UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

FLAVIO BLADIMIR CHOGLLO CHAFLA Petitioner, v. RODNEY S. SCOTT, et al., Respondents.	Case 2:25-cv-00437-SDN
LUIS GERMAN LEMA TAMAY Petitioner, v. RODNEY S. SCOTT, et al., Respondents.	Case 2:25-cv-00438-SDN
VICTOR MANUEL TENESACA LEMA Petitioner, v. RODNEY S. SCOTT, et al., Respondents.	Case 2:25-cv-00439-SDN

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioners Flavio Bladimire Chogllo Chafla, Luis German Lema Tamay, and Victor Manuel Tenesaca Lema by and through their attorney, Shantanu Chatterjee, respectfully submit this supplemental brief in support of their Petitions pursuant to 28 U.S.C. § 2241. At the Petitioners' last hearing before the Honorable Court on September 18, 2025, the Court asked

both parties whether the Court should order the Petitioners' release pending new bond hearings. The Court then invited supplemental briefing on the matter.

The Petitioners' position is that they should be released pending new bond hearings pursuant to 8 U.S.C. § § 1226(a) in which the Government has the burden of proof. Under § 1226(a), they are entitled to bond hearings before an Immigration Judge at which the Government must prove by clear and convincing evidence that they pose a danger to the community, or prove by a preponderance of the evidence that they are a flight risk, if it seeks to continue detaining them. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). **At this stage, the Government has not demonstrated either of these requirements for the Petitioners' detention under § 1226(a)**. Moreover, the *Mathews v. Eldridge* factors weigh in favor of the Petitioners' immediate release pending new bond hearings.

1. **The Court May Order the Respondents to Immediately Release the Petitioners Pending a New Bond Hearing.**

Courts in the First Circuit and in other districts have also determined that a habeas corpus petitioner may be ordered released pending the merits of their case. "[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits." *Woodcock v. Donnelly*, 470 F.2d 93 (1st Cir. 1972). *See also Martinez v. Hyde et al.*, No. 1:25-cv-11613-BEM, slip op. at 4 (D. Mass. June 17, 2025) (ordering that the respondents release the petitioner without conditions because 8 U.S.C. §1225 did not apply); *Sampaio v. Hyde et al.*, 1:25-cv-11981-JEK, slip op. at *26 (D. Mass. Sept. 9, 2025) (concluding that "[t]he balance of the *Mathews* factors favors [the petitioner]" and that his detention "violates his procedural due process rights under the Fifth Amendment, and he is entitled to immediate release."); *Valdez v. Joyce*, 25-Civ. 4627, slip op. at *8 (S.D. N.Y. Jun 18,

2025) (ordering the petitioner's immediate release because "Respondents' ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights"); *Lopez Benitez v. Francis et al.*, 25-cv-5937, 2025 WL 2371588, at *29 (S.D.N.Y. Aug. 13, 2025) (ordering the petitioner's immediate release because the respondents "offer no explanation whatsoever of their purported 'exercise of discretion' to detain [the petitioner] other than their initial assertion that his detention was non-discretionary.").

To qualify for release, a petitioner must show: (1) a substantial claim of law based on the facts surrounding the petition, and (2) the existence of "some circumstance making the [motion for bond] exceptional and deserving of special treatment in the interests of justice." *Aronson v. May*, 85 S. Ct. 3, 5 (1964). "[A] court considering a habeas petitioner's fitness for bail must inquire into whether the habeas petition raises substantial claims and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective." *Kiadii v. Decker*, 423 F.Supp.3d 18 (S.D. N.Y. 2018) (quoting *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001)). Courts in other districts have granted similar relief to habeas corpus petitioners seeking release while the merits of the case were pending. *See, e.g.*, *Kordia v. Noem*, 3:25-cv-01072-L-BT (N.D. Tex. Jun 27, 2025) (recommending the petitioner's release because the petitioner "has a significant liberty interest in being free from detention" and prolonged detention "creates a serious risk of erroneous deprivation of Petitioner's liberty interest"); *but see Kostak v. Trump*, Civil Action 3:25-1093 (W.D. La. Aug 27, 2025) (denying the petitioner's motion for release "in light of the injunctive relief granted to the Petitioner" in the form of "an individualized bond hearing before an immigration judge pursuant to Section 1226(a).").

In the three cases before the Court, each Petitioner has raised "substantial claims and [shown] that extraordinary circumstances exist." *Mapp v. Reno*, 241 F.3d 221 (2nd Cir. 2000). Each Petitioner has raised a substantial claim of law, videlicet that the Respondents have denied him the right to a bond hearing in which the Government has the burden of proof by wrongfully classifying him under § 1225(b)(2), and that the Government has not met its burden to justify their detention under § 1226(a). *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021).

