, and Petitioner
5 lived in compliance with the terms of his release for nearly five years. Petitioner's compliance
6 record is extraordinary: zero violations of any kind, continued employment as sole family
7 provider for three U.S. citizen children, maintained stable residence, and voluntary return after
8 ICE's unlawful removal—the strongest possible evidence against flight risk. Nothing in *Saravia*
9 turns on the TVPRA framework, and nothing limits its reasoning to minors.

10 *Saravia* thus affirms the broader constitutional rule that due process protections do not
11 vanish merely because the government later invokes a different statutory detention provision.
12 Instead, where liberty has already been granted—whether through a sponsor release, an ORR
13 decision, or an IJ bond order—procedural due process requires that the government provide
14 notice, a meaningful hearing, and a showing of changed circumstances before it may lawfully
15 revoke that liberty. The government's attempt to reframe *Saravia* as purely statutory and age-
16 specific fails to address this core constitutional holding, which applies with equal force to
17 Petitioner's re-detention here.

18 This constitutional principle is echoed by the Board of Immigration Appeals' own
19 guidance in *Matter of Sugay*, 17 I. & N. Dec. 637 (BIA 1981), which squarely recognized that
20 “where a previous bond determination has been made by an immigration judge, no change should
21 be made by a District Director absent a change of circumstance[.]” *Id.* at 640. The BIA reaffirmed
22 that liberty once granted—particularly after a prior individualized bond determination—cannot
23 be revoked arbitrarily. The Board in *Sugay* found that newly developed facts at the deportation
24 hearing, including a formal deportation order and additional adverse evidence, constituted a
25 material change in circumstances that justified revisiting and increasing bond. But it did not hold,
26 and has never held, that ICE can revoke release absent such changes.

27 The government cannot identify any changed circumstances here: no new crimes, no bond
28 violations, no demonstrated dangerousness. Most critically, Petitioner voluntarily returned to the

1 United States after ICE's February 12, 2025 unlawful removal—providing dispositive evidence
2 against flight risk. Someone intent on fleeing would not voluntarily return to face removal
3 proceedings.

4 The government's attempt to distinguish *Matter of Sugay* fails as a matter of law. *Sugay*'s
5 foundational principle—that "where a previous bond determination has been made by an
6 immigration judge, no change should be made by a District Director absent a change of
7 circumstance"—applies irrespective of whether detention authority derives from § 1226 or §
8 1231. 17 I. & N. Dec. 637, 640 (BIA 1981). The Board's emphasis on evidentiary justification for
9 custody modifications reflects fundamental fairness principles that transcend statutory
10 subchapters.

11 The BIA's subsequent vacatur of Petitioner's bond order as moot does not invalidate
12 Sugay's underlying principle. That technical action merely reflected the procedural reality that no
13 further bond proceedings were contemplated after the BIA affirmed removal. Critically, ICE's
14 subsequent re-detention of Petitioner was not predicated upon any new evidence: no criminal
15 charges materialized, no absconding occurred, no misconduct was documented. The
16 government's interpretation would authorize immediate re-detention of any bond recipient upon
17 final order entry, regardless of actual risk assessment, evidentiary support, or compliance history.
18 Such a regime contradicts both Sugay and constitutional due process.

19 The BIA's vacatur of the immigration judge's bond order here did not invalidate the
20 underlying findings—it simply reflected that, as a technical matter, no further action was needed
21 after the BIA affirmed the final removal order. But ICE's subsequent re-detention of Petitioner
22 did not rely on any new evidence. There were no new criminal charges, no absconding, no
23 misconduct—only the government's unilateral decision to revoke liberty without notice or
24 hearing.

25 To accept the government's interpretation would be to endorse a regime in which any
26 individual released on bond could be re-detained immediately upon the issuance of a final order—
27 regardless of actual risk, evidence, or compliance. That is not the law. It is not *Sugay*, and it is
28 not due process.

1 The government relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001), to argue that
 2 Petitioner's current detention is presumptively lawful because it is recent, only 5 months since
 3 March 28, and because removal is reasonably foreseeable. But *Zadvydas* addressed a different
 4 question entirely: whether prolonged detention—lasting beyond six months—violates due
 5 process in the absence of a significant likelihood of removal. 533 U.S. at 701. It did not address
 6 the procedural safeguards required before the government may revoke liberty that has already
 7 been granted, as is the case here.

