

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CRISTIAN ANDRES PENUELA CARLOS,

Plaintiff,

vs.

NO.9:25-CV-00249-MJT-ZJH

PAMELA BONDI, KRISTI NOEM, TODD  
LYONS, ALEXANDER SANCHEZ,

Defendants.

**REPORT AND RECOMMENDATION GRANTING IN PART PETITIONER'S  
PETITION FOR WRIT OF HABEAS CORPUS**

This case is assigned to the Honorable Michael J. Truncale, United States District Judge, and is referred to the undersigned United States Magistrate Judge for pre-trial management. Doc. No. 5. Pending before the Court is Petitioner Christian Andres Penuela Carlos's ("Penuela Carlos") *Petition for Writ of Habeas Corpus*. Doc. No. 2. Respondents filed a *Response* (Doc. No. 7), to which Penuela Carlos filed a *Reply* (Doc. No. 8). On November 1, 2025, Penuela Carlos filed a *Motion to Expedite* (Doc. No. 9), as his final immigration hearing is set for November 7, 2025. On November 4, at Penuela Carlos's request, the undersigned convened the parties for a status conference and the Respondents provided supplemental authority. Doc. No. 11. Upon consideration, Penuela Carlos's *Petition for Writ of Habeas Corpus* (Doc. No. 2) should be **GRANTED IN PART.**

I. Background

Petitioner Christian Andres Penuela Carlos is a native and citizen of Colombia. Doc. No. 2. Penuela Carlos has resided in New Jersey alongside his two children and long-time partner for over two years. Doc. No. 2. He was injured at the hospital awaiting the birth of his second child

in July of 2024, leading to injuries including an aneurysm and chronic back pain. That month, Penuela Carlos was arrested and charged with domestic violence, which was later dismissed and expunged. The arrest, however, led to his detention by Immigration & Customs Enforcement (“ICE”). Penuela Carlos has been detained by ICE since May of 2025, and at the IAH Detention Center in Polk County, Texas since July of 2025.

Penuela Carlos is applying for asylum and other protection relief. His bond request with EOIR was denied for lack of jurisdiction, and that matter was appealed to the Board of Immigration Appeals (“BIA”). Penuela Carlos states that he is at grave risk of suffering another aneurysm or other life-threatening injury under Respondents’ unlawful detention, placing him at “dire risk” unless he is released from custody. His motion for bond redetermination was denied on August 19, 2025, and he timely appealed to the BIA on August 28, 2025. Penuela Carlos requested humanitarian parole from ICE via email on August 23, 2025, August 28, 2025, and September 2, 2025. He also requested adequate medical care on August 28, 2025, September 1, 2025, and September 3, 2025. ICE has not granted him humanitarian parole, nor will Penuela Carlos have his surgical sutures removed or have access to a neurologist or other physician.<sup>1</sup>

## II. Legal Standard

The Court may grant a writ of habeas corpus to a petitioner who is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The petitioner “bears the burden of proving that he [or she] is being held contrary to the law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his [or her] burden of proof by a preponderance of the evidence.” *Villanueva v. Tate*, No. 4:25-CV-03364, 2025 WL 2774610, at \*4 (S.D. Tex. Sept. 26, 2025)(internal citations omitted). A court considering a habeas petition must

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<sup>1</sup> While the undersigned notes Penuela Carlos’s alleged medical issues, they played no role in the undersigned’s Report and Recommendation.

“determine the facts, and dispose of the matter as law and justice require.” *Id.* (citing 28 U.S.C. § 2243). When the Court finds a petitioner’s constitutional rights have been violated, the petitioner is entitled to the issuance of a writ. *Id.*

### III. Analysis

Penuela Carlos seeks a writ of habeas corpus for his immediate release from custody, arguing, in part, that respondents are violating his due process rights by denying him a meaningful opportunity to seek bond.<sup>2</sup> Doc. No. 2. Respondents argue (1) Penuela Carlos’s claims relating to medical care are not appropriate for habeas review,<sup>3</sup> (2) Penuela Carlos failed to exhaust his administrative remedies prior to filing the petition, (3) Penuela Carlos is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b)(2), (4) the Court lacks jurisdiction, and (5) Penuela Carlos has received all process that is due. Doc. No. 7.

