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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Carlos Adrian AGUAYO RIVERA,

Petitioner-Plaintiff,

v.

John CANTU, et al

Respondents-Defendants.

Case No. 2:25-cv-03579 DWL DMF

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HEBEAS CORPUS AND IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

This case presents a fundamental question: May ICE categorically deny bond hearings to detained migrants based solely on statutory labels that ignore individual circumstances, constitutional protections, and 17 years of demonstrated law-abiding conduct? The government's response says yes, invoking § 1225(b)(2) to claim that Petitioner—despite nearly two decades of continuous presence, no verifiable criminal history, prima facie VAWA protection, and deep family ties—must be detained indefinitely without any hearing. That position violates procedural due process and cannot withstand constitutional scrutiny.

The Government's response focuses on statutory classifications while sidestepping the constitutional core of Petitioner's claim. Respondents contend that because Petitioner was subject to expedited removal in 2008—seventeen years ago—he is permanently classified as an "applicant for admission" subject to mandatory detention without hearings. This "constitutional cliff" theory finds no support in Supreme Court precedent and fundamentally misreads *Jennings v. Rodriguez*, which explicitly remanded for courts to consider constitutional claims. 138 S. Ct. 830, 851 (2018).

Moreover, the government's factual assertions are deeply flawed. The Martinez Declaration attributes criminal convictions to Petitioner that do not belong to him—a pattern of database errors and mistaken identity documented by former FBI Special Agent Martin E. Hellmer in his expert analysis. Even setting aside these erroneous attributions, the government provides no individualized justification for detaining Petitioner specifically, no assessment of flight risk or danger, and no explanation for categorically denying the hearing the Constitution requires.

The Court should grant Petitioner's request: order his immediate release and require ICE to provide a bond hearing where the government must demonstrate by clear and convincing evidence that his detention is necessary.

II. THE GOVERNMENT'S CRIMINAL HISTORY ALLEGATIONS REST ON MISTAKEN IDENTITY

The government's opposition relies heavily on alleged criminal convictions that expert analysis demonstrates do not belong to Petitioner. The Martinez Declaration attributes to Petitioner: (1) a 2003 DUI arrest by Chandler Police; (2) 2006 importation of counterfeit currency; (3) 2008 conviction for importing merchandise subject to seizure; and (4) 2014 DUI conviction. Doc. 7-1 ¶¶ 8, 11. Petitioner denies committing these offenses. Independent criminal records research and expert analysis reveal these convictions belong to different individuals with similar names.

The government's own records confirm this problem. On page 2 of the I-213, ICE explicitly records "*Previous Criminal History: Subject has no criminal history,*" yet later pages attribute a 2008 federal importation conviction and a 2014 DUI to Petitioner while also listing two different FBI numbers—[redacted] and [redacted]—associated with him. *See* Exhibit C (I-213) at 2–3. Because FBI numbers are unique personal identifiers, multiple numbers for one person indicate cross-matched data from separate individuals. This internal inconsistency alone should have prompted individualized verification rather than blind reliance on flawed database pulls.

Martin E. Hellmer, a former FBI Special Agent with 23 years of experience conducting criminal history checks, reviewed Petitioner's case and identified systematic database errors leading to false attribution of others' crimes to Petitioner. *See* Hellmer Declaration ¶¶ 1-3, attached as Exhibit A. As Agent Hellmer explains, the FBI's Criminal Justice Information

System databases are intentionally designed to produce "any and all possible, and not necessarily exact, matches" when conducting criminal history checks. Id. ¶ 4. This design creates routine "false positives"—criminal records belonging to different individuals that are mistakenly associated with the subject of the inquiry. Id.

False positives occur when individuals share common characteristics such as first and last names combined with similar dates of birth or Social Security numbers. Id. ¶ 5. Agent Hellmer's independent research identified "no fewer than 50 individuals in Arizona alone" with the same first and last name combination as Petitioner, with "numerous" sharing the same birth year. Id. ¶ 7.

The alleged criminal convictions attributed to Petitioner in the Martinez Declaration match records for **different individuals:**

2006 Drug Importation (Cocaine): Commercial database records identify this conviction as belonging to [redacted] not Carlos Adrian Rivera Aguayo. *See* Exhibit B, CLEAR Report at 9-10. This individual has a different middle name ([redacted]), different birth date [redacted] vs. [redacted], and different address (Chandler vs. San Tan Valley). The case number [redacted] lists the defendant as [redacted] with attorney Joseph Anthony Duarte representing him in federal court. *Id.*

2004 Traffic Violations (Driving with suspended license): Database records show these convictions belong to [redacted] **born** [redacted]—not Petitioner, who was born [redacted]. *See* Exhibit B at 10-12. This individual resided at [redacted] Chandler, AZ—not Petitioner's address a[redacted]

Agent Hellmer explains that the association of **two different FBI numbers** [redacted] and [redacted] with Petitioner is itself strong evidence of database error. *See* Hellmer Decl. ¶ 9. "Because FBI Numbers are intended to provide law enforcement with a comprehensive record of an individual's criminal history, there should be just a single FBI Number assigned to each person." *Id.* The assignment of multiple FBI numbers is "highly unusual" and typically indicates either poor-quality fingerprints preventing proper matching, clerical errors during booking, or—most commonly—the mistaken association of records belonging to different individuals. *Id.* ¶¶ 9-10.