Moreover, "extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy [release pending bond] effective." *Kiadii*, 423 F.Supp.3d at 20. Petitioner Flavio Bladimir Chogllo Chafla suffers from epilepsy and is at risk of suffering from seizures while in detention. *See* Chogllo Chafla Pet. 18-1 at 15. Petitioner Luis German Lema Tamay has a three-year old United States citizen son that has been bereft of the presence of his father since Mr. Lema Tamay has been wrongfully detained by the Respondents. *See* Lema Tamay Pet. Doc 16-1 at 16. Similarly, Petitioner Tenesaca Lema has a three-year old United States citizen daughter that gone without her father's presence in the time Mr. Tenesaca Lema has been detained. *See* Tenesaca Lema Pet. 15-1 at 15. All of these facts weigh in favor of granting the Petitioners' request for release pending new bond hearings.

2. **The *Mathews v. Eldridge* Factors Weigh in Favor of the Petitioners' Release Pending New Bond Hearings.**

To determine whether a form of civil detention violates a detainee's due process rights under the Fifth Amendment, courts apply the three-part balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that test, a court must weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of

additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. *See also Hernandez-Lara*, 10 F.4th at 27-28 (analyzing procedural due process challenge to the detention of noncitizen held pursuant to Section 1226(a) using the *Mathews* test). In each Petitioner's case, these factors militate in favor of ordering the release of the Petitioner during the pendency of a new bond hearing in which the Government has the burden of proof.

A. <u>Flavio Bladimir Chogllo Chafla</u>

The facts of Mr. Chogllo Chafla's case strongly support his release during the pendency of his new bond hearing. "'Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects.'" *Zadvydas v Davis*, 533 U.S. 678 (2001) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). "'A person's interest in freedom from physical detention is 'the most elemental of liberty interests.'" *Sampaio v. Hyde et al.*, 1:25-cv-11981-JEK, slip op. at *20 (D. Mass. Sept. 9, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). For that reason, "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington v. Texas*, 441 U.S. 418, 425 (1979). In this case, Mr. Chogllo Chafla is detained at the Plymouth County Correctional Center "alongside individuals convicted of crimes, where he has neither been charged with nor convicted of any criminal offense, amplifies the burden effected by his ongoing detention." *Sampaio*, 1:25-cv-11981-JEK, slip op. at *20. Therefore, "the private interest that will be affected by the official action" strongly weighs in favor of Mr. Chogllo Chafla's release. *See Mathews*, 424 U.S. at 335.

Mr. Chogllo Chafla has already suffered "the risk of an erroneous deprivation of such interest through the procedures used." *Id.* On September 18, 2025, an Immigration Judge with the Chelmsford Immigration Court denied the Petitioner's request for bond due to the Respondents' representation that the Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Doc. 21, Pet. Chogllo Chafla. Even if the Petitioner was to appeal the Immigration Judge's denial of his bond request to the Board of Immigration Appeals ("BIA"), according to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024. *See Rodriguez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850, at *5 (W.D. Wash. Apr. 24, 2025). Furthermore, the BIA is likely to deny the Petitioner's bond appeal pursuant to its own precedential decision in *Yajure Hurtado*. Thus, the erroneous deprivation of the Petitioner's liberty interest has already occurred.

Lastly, "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," also weigh in favor of releasing the Petitioner. *Mathews*, 424 U.S. at 335. The Petitioner's release from custody during the pendency of a new bond hearing would obviate the need for any additional government resources or expenditures to be allocated towards the Petitioner's continued confinement. "[U]nncessary detention," the First Circuit reasoned, "imposes substantial societal costs," as it "'separates families and removes from the community breadwinners, caregivers, parents, siblings and employees.'" *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020)). In this case, the Respondents' detention of the Petitioner has separated him from his sister, his job, and his community. *See* Doc. 18-1. Moreover, while in detention, the Government has had to

shoulder the expenses of the Petitioner's epilepsy medication. *Id.* As the First Circuit aptly stated, "given the risk that the current procedures lead to many instances of needless detention, entailing substantial social and financial costs, the public interest in placing the burden of proof on the detainee is uncertain at best, and may well be negative." *Hernandez-Lara*, 10 F.4th at 33.

The Government might argue that releasing the Petitioner pending a new bond hearing risks the Petitioner's absconding. This argument fails because the Petitioner has every incentive to pursue his claims to relief from removal. If a noncitizen fails to appear at his Immigration Court hearing, the Immigration Judge may order the noncitizen's removal from the United States *in absentia*. *See* 8 U.S.C. § 1229a(b)(5)(A) ("Any alien who…does not attend a proceeding under this section, shall be ordered removed in absentia"); 8 CFR § 1003.26(b)("In any deportation proceeding before an Immigration Judge in which the respondent fails to appear, the Immigration Judge shall order the respondent deported in absentia."). An order of removal renders a noncitizen ineligible for most forms of lawful immigration status. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(i) ("Any alien who has been ordered removed…is inadmissible)." The Petitioner included a copy of his Asylum Application with his bond motion and therefore has every incentive to present the merits thereof in Immigration Court rather than abscond, which mitigates any risk of flight. *See* Doc. 18-1 at 60. The Government has not alleged any other factors supporting the conclusion that the Petitioner is a flight risk or a danger to the community. Courts in other districts have granted release in similar circumstances. *See, e.g.*, *Valdez v. Joyce*, 25-Civ. 4627, slip op. at *7 (S.D. N.Y. Jun 18, 2025) (finding the third *Mathews* prong weighed in the petitioner's favor because "Petitioner has no criminal history in any country, and Respondents do not argue that he is a danger to the community," and "Respondents have offered no evidence that Petitioner is a flight risk."). If the Government contrives of reasons why the Petitioner might

pose a flight risk or a danger, the Government may litigate those arguments at the Petitioner's new bond hearing at which the Government bears the burden of proof. In conclusion, the *Mathews* factors weigh in favor of the Petitioner's immediate release pending a new bond hearing.