#### A. Jurisdiction

Because it concerns the Court’s power to decide the case, “[j]urisdiction is always first.” *Louisiana v. U.S. Dep’t of Energy*, 90 F.4th 461, 466 (5th Cir. 2024). “‘Federal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (citation omitted). Several sections of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C ch. 12 § 1101 et seq., curtail the jurisdiction of federal district courts in immigration cases. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

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<sup>2</sup> Due to the necessity of an expedient decision, and the substantial overlap of this issue with those in courts around the country and within the Fifth Circuit, the undersigned has borrowed heavily from the well-written opinions and concise analysis of Judge Pulliam in *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) and Judge Cardone in *Lopez-Arevalo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025).

<sup>3</sup> Penuela Carlos’s counsel conceded at the telephonic status conference that deliberate indifference to medical care is not a pathway to habeas relief. Therefore, it will not be analyzed in this Report and Recommendation.

In their Response, Respondents cite to two statutes that would deprive this court of jurisdiction: 8 U.S.C. § 1252(g) and (b)(9). Neither apply here.

a. § 1252(g)

§ 1252(g) prohibits federal district courts from considering “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.” The Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999)). Thus, § 1252(g) applies only “to protect from judicial intervention the Attorney General’s long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)).

The statute “does not bar courts from reviewing an alien detention order, because such an order, ‘while intimately related to efforts to deport, is not itself a decision to ‘execute removal orders’ and thus does not implicate [§] 1252(g).’” *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (citation omitted); accord *Kong v. United States*, 62 F.4th 608, 617–18 (1st Cir. 2023) (collecting cases).

Here, Penuela Carlos is not challenging Respondents’ decision to commence proceedings, adjudicate the case or execute the removal order. As Petitioner’s counsel conceded at the telephonic status conference, Penuela Carlos’s immigration case is proceeding on a different track as the instant habeas action. Here, instead, he challenges his ongoing detention, specifically the

lack of due process in failing to provide a detention hearing. And as the Respondents admit in their *Response*, Fifth Amendment due process applies in immigration proceedings. Doc. No. 7, at 14. Such claims are not barred by § 1252(g). See *Vraj Dilipbhai Patel v. Jeff Tindall, et al.*, No. 3:25-CV-00373, 2025 WL 2823607, at \*2 (W.D. Ky. Oct. 3, 2025) (collecting cases); *Lopez Santos v. Noem*, No. 25-CV-01193, 2025 WL 2642278, at \*2–3 (W.D. La. Sept. 11, 2025).

b. § 1252(b)(9)

Section 1252(b)(9) is another narrowly applicable provision, providing: “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 judicial review of a final order under this section.*” (emphasis added).

Recall the Supreme Court in *Jennings v. Rodriguez* declined to apply an expansive interpretation of “arising from” and held that § 1252(b)(9) did not present a bar to reviewing the immigration habeas petitioners’ challenge to their mandatory detention. *Jennings*, 583 U.S. at 293. The Supreme Court found an expansive interpretation of “arising from” would make “claims of prolonged detention effectively unreviewable.” *Id.* Accordingly, the Court has jurisdiction to decide this matter.

B. Administrative Exhaustion

Respondents next argue that Penuela Carlos’s claim is premature because he has not exhausted his administrative remedies. Doc. No. 7, at 9-10.

“Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); see 8 U.S.C. § 1252(d)(1) (“A court may review a final order of removal only if ... the alien

has exhausted all administrative remedies.”). As the Respondents acknowledge, “in cases such as this, where the exhaustion requirement is not mandated by statute, exhaustion can be forgiven by the Court.” Doc. No. 7, at 9.

Penuela Carlos challenges his ongoing detention as a violation of due process, not a final order of removal. Doc. No. 2. He requested a bond hearing before an Immigration Judge, who determined that he lacked jurisdiction to hold one. Doc. No. 7, Ex. D. Penuela Carlos has appealed that decision. Doc. No. 7, Ex. E. Requiring him to wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing. *See Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021). “Bond denial appeals ‘typically take six months or more to be resolved at the BIA.’” *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at \*3 (E.D. Mich. Sept. 9, 2025) (quoting *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025)). “The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving” Penuela Carlos’s appeal of the Immigration Judge’s bond dismissal. *See id.*

Petitioner also argues that further exhaustion would be “patently futile” because the BIA has repeatedly held that noncitizens in his position are ineligible for bond hearings, and thus any appeal would inevitably be denied. Doc. No. 8, at 23; *see Matter of Q Li*, 29 I. & N. Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Because the BIA has already adopted that interpretation, waiting for a ruling in his pending appeal would simply prolong his detention without providing the possibility of relief. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994)(citing *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir., 1985)). Considering Penuela Carlos already requested a bond determination and further filed an appeal with the BIA, the undersigned finds that further exhaustion would be futile. Doc. No. 8, at 23.

