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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Junior Gomez, Petitioner, v. John Cantu, et al., Respondents.	Case No.: CV-25-03255-PHX Petitioner's Reply to Respondents' Opposition to Petition for Writ of Habeas Corpus

I. Introduction

Respondents apprehended and detained Petitioner after his entry to the U.S. on January 4, 2024, and, based on the individualized facts of Petitioner's case, released Petitioner from custody on an Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a). *See* ECF No. 10-A (Notice to Appear); ECF No. 10-B (Notice of Custody Determination); ECF No. 12-A, ¶¶ 6–7. On July 22, 2025, Respondents re-detained Petitioner when he appeared for his hearing at the Dallas Immigration Court, *see* ECF No. 12-A, ¶¶ 8–9, without alleging changed circumstances and without an individualized consideration as to whether Petitioner poses a danger to the community or a flight risk. Following the Board of Immigration Appeals' ("the Board's") precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Petitioner is now subject to mandatory detention under 8 U.S.C. § 1225(b)(2) without access to a bond hearing.

Petitioner does *not*, as Respondents write, challenge Respondents' prior motion to dismiss his removal proceedings or their intention of subjecting him to expedited removal proceedings in the future. ECF No. 12, at *3–4. Rather, as set forth in the Amended Petition, he alleges that his

re-detention without a showing of changed circumstances violates his procedural due process rights (Count 1) and his substantive due process rights (Count 2). Petitioner further claims he can only lawfully be detained pursuant to 8 U.S.C. § 1226(a) and that his continued detention without a bond hearing violates the Immigration and Nationality Act ("INA") (Count 3); his right to a bond hearing pursuant to 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 (Count 4); and his due process rights (Count 5). ECF No. 10.

This Court has jurisdiction to review habeas petitions challenging a noncitizen's detention. *See Echevarria v. Bondi, et al.*, No. 2:25-cv-3252 (D. Ariz. Oct. 3, 2025). Moreover, this Court and others nationwide have rejected Respondents' arguments that noncitizens like Petitioner can lawfully be detained pursuant to 8 U.S.C. § 1225(b)(2). *See, e.g.*, *Benitez Cornejo v. Cantu, et al.*, No. CV-25-03672 (D. Ariz. October 17, 2025); *Echevarria v. Bondi, et al.*, No. 2:25-cv-3252 (D. Ariz. Oct. 3, 2025); *Quispe Ardiles v. Noem*, No. 1:25-cv-01382 (E.D. Va. Sept. 30, 2025) (explaining "at least thirty federal district courts around the country[]" have concluded the government's application of § 1225(b)(2)(A) to similarly situated petitioners is unlawful). As set forth below, Respondents' arguments regarding § 1225(b)(2)(A) and § 1226 disregard the plain meaning of the statutes, conflict with the statutory structure, and distort and ignore precedent.

Moreover, Respondents contend that Petitioner's due process rights have not been violated by his re-detention and that due process does not require Respondents to provide a pre-detention hearing before re-detaining him if he is released. ECF No. 12, at *8–9. Respondents argue that the procedural protections afforded to noncitizens detained under § 1226(a) are sufficient process enough, even though, in the same breath, Respondents argue that Petitioner is not detained under § 1226(a) and instead is subjected to mandatory detention under § 1225(b)(2)(A). As such, Petitioner is afforded any of these protections. Under the *Mathews v. Eldridge* framework, the balance of factors is clearly in Petitioner's favor.

II. Argument

a. Petitioner does not challenge DHS's dismissal of his removal proceedings.

Respondents wrongly claim there is no case or controversy, arguing that Petitioner is improperly challenging the hypothetical future action of being subject to expedited removal. ECF No. 12, at *3-4. In fact, Petitioner challenges the constitutionality of mandatory detention under 8

U.S.C. § 1225(b)(2)(A) and the legality of his re-detention absent a showing of changed circumstances.

b. This Court has subject matter jurisdiction.