8 Petitioner does not claim that his current detention is unlawful because it is prolonged. He
 9 claims it is unlawful because ICE re-detained him—after nearly five years and three months of
 10 release under a \$25,000 judicial bond order, without a hearing, and without any showing of
 11 changed circumstances. *Zadvydas* does not immunize the government from due process scrutiny
 12 simply because detention is still short in duration. The Supreme Court in *Zadvydas* explicitly
 13 reaffirmed that “[f]reedom from imprisonment—from government custody, detention, or other
 14 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
 15 *Id.* at 690.

16 The government's reliance on *Zadvydas* and *Lema v. INS* is
 17 misplaced. *Zadvydas* addressed prolonged detention, not the procedural safeguards required
 18 before liberty is revoked. Likewise, *Lema* involved continuous detention, whereas Petitioner
 19 lived peaceably in the community for over five years before his sudden re-detention. Neither case
 20 grants ICE unreviewable power to strip liberty already conferred by judicial bond without any
 21 hearing. To the contrary, Supreme Court precedent warns against allowing agencies such
 22 unchecked authority over fundamental rights.

23 The government's *Lema* citation actually undermines its position. *Lema* addressed
 24 prolonged detention under *Zadvydas*—not re-detention after revocation of liberty. *Lema* involved
 25 continuous detention, while Petitioner was lawfully released for over five years.

26 Indeed, the Court warned against permitting “unreviewable authority to make
 27 determinations implicating fundamental rights.” *Id.* at 692 (quoting *Superintendent, Mass. Corr.*
 28 *Inst. at Walpole v. Hill*, 472 U.S. 445, 450 (1985)). That is precisely what the government claims

1 here: the unreviewable authority to summarily revoke a liberty interest previously granted by a
2 neutral adjudicator, without any new evidence or process.

3 ICE had a simple, constitutional obligation before re-detaining Petitioner: provide him an
4 individualized hearing and establish by clear and convincing evidence a materially changed
5 circumstance that justified revoking his previously granted liberty. ICE did neither, and its failure
6 violates Petitioner's procedural due process rights under the Fifth Amendment. Immediate
7 injunctive relief is required.

8 **III. PETITIONER DEMONSTRATES IRREPARABLE HARM**

9 Petitioner's re-detention without any hearing or determination of materially changed
10 circumstances violates procedural due process, regardless of § 1231(a)(6). Unconstitutional
11 detention, even briefly, constitutes irreparable harm that warrants injunctive relief.

12 The government dismisses Petitioner's injury as minimal, contending his claims of harm
13 are speculative. But Ninth Circuit precedent has consistently rejected that notion: detention
14 without procedural due process—no matter how brief—is *per se* irreparable. *Hernandez v.*
15 *Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-
16 citizens is always constrained by the requirements of due process”). This is because the very
17 essence of due process protects individuals precisely from this type of arbitrary deprivation of
18 liberty. *Id.*

19 Here, Petitioner faces not only the inherent constitutional harm of unlawful detention but
20 also unique vulnerabilities stemming from role as primary financial provider for his three U.S.
21 citizen children ages 17, 7, and 6, and his lawful permanent resident wife. Petitioner is a survivor
22 of severe labor trafficking (as documented in his pending T visa application), deeply
23 compounding the harm inflicted by renewed detention. He faces acute psychological distress from
24 being re-detained without explanation after over five years of lawful compliance, exacerbated by
25 separation from his three children who have special medical needs. His 6-year-old child has
26 speech development issues requiring ongoing parental support and therapy, and his 7-year-old
27 child has a thyroid condition requiring daily medication management. Petitioner's detention
28 specifically highlights ICE's troubling record in his own case of violating court orders and

1 disregarding legal constraints. ICE's pattern includes unlawful removal followed by summary re-
 2 detention without any process—demonstrating concrete harm ICE has already inflicted on
 3 Petitioner personally. Thus, Petitioner's fears are not speculative—they reflect concrete harms
 4 ICE has previously inflicted upon him specifically.