Accordingly, Penuela Carlos's claim is properly before the Court with no further requirement to exhaust administrative remedies.

C. Procedural Due Process

Turning to the merits, Respondents argue that Penuela Carlos is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b). Doc. No. 7. Respondents reference a September 5, 2025, BIA decision that supports their position, *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (concluding decisively that § 1225(b)(2)(A) covers inadmissible noncitizens who lived unlawfully in the United States for longer than two years without apprehension). Respondents also submitted recent district court decisions that they contend reinforce this interpretation, including an order and memorandum opinion. Doc. No. 11. The two cases Respondents point to include an Order from *Garibay-Robledo v. Noem*, 1:25-cv-177-H (N.D. Tex. Oct. 24, 2025), Dkt. 9, and a memorandum ruling from *Sandoval v. Acuna*, 5:25-cv-1467-DCJ-CBW, Dkt. 14.<sup>4</sup> In *Garibay-Robledo*, the Court concluded that § 1225(b)(2) applies to noncitizens encountered within the United States who have not been admitted, relying on 1225(a)(1)'s definition of "applicant for admission" and the BIA's procedural interpretation in *Matter of Yajure Hurtado*. Doc. No. 11. Similarly, in *Barrios-Sandoval*, the Court concluded that individuals present without admission fall within the "applicant for admission" category and are therefore subject to mandatory detention under 1225(b)(2). Doc. No. 11. Respondents contend that these recent decisions reflect the correct reading of the INA and confirm that 1225(b)(2) governs here.

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<sup>4</sup> Respondents emphasize that both decisions held, consistent with § 1225's text, that Congress expressly included "an alien present in the United States who has not been admitted" within the definition of "applicant for admission." See 8 U.S.C. 1255(a)(1).

In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect. *See Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at \*8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); *see Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at \*10 n.9 (D.N.H. Sept. 8, 2025). That includes courts in the Fifth Circuit. *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at \*5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-CV-01093, 2025 WL 2472136, at \*3 (W.D. La. Aug. 27, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at \*7 (W.D. Tex. Oct. 21, 2025).

Regardless, Penuela Carlos challenges his ongoing detention on constitutional grounds as a violation of due process. Doc. No. 2, at 15. Therefore, the undersigned need not consider whether the agency's new mandatory detention policies reflect a proper reading of the INA. The issue, instead, is whether those policies have been applied to Penuela Carlos in an unconstitutional manner. *See Perez v. Kramer*, No. 25-CV-3179, 2025 WL 2624387, at \*3 (D. Neb. Sept. 11, 2025) (declining to consider “the validity of the government’s argument that [the p]etitioner should be mandatorily detained under § 1225” or the applicability of *Yajure Hurtado* and considering, instead, the due process question). Neither of the cases cited by the Respondents based the decisions on any due process grounds.

a. Effect of *Thuraissigiam*

Respondents argue “[Penuela Carlos] is not entitled to anything beyond what § 1225(b) provides him.” Doc. No. 7, at 20. (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). The effect of *Thuraissigiam* was addressed at length in *Lopez-Arevelo*, and the undersigned adopts the view that the holding in *Thuraissigiam* does not foreclose Penuela Carlos’s

due process claims which seek to vindicate a right to an individualized bond hearing. *Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828, at \*7–10 (W.D. Tex. Sept. 22, 2025); see *Espinoza v. Kaiser*, No. 25-CV-1101, 2025 WL 2581185, at \*7 n.9 (E.D. Cal. Sept. 5, 2025); *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at \*7–8 (W.D. Tex. Oct. 21, 2025).

Unlike the Petitioner in *Thuraissigiam*, Penuela Carlos does not challenge the admission process in any way or assert a right to remain in the United States. He merely seeks a chance to apply for release on bond pending resolution of his asylum claim that remains to be resolved in standard removal proceedings. Nothing in *Thuraissigiam* suggests Penuela Carlos lacks such a due process right.

A second key point of distinction is that *Thuraissigiam* was stopped by Border Patrol “within twenty-five yards of the border,” immediately detained, and never released. *Thuraissigiam*, 591 U.S. at 114. Penuela Carlos entered the country on July 16, 2023, but unlike *Thuraissigiam*, he was not detained at entry, not placed in expedited removal proceedings, and had an initial hearing scheduled. Doc. No. 7, Ex. A. He then lived in the United States until, in May 2025, ICE detained Penuela Carlos after he was arrested for domestic violence. Doc. No. 2.