Petitioner's claims are not barred by 8 U.S.C. § 1252(g), § 1252(b)(9), or § 1252(a)(2)(A), as Petitioner contests the legality of his detention, not Respondents' decision to commence removal proceedings against him, a final removal order, whether Respondents can execute his removal, or whether he can be subjected to expedited removal.[1]

i. 8 U.S.C. § 1252(g)

As this Court recently explained, 8 U.S.C. § 1252(g)[2] "does not preclude jurisdiction over the challenges to the legality of [an alien's] detention." *Echevarria*, No. 2:25-cv-3252, at *4 (internal quotations omitted). Section 1252(g) relates to "three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.- Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The statute does not preclude review of "the universe of deportation claims," and "[t]here are of course many other decisions or actions that may be a part of the deportation process" that may be reviewed. *Id. See also Jennings v. Rodriguez*, 83 U.S. 281, 294 (2018) (explaining § 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General" and solely "refer[s] to just those three specific actions themselves."); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Reno v. Am.-Arab Anti- Discrimination Comm.*, 525 U.S. 471, 482 (1999)) ("reject[ing] as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'").

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[1] Respondents also state without explanation that this Court is deprived of jurisdiction under § 1252(e), which only applies to "any action pertaining to an order to exclude an alien." Since Petitioner is not challenging an exclusion order, it is not relevant here.

[2] This statute states: "Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

Here, Petitioner does not challenge whether Respondents can commence removal proceedings, adjudicate his case, or execute his removal if necessary. Rather, he challenges the legality of his re-detention and mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

ii. 8 U.S.C. §§ 1252(b)(9))

Section 1252(b)(9) also does not deprive this Court of jurisdiction.[3] Where a petitioner is "not asking for review of an order of removal" or "challenging any part of the process by which their removability will be determined ...., § 1252(b)(9) does not present a jurisdictional bar." *Jennings v. Rodriguez*, 583 U.S. 281,294 (2018); *see also Ibarra-Perez*, 2025 WL 2461663 at *9 (this provision does not bar claims that are "independent of or collateral to the removal process."); *Echevarria*, No. 2:25-cv-3252, at *5 (finding § 1252(b)(9) did not preclude review of a habeas petition). Again, this statute does not apply to Petitioner, who does not contest a removal order or the removal process. Rather, he challenges whether it is constitutional for Respondents to re-detain him without showing a change in circumstances and whether Respondents can lawfully subject him to mandatory detention without bond pursuant to 8 U.S.C. § 1225(b)(2)(A).

iii. 8 U.S.C. § 1252(a)(2)(A)

Petitioner is not contesting expedited removal, and this statute is therefore irrelevant.

c. Section 1225(b)(2)(A) does not apply to Petitioner.

This Court has previously rejected Respondents' argument that noncitizens like Petitioner can be subject to mandatory detention under § 1225(b)(2)(A), particularly when – like here – documents show the government specifically detained the individual under § 1226(a). *See Benitez Cornejo v. Cantu, et al.*, No. CV-25-3672 at *2 (explaining that, in addition to the reasons set forth by the court in *Echevarria v. Bondi*, the Notice of Custody Determination specifically stated the petitioner would be detained pursuant to § 1226(a)); *Echevarria*, No. 2:25-cv-3252, at *8–17 (explaining plain language and statutory structure support conclusion that petitioner was detained

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[3] Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in juridical review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2242 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

pursuant to § 1226(a)). Courts around the country have also rejected the government's argument that § 1225(b)(2)(A) encompasses all noncitizens who are present without admission or parole.[4] Respondents, in comparison, cite no case that supports their expansive reading of § 1225(b)(2)(A).

Section 1225(b)(2)(A) authorizes mandatory detention only if three conditions are met. An "examining officer" must determine the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." *See, e.g., Echevarria v. Bondi, et al.*, No. 2:25-cv-3252 at *9; *Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)). Although Petitioner may satisfy the first requirement as an "applicant for admission," he does not satisfy the second.