5 The government's reliance on *Slaughter* to argue otherwise is misplaced. In *Slaughter*,
 6 the claimed harm was speculative because no immediate action—like a summary judgment
 7 motion—had even occurred, and the plaintiff's restrictions in detention were specifically tied to
 8 documented misconduct and a demonstrated safety concern. *Slaughter v. King County Corr.*
 9 *Facility*, No. 05-cv-1693, 2006 WL 5811899, at *4 (W.D. Wash. Aug. 10, 2006), *report and*
 10 *recommendation adopted*, 2008 WL 2434208 (W.D. Wash. June 16, 2008). Here, by contrast,
 11 Petitioner's injury is both imminent and ongoing: ICE has already detained him without
 12 procedural safeguards, provided no individualized basis to justify revocation of his release, and
 13 poses an immediate risk of unlawful removal while his T visa application remains pending and
 14 despite the active Ninth Circuit stay of removal. His detention is not due to disruptive behavior,
 15 but rather a constitutional deprivation without adequate process, clearly distinguishing the
 16 irreparable harm at issue here from the speculative and justified detention conditions in *Slaughter*.

17 Nor does *Caribbean Marine Services* support the government's position. That case dealt
 18 with future economic losses, a fundamentally different context. Petitioner's injury is immediate
 19 and constitutional: unlawful detention without process and separation from his U.S. citizen
 20 children. Courts consistently recognize such deprivations as irreparable.

21 In short, irreparable harm here is not merely likely; it is already occurring. Petitioner is
 22 entitled to immediate injunctive relief to prevent further constitutional and psychological harm.

23 **IV. PETITIONER IS LIKELY TO SUCCEED ON MERITS OR AT LEAST RAISE**
 24 **"SERIOUS QUESTIONS"**

25 Once liberty has been granted through judicial or administrative process, due process does
 26 not permit its arbitrary revocation. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)
 27 (recognizing that "the liberty of a parolee . . . must be seen as within the protection of the [Due
 28 Process] Clause"); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Young v. Harper*, 520 U.S.

1 143, 152 (1997). Petitioner's court-ordered release on bond created just such a conditional liberty
 2 interest—protected not because it is absolute, but because it cannot be extinguished without due
 3 process. Yet ICE asserts unreviewable discretion to re-detain Petitioner based solely on the
 4 issuance of a final removal order, without any individualized finding that circumstances have
 5 materially changed. That position defies settled procedural due process principles, which
 6 uniformly require meaningful safeguards before the government may strip an individual of
 7 previously granted liberty. *See Saravia*, 905 F.3d at 1143-44; *see also Matter of Sugay*, 17 I. &
 8 N. Dec. at 640.

9 The government suggests that the July 2025 bond denial cures any defect, and that reliance
 10 on § 1231(a)(6) and *Zadvydas* insulates its actions. Those arguments collapse under established
 11 precedent. Due process requires safeguards before liberty is revoked; later hearings cannot
 12 retroactively validate unconstitutional detention. Nor does statutory authority erase constitutional
 13 requirements: the distinction between §§ 1226 and 1231 matters less than the fact that liberty had
 14 already been judicially granted. Courts from *Saravia* to *Sugay* reaffirm that revocation of bond
 15 requires individualized justification, not categorical reliance on a final order.

16 Under the Supreme Court's decision in *Mathews v. Eldridge*, procedural due process
 17 protections must precede, not follow, deprivations of liberty. 424 U.S. 319, 333 (1976). Post-hoc
 18 proceedings cannot retroactively cure an initially unconstitutional detention. Moreover, the July
 19 2025 determination appears fundamentally flawed in its failure to consider—or even
 20 acknowledge—Petitioner's voluntary return to the United States, which constitutes the most
 21 probative evidence conceivable regarding flight risk. A constitutional assessment that ignores
 22 dispositive contrary evidence cannot satisfy due process requirements for individualized
 23 evaluation. Moreover, the government's emphasis on Petitioner's decade-old convictions ignores
 24 that the Immigration Judge in November 2019 considered this identical criminal history and still
 25 found Petitioner suitable for \$25,000 bond.