Supporting exhibits demonstrate the specific mis-attributions: (1) 2006 U.S. District Court drug importation – Defendant [redacted] and [redacted] counsel Joseph A. Duarte, Exh. B at 9-10; (2) 2004 Chandler traffic citation (A.R.S. § 28-3473.A) – [redacted] address [redacted] vs. Petitioner's DOB [redacted] and San Tan Valley residence, Exh. B at 10-12; and (3) verified Petitioner entries limited to a 2001 Maricopa traffic and 2013 Riverside seat-belt violation, Exh. B at 8-9. These records, coupled with Agent Hellmer's findings, confirm that DHS relied on other individuals' records and that Petitioner's own history contains no crime involving moral turpitude.

Independent verification confirms Petitioner's actual criminal history consists solely of minor traffic violations: a 2001 unspecified traffic violation and 2004 driving-related infractions in Maricopa County, and a 2013 seatbelt violation in Riverside, California. *See* Hellmer Decl. ¶ 7; Exhibit B at 8-9. **None of these constitute crimes involving moral turpitude.**

The government's reliance on flawed database records—without conducting individualized verification—exemplifies the constitutional problem Petitioner identifies:

categorical decision-making divorced from actual facts about the individual. When ICE attributes serious felonies to the wrong person and uses those false attributions to justify detention, the risk of erroneous deprivation under *Mathews v. Eldridge* becomes absolute.

In sum, the record shows DHS conflated at least two individuals under similar identifiers; the government's own I-213 lists "no criminal history"; and independent verification confirms only minor traffic infractions.

III. EVEN IF THE ALLEGED CONVICTIONS BELONGED TO PETITIONER, THEY WOULD NOT JUSTIFY CATEGORICAL DENIAL OF A BOND HEARING

Even assuming *arguendo* the criminal history alleged in the Martinez Declaration were accurate—which Petitioner categorically denies—those convictions would not eliminate constitutional requirements for a bond hearing.

A. Simple DUI Is Not a Crime Involving Moral Turpitude

The government alleges Petitioner was arrested for DUI in 2003 and convicted of DUI in 2014. **Petitioner denies these allegations.** But even if true, simple DUI without aggravating factors is not a crime involving moral turpitude under binding authority.

Courts uniformly hold that simple DUI is not a CIMT. *See Matter of Torres-Varela*, 23 I. & N. Dec. 78 (BIA 2001) (aggravated DUI based solely on recidivism not CIMT); *Matter of Lopez-Meza*, 22 I. & N. Dec. 1188 (BIA 1999) (Arizona DUI is CIMT only when defendant drives **knowing** license is suspended for prior DUI); *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009) (en banc) (deferring to *Lopez-Meza* where knowledge-of-suspension element proved). The government alleges no such aggravator here; thus, even accepting its version of facts, no CIMT arises under binding authority.

USCIS's own Policy Manual confirms: "Drunk or reckless driving" is listed among crimes that do "not constitute crimes involving moral turpitude." USCIS Policy Manual, Vol. 12, Part F, Ch. 5. The Immigrant Legal Resource Center's authoritative guidance states: "simple drunk driving, even with injury or as a repeat offense, is not a CIMT." ILRC, *Crimes Involving Moral Turpitude* § N.7.

A DUI becomes a CIMT only with specific aggravating factors such as driving with knowledge of license suspension for a prior DUI. *See Matter of Lopez-Meza*, 22 I. & N. Dec. 1188 (BIA 1999); *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009). The government's allegations contain no such aggravating circumstances.

B. The 2006/2008 Counterfeiting Allegations Belong to a Different Person

The government alleges Petitioner was convicted of importing counterfeit currency in 2006 and 2008. **Petitioner categorically denies these allegations.** As documented above, these convictions belong to [redacted]—a different individual with a different middle name, different birth date, and different address. *See* Exhibit B.

Moreover, even if these allegations were accurate, the government provides no analysis of the specific statute of conviction, the elements proven, or whether the conviction constitutes a CIMT under the categorical approach. Counterfeiting *with intent to defraud* typically constitutes a CIMT. *See* USCIS Policy Manual, Vol. 12, Part F, Ch. 5 ("offenses relating to counterfeiting are generally CIMTs"). However, "possession of counterfeit securities *without intent*" is not a CIMT. *Id.* Without the record of conviction, the government cannot establish whether any alleged counterfeiting offense involved the requisite fraudulent intent.