In sum, *Thuraissigiam* does not prohibit Penuela Carlos from pursuing his due process claim for two reasons. First, he challenges his detention, not his deportability. And second, he was detained after years of presence in the United States, rather than on the threshold of initial entry.

b. The *Mathews* Test

Turning to the merits of Penuela Carlos's procedural due process challenge, "[t]o determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at \*2 (W.D. Tex. Sept. 8, 2025). Those factors are: (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. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *M.S.L. v. Bostock*, No. 25-CV-1204, 2025 WL 2430267, at \*8 (D. Or. Aug. 21, 2025) (citing *Mathews*, 424 U.S. at 348).

i. Private Interest

As to the first element, "[t]he interest in being free from physical detention' is 'the most elemental of liberty interests.'" *Martinez v. Sec. of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at \*2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). On July 16, 2023, Penuela Carlos was given a Notice to Appear on September 30, 2026 to show cause why he should not be removed from the United States. Doc. No. 7, Ex. A. Several months ago, he was arrested by ICE authorities and detained. Doc. No. 7, Exs. B, C. The Respondents argue he was already given a bond hearing where he was represented by counsel. Doc. No. 7, at 21. Factually, Penuela Carlos requested a custody redetermination which the immigration judge

denied because there was “no jurisdiction.” Doc. No. 7, Ex. D. Nowhere in the record does it indicate Penuela Carlos was ever given a bond hearing.

As other courts have noted in considering this issue, “Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance prior to BIA’s position in *Yajure Hurtado*.” See *Lopez-Arevalo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828, at \*4 (W.D. Tex. Sept. 22, 2025) (citing *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at \*10 (E.D. Cal. Sept. 5, 2025)).

This position finds support in the longstanding principle in the criminal context that due process requires a pre-deprivation hearing before the revocation of parole. See *id.* at \*9 (citing *Young v. Harper*, 520 U.S. 143, 147–49 (1997)). “The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Parolees thus have a protected liberty interest in their “continued liberty.” *Id.* (citation omitted). A number of district courts have extended this reasoning to the immigration context and held that once released from immigration custody, noncitizens acquire “a protectable liberty interest in remaining out of custody on bond.” *Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at \*2 (N.D. Cal. June 14, 2025) (collecting cases); accord *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at \*8 (D. Or. Aug. 21, 2025) (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.”) (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099, at \*12 (D. Ariz. Aug. 11, 2025) (same).

Because he spent nearly two years at liberty in the United States, Penuela Carlos possesses a cognizable interest in his freedom from detention.

ii. Risk of Erroneous Deprivation

Under the second *Mathews* factor, the Court considers “whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Martinez v. Sec. of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at \*3 (W.D. Tex. Sept. 8, 2025) (quoting *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025)). As in other recent cases, at Penuela Carlos’s bond hearing, “the [Immigration Judge] declined to exercise jurisdiction, finding that [the petitioner was] subject to mandatory detention under § 1225.” *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at \*11 (E.D. Cal. Sept. 5, 2025)). Such a hearing “did not in fact provide ... an opportunity to contest the existence, nature, or significance of [any] supervision violations” or otherwise make an individualized assessment of the need to re-detain him. *See id.* Certainly, Penuela Carlos has the right to appeal the Immigration Judge’s jurisdictional dismissal to the BIA. And he has done so. But given the BIA’s interpretation of mandatory detention in *Yajure Hurtado*, that appeal is almost certainly a futile exercise. Thus, there is a risk that Penuela Carlos has been and will continue to be erroneously deprived of his liberty.

In terms of available alternatives and their probable benefits, agency decisionmakers regularly “conduct[ ] individualized custody determinations ... consider[ing] flight risk and dangerousness.” *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020) (citation omitted); *see also* 8 C.F.R. §§ 236.1(c)(8), 1003.19(h)(3). Because such a proceeding would give Penuela Carlos the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of his liberty.

Therefore, the second *Mathews* factor also supports Penuela Carlos's claim that he has been denied procedural due process.

iii. Government's Interest

Certainly the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community. Penuela Carlos entered the United States on July 16, 2023, and was issued a Notice to Appear by the Department of Homeland Security. Doc. No. 7, Ex. A. Petitioner was not placed in expedited removal proceedings nor detained at entry, and had an initial hearing date scheduled for 2026. *Id.* But the decision not to detain Penuela Carlos on his own recognizance two years ago, in and of itself, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd* 905 F.3d 1137 (9th Cir. 2018). And Penuela Carlos did not abscond from his proceedings—ICE detained Penuela Carlos after being arrested by state authorities on charges that were later dismissed and expunged. Doc. No. 2. In any event, if such concerns exist, they would be squarely addressed if the Court were to grant the petition and order a bond hearing. *See Martinez v. Sec. of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at \*4 (W.D. Tex. Sept. 8, 2025).