This Court and others have consistently recognized that "seeking admission" necessarily requires present-tense conduct, and this section can therefore not apply to an individual like Petitioner who was apprehended in Dallas, Texas, one-and-a-half years after entering. *See Echevarria*, No. 2:25-cv-3252, at *10 ("The word 'seeking' is the present participle of the verb 'seek.' It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection."); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, at *8 (E.D. Cal. Sept. 23, 2025) ("the use of a present participle, 'seeking,' necessarily implies some sort of present-tense action.") (internal quotations and citations omitted).

As this Court has also previously recognized, applying § 1225(b)(2) to Petitioner conflicts with the Supreme Court's interpretation of § 1225 and § 1226 in *Jennings v. Rodriguez* 583 U.S.

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[4] *See, e.g., Hasan v. Crawford*, No. 1:25-CV-1408 (E.D. Va. Sept. 19, 2025); *Quispe Ardiles v. Noem*, No. 1:25-cv-01382 (E.D. Va. Sept. 30, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Teyim v. Perry*, No. 1:25-cv-01615 (E.D. Va. October 15, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720 (D. Colo. Oct. 17, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. Jul. 24, 2025); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Giron Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampaio v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez v. FCI Berlin, Warden*, No. 1:25-cv-00326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-cv-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 3:25-cv-06921, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 3:25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycroft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:2025cv01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025).

281 (2018) and "fails to take account of the entirety of the statutory scheme." *See Echevarria v. Bondi*, No. 2:25-cv-3252, at *17. The Supreme Court explained in *Jennings*, "U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a)." 583 U.S. at 289 (emphasis added). The legislative history also supports this understanding, as the Conference Report stated twice that § 1225 would apply to "aliens arriving in the United States." H.R. Conf. Rep. No. 104-828 at 208, 209 (1996).

Moreover, reading § 1225(b)(2) to encompass all noncitizens who entered without inspection would render multiple provisions of § 1226 superfluous. "[O]ne of the most basic . . . canons" of statutory interpretation is that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)) (internal brackets omitted). There are multiple provisions in § 1226(c) that mandate detention for certain inadmissible noncitizens, including § 1226(c)(1)(E), which was enacted earlier this year as part of the Laken Riley Act and applies to noncitizens who entered the U.S. without admission and were thereafter charged with, arrested for, convicted of, or admitted committing various offenses. *See Quispe Ardiles*, No. 1:25-cv-01382, at *16 ("[i]f § 1225(b) already required mandatory detention of all noncitizens who have not been admitted, these provisions would be meaningless.").

The title of § 1225 – "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing" – further indicates that Congress intended § 1225 to apply only to noncitizens apprehended upon arrival. *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.") (internal quotations omitted).

Finally, Respondents have historically treated Petitioner as detained under § 1226(a). When Respondents apprehended Petitioner after he entered the U.S., they detained him and then released him pursuant to an Order of Release on Recognizance "*under Section 236 of the INA*." ECF No. 10-B (emphasis added). In July 2025, Respondents could only legally re-detain Petitioner by revoking his parole and rearresting him under the original warrant. *See* 8 U.S.C. § 1226(b). In

a nearly identical case, the Eastern District of Virginia granted the habeas petition, concluding that the Order of Release of Recognizance and subsequent re-detention under the original warrant "support[] the conclusion that he is detained pursuant to § 1226(a)." *Quispe Ardiles*, No. 1:25-cv-01382, at *10.

d. Petitioner's ongoing detention without a bond hearing violates the INA, federal regulations, and due process.

Because Petitioner can only lawfully be detained pursuant to 8 U.S.C. § 1226(a), his continued detention without bond violates the INA (Count 3), federal regulations (Count 4), and due process (Count 5).[5] On this basis, he requests this Court order his immediate release or that he be given a bond hearing pursuant to § 1226(a).

