Hillary Walsh
NEW FRONTIER IMMIGRATION LAW
550 W. Portland St.
Phoenix, AZ 85003
hillary@newfrontier.us
623.742.5400 o
888.210.7044 f

Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Francisco Angel Roblero,

Petitioner-Plaintiff,

v.

John Cantu, et al.,

Respondents-Defendants.

Case No. **2:25-cv-03038-KML-DMF**

PETITIONER-PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

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

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

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

II. PETITIONER'S DETENTION IS PROCEDURALLY UNLAWFUL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Petitioner does not claim that his current detention is unlawful because it is prolonged. He claims it is unlawful because ICE re-detained him—after nearly five years and three months of release under a $25,000 judicial bond order, without a hearing, and without any showing of changed circumstances. *Zadvydas* does not immunize the government from due process scrutiny simply because detention is still short in duration. The Supreme Court in *Zadvydas* explicitly reaffirmed that "[f]reedom 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." Id. at 690.

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

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

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

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

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

III. PETITIONER DEMONSTRATES IRREPARABLE HARM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR PETITIONER

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

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

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

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

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

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

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

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

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

[1] *Camarena v. ICE*, 988 F.3d 1268 (11th Cir. 2021), *E.F.L. v. Prim*, 986 F.3d 959 (7th Cir. 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)

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

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

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

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

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

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

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

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

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

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

VII. CONCLUSION

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

1. Order Petitioner's immediate release from ICE custody;

2. Restore Petitioner to his prior bond status pending resolution of his removal proceedings and T visa application;

3. Enjoin Respondents from re-detaining Petitioner absent: (a) a hearing before a neutral adjudicator, (b) individualized findings based on clear and convincing evidence of materially changed circumstances that justify revocation of his previously granted liberty, and (c) adequate notice and opportunity to be heard;

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

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

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

Dated: September 10, 2025

Respectfully submitted,

s/ Hillary Walsh
Hillary Walsh
Attorney for Petitioner-Plaintiff

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