Presumably, the Government has an interest in avoiding "the incremental cost resulting from the increased number of hearings" if it must provide bond determinations to people like Penuela Carlos. *Infinity Healthcare Servs., Inc. v. Azar*, 349 F. Supp. 3d 587, 601 (S.D. Tex. 2018) (quoting *Mathews*, 424 U.S. at 347). However, such costs cannot be terribly burdensome, given the BIA concedes in *Yajure Hurtado* "[w]e acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection." *In re: Yajure Hurtado*, 29 I&N Dec. 216, 226 (BIA 2025); accord *Singh v. Andrews*, No. 25-CV-00801,

2025 WL 1918679, at \*8 (E.D. Cal. July 11, 2025) (“In immigration court, custody hearings are routine and impose a ‘minimal’ cost.”) (*Doe v. Becerra*, No. 2:25-CV-00647, 2025 WL 691664, at \*6 (E.D. Cal. Mar. 3, 2025)). Therefore, this factor also weighs in Penuela Carlos’s favor.

Because all three *Mathews* factors support Penuela Carlos’s position, the Court finds that detaining him without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution. This decision is supported by a growing number of district courts across the country who have found that holding people like Penuela Carlos in mandatory detention without a bond hearing likely constitutes a due process violation. *See, e.g., Espinoza v. Kaiser*, No. 25-CV-01101, 2025 WL 2581185, at \*11–12 (E.D. Cal. Sept. 5, 2025); *Kostak v. Trump*, No. CV 3:25-CV-01093, 2025 WL 2472136, at \*3 (W.D. La. Aug. 27, 2025); *Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at \*8–9 (E.D. Cal. July 11, 2025) (collecting cases).

#### D. Scope of Relief

As to the appropriate remedy, Penuela Carlos requests that he be immediately released from custody.

Some courts have determined that the appropriate relief for an immigration detainee held in violation of due process is the petitioner’s immediate release from custody. *See, e.g., M.S.L. v. Bostock*, No. 6:25-CV-01204, 2025 WL 2430267, at \*15 (D. Or. Aug. 21, 2025). But it appears that the comfortable majority position—both historically and in recent weeks—is to instead require a bond hearing before an immigration judge. *See, e.g., Hernandez-Lara v. Lyons*, 10 F.4th 19, 46 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 855 & n.14 (2d Cir. 2020); *Kostak v. Trump*, No. 3:25-CV-01093, 2025 WL 2472136, at \*4 (W.D. La. Aug. 27, 2025); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 811–12 (W.D. Tex. 2015) (collecting cases). This makes sense,

given that the undersigned has found a procedural due process violation. Penuela Carlos's rights are not violated by the very fact of his detention. Rather, they are violated because he has been detained without a bond hearing that accords with due process. *See Black v. Decker*, 103 F.4th 133, 150–1 (2d Cir. 2024) (considering “whether and when due process requires that a particular detained noncitizen receive a bond hearing”).

#### IV. Recommendation

For the reasons stated above, Penuela Carlos's *Petition for Writ of Habeas Corpus* (Doc. No. 2) should be **GRANTED IN PART**.

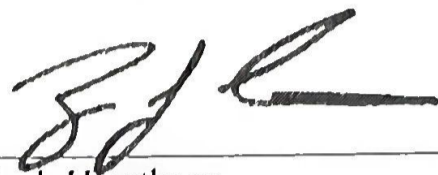
#### V. Objections

Pursuant to 28 U.S.C. § 636(b)(1)(C), each party to this action has the right to file objections to this Report and Recommendation. Objections to this Report must (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, (3) be served and filed within 7 days after being served with a copy of this Report, and (4) be no more than eight (8) pages in length. See 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(2); E.D. TEX. CIV. R. CV-72(c). A party who objects to this Report is entitled to a de novo determination by the United States District Judge of those proposed findings and recommendations to which a specific objection is timely made. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this Report, within 7 days of being served with a copy of this Report, bars that party from: (1) entitlement to de novo review by the United States District Judge of the findings of fact and conclusions of law, and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States District

Judge. See *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED this 4th day of November, 2025.

A handwritten signature in black ink, appearing to read 'Zack Hawthorn', written over a horizontal line.

Zack Hawthorn  
United States Magistrate Judge