B. Victor Manuel Tenesaca Lema

The *Mathews* factors also weigh in favor of Mr. Tenesaca Lema's release. Regarding the first prong, Mr. Tenesaca Lema's liberty interest weighs in his favor for the same reasons as for Mr. Chogllo Chafla. *See supra* at 2.A. Regarding "the risk of an erroneous deprivation of such interest through the procedures used," Mr. Tenesaca Lema's case differs from Mr. Chogllo Chafla's case only in that Mr. Tenesaca Lema's bond request—now set for hearing on September 24, 2025—has not yet been denied. However, the same Immigration Judge (Christine Olson) will preside over Mr. Tenesaca Lema's case, which suggests that Mr. Tenesaca Lema's bond request will also be denied based on the application of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and an erroneous application of 8 U.S.C. § 1225(b)(2).

Regarding the third prong, the Government argues that this factor weighs against Mr. Tenesaca Lema's release because "Petitioner Tenesaca Lema was already in removal proceedings but failed to appear for his master calendar hearing in February 2024." Doc. 19 at 3. This argument fails because, based on the Government's own evidence, the Immigration Judge did not order Mr. Tenesaca Lema removed *in absentia* based on his failure to appear, but rather administratively closed removal proceedings pursuant to *Laparra-Deleon v. Garland*, 52 F.4th 514 (1st Cir. 2022). *See* Doc. 14-5 (administratively closing removal proceedings "for good cause shown pursuant to *Matter of Laparra* (regarding non-complaint Notice to Appear."). In *Laparra-Deleon*, the First Circuit ruled that an Immigration Judge may not issue an *in absentia*

removal order if "the noncitizen subject to it did not receive the 'written notice' specified in [8 U.S.C.] § 1229a(b)(5)(A), which is the statute that mandates the issuance of such a removal order and that is our concern here." *Laparra-Deleon*, 52 F.4th at 523. Here, the Immigration Judge administratively closed the Petitioner's case—rather than issuing an *in absentia* removal order, as otherwise authorized by 8 U.S.C. § 1229a(b)(5)(A) when a noncitizen fails to appear—because the Immigration Judge found that the Petitioner did not receive proper notice of the February 21, 2024 hearing. *See* Doc. 14-5. **Therefore, the Petitioner's non-appearance at that hearing does not weigh against him in the *Mathews* analysis because his non-appearance was due, according to the Immigration Judge, to the Government's failure to provide him with proper notice of the hearing as required by 8 U.S.C. § 1229a(b)(5)(A) and *Laparra-Deleon*.** Mr. Tenesaca Lema should not be penalized in this context for the Government's own failure to comply with written notice requirements. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.").

Mr. Tenesaca Lema's facts support finding that "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," weigh in favor of his release. *Mathews*, 424 U.S. at 335. The Petitioner has a three-year old United States citizen daughter that has been deprived of her father's presence during the Respondents' unlawful detention of the Petitioner. *See* Doc. 15-1 at 15. The mother of his daughter has been deprived of her partner. *See id.* at 17. His employer and colleagues in the roofing industry have felt his absence deeply. *See id.* at 31. Therefore, the

Mathews factors support Mr. Tenesaca Lema's release pending a new bond hearing, notwithstanding the Government's contentions.

C. Luis German Lema Tamay

Petitioner Lema Tamay merits release from custody for reasons similar to Mr. Choglo Chafla, argued *supra* at 2.A. His liberty interests have been wrongfully denied on the same improper basis, and the Immigration Judge denied his bond request based on the Respondents' wrongful contention that he is detained under 8 U.S.C. § 1225(b)(2). *See* Lema Tamay Pet. Doc. 19. Thus, the damage has already been done regarding the first two prongs of the *Mathews* analysis: the "the private interest that will be affected by the official action" and "the risk of an erroneous deprivation." *Mathews*, 424 U.S. at 335. Regarding the third prong, ordering the Petitioner's immediate release will relieve the Government of continued expenditures going to his detention. Moreover, the Petitioner has a three-year old United States citizen son whom the Respondents stripped of his father. *See* Doc. 16-1 at 16. Releasing the Petitioner while he awaits his new bond hearing will at least mitigate the emotional damage caused to the Petitioner's family and extensive community in the South Portland area. *See id.* at 18-30.

CONCLUSION

For the reason described above, the Court may and should order the Respondents to immediately release the Petitioners pending new bond hearings, consistent with ample precedential authority and application of the *Mathews v. Eldridge* factors.

Dated: September 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shantanu Chatterjee, Counsel for Petitioner hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: September 19, 2025

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