26 Petitioner's due process claim clearly satisfies the Ninth Circuit's alternative "serious
 27 questions" standard. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).
 28 His private interest—freedom from detention following an immigration judge's bond

1 determination—is substantial, protected by an individualized judicial finding that he is neither
2 dangerous nor a flight risk. Against this significant liberty interest, the risk of erroneous
3 deprivation under ICE's no-process approach is unacceptably high. Without a hearing, without
4 evidence, without any individualized finding, ICE has effectively rendered the prior judicial
5 determination meaningless.

6 Conversely, requiring ICE to provide basic procedural safeguards—an individualized
7 showing of changed circumstances before revocation—is hardly burdensome. The government
8 already makes such findings routinely in immigration proceedings and indeed did so previously
9 in Petitioner's own case. The government provides no explanation for why such a hearing was
10 impossible before March 28, 2025, when ICE chose to re-detain Petitioner immediately upon his
11 voluntary return. ICE routinely conducts bond hearings and indeed conducted one for Petitioner
12 in November 2019. The government's contrary claim—that no process is owed at all—ignores
13 binding authority and defies due process itself.

14 This violation of procedural requirements is compounded by the arbitrary nature of ICE's
15 decision-making. The APA requires that agencies "examine the relevant data and articulate a
16 satisfactory explanation for its action including a rational connection between the facts found and
17 the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). Here, ICE
18 has failed to consider the most probative evidence available—Petitioner's voluntary return—and
19 has provided no rational explanation for why circumstances that supported release in 2019
20 suddenly require detention in 2025. This pattern of unexplained decision-making, divorced from
21 individualized assessment, exemplifies the arbitrary conduct the APA prohibits.

22 ICE attempts to obscure the issue by relying on § 1231(a)(6) and *Zadvydas v. Davis*, 533
23 U.S. 678 (2001), suggesting Petitioner seeks to undermine generalized authority for post-removal
24 detention. But Petitioner does no such thing. He does not dispute ICE's general statutory power
25 to detain individuals after a removal order becomes final. Instead, Petitioner challenges only the
26 government's unlawful refusal to provide any procedural safeguards when revoking liberty
27 previously granted by a neutral adjudicator.

28

1 Petitioner's claim thus readily clears the threshold of raising serious constitutional
2 questions. The government's contrary position—that no procedural safeguards whatsoever
3 apply—cannot withstand constitutional scrutiny.

4 The constitutional questions presented are profound: whether due process permits
5 summary revocation of judicially granted liberty based solely on administrative convenience, and
6 whether constitutional protections depend on statutory labels rather than functional reality of
7 detention. These questions go to the heart of our constitutional system.

8 **V. BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR PETITIONER**

9 The public interest is best served when constitutional safeguards are respected, not
10 circumvented. Ensuring procedural due process before an individual's liberty is revoked promotes
11 public confidence in the immigration system's fairness and legitimacy. Far from causing harm,
12 requiring ICE to justify the sudden detention of a person previously deemed neither a danger nor
13 a flight risk enhances public trust. *See Hernandez*, 872 F.3d at 996.

14 Moreover, ICE faces minimal hardship from complying with fundamental constitutional
15 requirements. Petitioner was released nearly five years ago under strict bond conditions. He
16 complied faithfully—never once violating terms or suggesting any risk of danger or flight.
17 Maintaining Petitioner's status quo release pending a basic individualized hearing on changed
18 circumstances thus creates no public safety risk, administrative burden, or legitimate
19 governmental hardship.

20 Petitioner maintained continuous employment as sole financial provider for his three U.S.
21 citizen children and lawful permanent resident wife, established deep community ties through
22 children's medical care, and demonstrated ultimate reliability by voluntarily returning after ICE's
23 unlawful February 2025 removal.

24 By contrast, ICE's recent re-arrest of Petitioner undermines ICE's own assurances that it
25 would respect court orders after its February 12, 2025 unlawful removal in violation of the Ninth
26 Circuit stay. ICE's disregard for federal court orders erodes the integrity of the judicial process,
27 heightening public skepticism about the fairness of immigration enforcement.

1 When balancing these equities, the public's interest overwhelmingly favors Petitioner's
2 position: maintaining the procedural fairness and constitutional integrity of our immigration
3 system. ICE's position, if accepted, would signal that fundamental procedural rights can be
4 abandoned without consequence whenever a removal order becomes final, a proposition
5 irreconcilable with basic due process. The equities therefore decisively favor granting Petitioner
6 preliminary injunctive relief.