Petitioner's continued detention without a bond hearing violates due process. Applying the *Mathews v. Eldridge* framework to Petitioner weighs heavily in favor of his release or that he be given a bond hearing pursuant to INA § 1226(a).

Petitioner's private interest in freedom from detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

Second, the risk of erroneous deprivation is high under the current procedures, and additional procedures would mitigate this risk. Civil detention is only valid when it is necessary to prevent danger to the community or a flight risk. *Zadvydas*, 533 U.S. at 690. In this case, Respondents have never shown that Petitioner poses a danger or a flight risk. "At its foundation, due process prohibits detaining an individual without justification." *Mohammed H. v. Trump*, No. CV 25- 1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025). The imposition of additional safeguards in the form of Petitioner's release or a bond hearing would ensure that the government is only detaining those who actually pose a flight risk or a danger to the community. There is therefore a high risk of the erroneous deprivation of Petitioner's liberty, and there are

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[5] Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. §§ 236.1(d) & 1003.19(a)-(f). The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and therefore violates both the INA and its implementing regulations.

procedures that could alleviate this risk; as such, the second factor also weighs in favor of Petitioner.

Third, Respondents do not explain why the government's interests in immigration enforcement would be harmed by Petitioner's immediate release or release on bond, as he would remain subject to removal proceedings and Respondents have not shown that he is a flight risk. *See Luna Quispe*, No. 1:25-cv-01471 ("Respondents do not explain why these interests would not be adequately protected by the individualized determination of an immigration judge as to whether an individual should be released on bond under section 1226(a) … there is currently no order of removal pending against Petitioner, and he otherwise does not pose a flight risk or a risk to the public and has thus far fully cooperated with Respondents."). The third factor therefore also weighs in Petitioner's favor.

Petitioner therefore requests this Court either order his release or that he be given a bond hearing pursuant to § 1226(a).

e. Petitioner's re-detention absent a change in circumstances violated his procedural and substantive due process rights.

Petitioner's re-detention absent a change in circumstances also violates his procedural due process rights (Count 1) and substantive due process rights (Count 2).[6] As relief, Petitioner requested this Court order his release and enjoin Respondents from re-detaining him absent a pre-detention hearing.

Petitioner was initially detained and released on an order of recognizance pursuant to 8 U.S.C. § 1226(a). ECF No. 10-B. Although Petitioner recognizes ICE has the statutory authority to revoke a bond and re-arrest a noncitizen pursuant to 8 U.S.C. § 1226(b), Respondents overlook critical rulings from the Board and the Ninth Circuit, which have made clear that re-detention requires a showing of changed circumstances after the person's initial release from custody. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

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[6] Counts 1 and 5 are not duplicative, as Respondents state, as Count 1 alleges Respondents violated Petitioner's due process rights by re-detaining him without showing a change in circumstances and Count 5 alleges Respondents violated Petitioner's due process rights by subjecting him to mandatory detention without a bond hearing.

Additionally, as the Ninth Circuit has explained, ICE's "discretion to incarcerate non-citizens is always constrained by the requirements of due process." *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). Due process requires a meaningful opportunity to be heard *before* the deprivation of liberty occurs. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts have consistently applied the *Mathews* framework when evaluating due process challenges to civil immigration detention. *See, e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases).

As for the first factor in *Mathews*, Respondents claim that "Petitioner can cite no liberty or property interest to which due process protections attach," ECF No. 11, at *10, yet the interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). The first factor therefore weighs heavily in favor of Petitioner.

Moreover, contrary to Respondents' assertion that the "the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress," ECF No. 12, at *8, over a century of precedent establishes the opposite: the Supreme Court has repeatedly held that noncitizens, including those who have come to the U.S. illegally, enjoy the protections of the Fifth Amendment. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection."); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."); *Yamataya v. Fisher*, 189 U.S. 86, 100–01 (1903) (noncitizen who entered country in violation of law cannot be "deprived of [her] liberty" without receiving "due process of law"). Respondents' argument mistakenly relies heavily on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020) and *Nishimura Ekiu v. U.S.*, 142 U.S. 651 (1892), both of which involved noncitizens *arriving* at the border, rather than noncitizens like Petitioner who are already in the U.S. These cases only reiterate that noncitizens

who have not yet entered the U.S. "stand[ ] on a different footing" than those who have "passed through our gates," even illegally. *See Mezei*, 345 U.S. at 212.

As for the second factor, the risk of erroneous deprivation in this case is extraordinarily high, as ICE has not shown any changed circumstances to warrant Petitioner's re-detention and Petitioner has not been afforded a bond hearing to establish whether he poses a danger to the community or a flight risk. Should this Court order Petitioner's release, the additional imposition of a pre-deprivation hearing before Petitioner can be re-detained would mitigate the risk of erroneous deprivation.

Respondents' claims regarding the constitutionality of protections afforded to other noncitizens detained under 8 U.S.C. § 1226(a) are entirely irrelevant here, as Respondents also claim that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and, as such, Petitioner is not receiving any of these protections. Respondents rely on cases such as *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) and *Reyes v. King*, No. 1:19-cv-8674 (S.D.N.Y. Aug. 20, 2021) to argue that there are sufficient procedural protections in place such that a pre-detention hearing is not warranted. However, these courts concluded there was not a high risk of erroneous deprivation of liberty based on the procedural protections provided under § 1226(a) – *a statute Respondents argue does not apply to Petitioner.*

In stark contrast to the procedures provided in § 1226(a) and discussed in *Rodriguez Diaz* and *Reyes*, ICE did not make an individualized custody determination when re-detaining Petitioner, ICE did not show any changed circumstances to warrant revoking his parole or re-detaining him, and Petitioner has no further avenues to challenge his detention given the Board's decision in *Matter of Yajure Hurtado*. There is therefore a very high risk of erroneous deprivation of liberty, as there are absolutely no procedures in place to mitigate this risk. Other courts, including in this circuit, have found a pre-detention hearing is warranted. *See, e.g.*, *Bastidas Mendoza, et al. v. Sergio Albarran, et al.*, No. 25-CV-08205-VC, at *1 (N.D. Cal. Sept. 26, 2025) ("petitioners have shown a strong likelihood that they are entitled to a pre-deprivation hearing before an immigration judge").

The burden on the government is minimal, as bond hearings are routine. *See Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, at *2 (E.D. Cal. Mar. 3, 2025) (""In immigration court, custody hearings are routine and impose a minimal' cost."). Respondents do not explain why the

government's interests in immigration enforcement would be harmed by Petitioner's immediate release the imposition of a pre-deprivation hearing, as he would remain subject to removal proceedings if released and Respondents have not shown that he is a flight risk. Moreover, the government cannot have an interest in detaining Petitioner if he does not in fact pose a flight risk or a danger. *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.").

As such, the balance of factors favors Petitioner.

f. Petitioner did not allege Respondents violated his Fourth Amendment Rights.

Contrary to Respondents' assertions, Petitioner never claimed Respondents violated his Fourth Amendment rights. *See* ECF No. 12, at *10 (discussing Petitioner's "allegations" in this regard).

III. Conclusion

Based on the above, Petitioner requests that this Court declare that Petitioner's re-detention absent a showing of changed circumstances violated his due process rights and order his release (Counts 1 and 2). Alternatively, Petitioner requests this Court declare that Petitioner can only lawfully be detained pursuant to 8 U.S.C. § 1226(a) and, as such, order he be released or given a bond hearing (Counts 3, 4, and 5).

Dated: October 24, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, as well as all attachments thereto, to this Court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to counsel of record for the respondents. Additionally, pursuant to Fed. R. Civ. Pro. 5, on October 24, 2025, I mailed the foregoing by certified mail to the attorney for all respondents at:

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Date: October 24, 2025

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