7 **VI. THE GOVERNMENT'S JURISDICTIONAL ARGUMENTS ARE**
8 **INAPPLICABLE TO THIS REQUEST FOR INTERIM RELIEF**

9 The government invokes 8 U.S.C. § 1252(g) to argue that the Court lacks jurisdiction. But
10 § 1252(g) applies narrowly to claims challenging ICE's discretionary decisions to execute
11 removal orders. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-85 (1999).
12 Petitioner's claim, by contrast, does not challenge ICE's authority or discretion in executing
13 removal; it challenges the procedural safeguards—or complete absence thereof—surrounding
14 ICE's decision to revoke bond and re-detain him.

15 Unlike *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022), and similar decisions from other
16 circuits relied upon by the Government,¹ Petitioner does not seek a generalized stay to pursue
17 other immigration remedies. In those cases, the petitioners challenged ICE's discretionary
18 authority to execute a removal order or sought judicial intervention to stop or delay their removal
19 itself. For instance, in *Rauda*, the petitioner explicitly sought to halt removal pending resolution
20 of a motion to reopen immigration proceedings—a discretionary act directly concerning removal
21 execution. *Rauda*, 55 F.4th at 776-78

22 Petitioner's challenge is fundamentally different. He contests neither ICE's ultimate
23 authority nor discretion to execute removal orders. Instead, he raises a constitutional procedural
24 due process claim regarding ICE's revocation of liberty after he was lawfully released on
25 immigration bond by judicial order. The claim here is simply that ICE cannot disregard basic due
26

27

¹ *Camarena v. ICE*, 988 F.3d 1268 (11th Cir. 2021), *E.F.L. v. Prim*, 986 F.3d 959 (7th Cir.
28 2021), *Tazu v. Att'y Gen.*, 975 F.3d 292 (3d Cir. 2020), *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018), and *Silva v. United States*, 866 F.3d 938 (8th Cir. 2017)

1 process protections and constitutional limitations by summarily re-detaining Petitioner without
2 any individualized showing of changed circumstances or opportunity for review. This claim does
3 not implicate ICE's discretionary decisions about executing removals; it pertains solely to
4 whether procedural due process must be honored before liberty previously granted by judicial
5 order can be revoked.

6 Indeed, § 1252(g) narrowly applies only to three discrete actions: decisions to "commence
7 proceedings, adjudicate cases, or execute removal orders." *Reno*, 525 U.S. at 482. The Supreme
8 Court rejected the expansive reading of § 1252(g) that the government advocates here,
9 emphasizing the provision is not a general jurisdictional limitation on all claims connected to
10 removal. *Id.* at 482-83. Rather, the Court clarified it is targeted specifically to protect certain
11 discretionary acts—such as initiating removal or the discretionary determination not to grant
12 deferred action—from judicial interference. *Id.* at 485.

13 Petitioner's claims do not implicate these discrete, discretionary decisions. He is not
14 challenging ICE's choice or timing regarding the execution of his removal order. Rather,
15 Petitioner challenges ICE's failure to provide minimal constitutional safeguards prior to
16 summarily revoking his liberty previously secured by a judicial determination. Because the issue
17 is not the discretionary decision itself, but rather the procedural due process protections required
18 prior to re-detention, the limited scope of § 1252(g), as interpreted by *Reno*, plainly does not
19 apply.

20 The government's cited cases—*Rauda*, 55 F.4th 773, *Camarena*, 988 F.3d 1268 (holding
21 that § 1252(g) barred jurisdiction over habeas petitions filed by individuals with final removal
22 orders who sought to delay their deportation while applying for provisional unlawful presence
23 waivers; claims challenged the timing of ICE's decision to execute removal orders, not the
24 legality of detention or the constitutionality of re-detention without process), *E.F.L.*, 986 F.3d
25 959 (same, where petitioner sought to halt execution of a removal order while pursuing
26 administrative relief and raised no challenge to her detention or previously granted liberty), *Tazu*,
27 975 F.3d 292 (holding § 1252(g) barred jurisdiction over challenge to timing and mechanics of
28 executing a final removal order, including re-detention just before deportation; petitioner did not

1 allege revocation of previously granted liberty or procedural due process violation), *Hamama*,
2 912 F.3d 869 (§ 1252(g) barred claims by Iraqi nationals seeking to delay removal to pursue
3 immigration relief; petitioners did not challenge detention or revocation of previously granted
4 liberty), and *Silva*, 866 F.3d 938 (§ 1252(g) barred Bivens and FTCA claims stemming from
5 mistaken execution of removal order during pending appeal; court held claims arose from
6 execution of removal order, not unlawful detention or due process violation)—are all consistent
7 with *Reno*'s limitation, each specifically challenging discretionary acts in executing removal
8 orders themselves. None involve the fundamentally different procedural issue presented here—
9 constitutional protections against arbitrary re-detention following judicially granted liberty.

10 The petitioner in *Tazu* had never been granted liberty that was subsequently revoked—
11 distinguishing it from Petitioner's case where judicial bond order was revoked without process
12 after over five years of compliance).

13 The government argues that Petitioner's T visa mandamus claim falls outside habeas
14 jurisdiction under *Pinson v. Carvajal*, but this mischaracterizes the claim. Under 8 C.F.R. §
15 214.204(b)(2)(iii), a bona fide determination would automatically stay Petitioner's removal order,
16 creating direct nexus between USCIS delay and detention lawfulness. The government also cites
17 *Ruiz-Diaz v. United States*, 703 F.3d 483 (9th Cir. 2012), arguing no legitimate entitlement to
18 expedited processing, but *Ruiz-Diaz* involved aliens circumventing regulatory restrictions while
19 Petitioner followed proper procedures under trafficking victim protections.

20 Finally, the government's jurisdictional arguments fail because Petitioner challenges
21 detention procedures, not removal execution. District courts consistently recognize jurisdiction
22 over constitutional challenges to detention procedures rather than removal timing or discretion.
23 This precedent confirms what *Reno* and its progeny already establish: § 1252(g) does not bar due
24 process challenges to ICE's summary re-detention of individuals previously granted liberty by
25 judicial order

26 Nor does the government's invocation of any class action defeat jurisdiction here. Unlike
27 the systemic claims involving broad procedures for removal execution, Petitioner's challenge is
28 narrowly focused on the individualized process required before revocation of bond-based liberty.

1 Because Petitioner's claims are individualized and focus on detention procedures rather than the
2 removal execution, § 1252(g)'s jurisdictional bar remains entirely inapplicable.

3 **VII. CONCLUSION**

4 For the foregoing reasons, Petitioner respectfully requests that this Court grant his
5 Motion for Preliminary Injunctive Relief and:

6 1. Order Petitioner's immediate release from ICE custody;
7 2. Restore Petitioner to his prior bond status pending resolution of his removal
8 proceedings and T visa application;
9 3. Enjoin Respondents from re-detaining Petitioner absent: (a) a hearing before a neutral
10 adjudicator, (b) individualized findings based on clear and convincing evidence of materially
11 changed circumstances that justify revocation of his previously granted liberty, and (c) adequate
12 notice and opportunity to be heard;

13 4. Enjoin Respondents from removing Petitioner while his T visa application remains
14 pending before USCIS and during the pendency of the Ninth Circuit stay; and

15 5. Grant such other relief as the Court deems just and proper.

16 ICE's summary re-detention of Petitioner after nearly five years of exemplary compliance
17 and following his voluntary return to face removal proceedings, violates fundamental due
18 process and cannot stand. The constitutional status quo must be preserved while this Court
19 adjudicates whether the government may strip liberty previously granted through judicial
20 determination without any procedural safeguards whatsoever.

21 Dated: September 10, 2025

Respectfully submitted,

22 s/ Hillary Walsh
23 Hillary Walsh
24 *Attorney for Petitioner-Plaintiff*

25

26

27

28

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2025, I electronically transmitted this **PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Timothy Courchaine
United States Attorney
District of Arizona

Brock Heathcotte
Assistant U.S. Attorney
U.S. Attorney's Office
District of Arizona
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004
Telephone: 602-514-7762
Email: Brock.Heathcotte@usdoj.gov

s/Hillary Walsh

Hillary Walsh

Attorney for Petitioner-Plaintiff