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C. Ancient, Disputed Convictions Cannot Justify Categorical Denial of Hearings in 2025

Even accepting the government's erroneous factual allegations, alleged convictions from 2003, 2006, 2008, and 2014 cannot justify categorical denial of a bond hearing in November 2025. The most recent alleged offense occurred over eleven years ago. Since then, Petitioner has resided continuously in the United States, maintained stable employment as a cement construction worker, supported his wife and two U.S. citizen children, and demonstrated complete compliance with immigration requirements.

The government cites no authority permitting ICE to categorically deny bond hearings based on decade-old alleged offenses—particularly where those offenses are either not CIMTs (DUI) or are disputed and likely misattributed (counterfeiting). Constitutional due process requires individualized assessment of *current* flight risk and danger, not categorical exclusion based on ancient, disputed records.

IV. THE GOVERNMENT'S STATUTORY ARGUMENT DOES NOT ANSWER THE CONSTITUTIONAL QUESTION

The government contends Petitioner is subject to mandatory detention under § 1225(b)(2) as an "applicant for admission" because he was subject to expedited removal on December 27, 2008. Doc. 7 at 6-8. That statutory framing misses the constitutional issue entirely. The violation did not arise from which detention statute applies, but from the absence of any hearing or individualized assessment before depriving Petitioner of liberty for three months. Due process under *Mathews v. Eldridge* requires procedures *before* liberty is taken away, not post-hoc statutory classifications. 424 U.S. 319, 333 (1976). No statutory interpretation can cure a constitutional deprivation that has already occurred.

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A. This Court Has Already Rejected the Government's § 1225(b)(2) Theory

The government acknowledges that this Court "explicitly rejected its legal position" in *Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), and that its interpretation represents a "minority position." Doc. 7 at 8. The government's own admission that most federal courts reject its statutory theory underscores the weakness of its position.

In *Echevarria*, this Court held that individuals who entered without inspection years ago and have established lives in the United States are not "applicants for admission" subject to mandatory detention under § 1225(b)(2). This Court recognized that the government's interpretation leads to absurd results: treating someone who entered 17 years ago identically to someone arriving at a port of entry today, despite profound differences in equities, community ties, and constitutional interests

B. Jennings Preserved the Constitutional Challenge Petitioner Brings

In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Supreme Court addressed only statutory construction and explicitly left open the constitutional question whether indefinite detention without a bond hearing is permissible. *Id.* at 851. Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts must exercise independent judgment and not defer to agency interpretations that abridge constitutional rights. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), continued detention is unlawful where no individualized hearing occurs and removal is not reasonably foreseeable.

Respondents' reliance on recent 2025 BIA decisions—*Matter of Q. Li* and *Matter of Yajure Hurtado*—is misplaced. Those cases involved recent arrivals lacking equities or humanitarian protections. By contrast, Mr. Aguayo Rivera has seventeen years of law-abiding

presence and renewed VAWA prima facie status. Even if those decisions narrow IJ bond jurisdiction, they do not resolve the constitutional question *Jennings* left open and cannot justify denial of an individualized hearing.[1]

C. Statutory Authority Does Not Eliminate Constitutional Obligations

The government leans heavily on its statutory authority under § 1225(b)(2), suggesting that mandatory detention eliminates any constitutional obligation to provide a hearing. But statutory detention power and constitutional due process obligations are distinct. Petitioner does not dispute ICE's general ability to detain individuals under immigration statutes. What he challenges is ICE's categorical denial of any hearing to assess whether his *specific* detention is necessary.

The Supreme Court has repeatedly held that statutory authority for civil detention must be construed to include constitutional limitations. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The government cannot use statutory labels to evade constitutional obligations.

Moreover, under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024), courts must "exercise their independent judgment" in interpreting statutes without deference to agency interpretations. The APA codifies this role: courts must "decide all relevant questions of law" and "interpret constitutional and statutory provisions" independently. 5 U.S.C. § 706. This Court need not defer to ICE's interpretation that § 1225(b)(2) eliminates all procedural protections.

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[1] See *Echevarria v. Bondi*, No. 2:25-cv-03252 (PHX-DWL) (D. Ariz. Oct. 3, 2025) (recognizing split on § 1225(b) bond jurisdiction); courts continue to evaluate the government's expanded "applicant-for-admission" theory, underscoring why this Court should decide the constitutional issue directly.

V. THE GOVERNMENT CANNOT RECONCILE ITS STATUTORY THEORY WITH PETITIONER'S 17-YEAR CONTINUOUS PRESENCE AND PRIMA FACIE VAWA PROTECTION

The government's theory that Petitioner is an "applicant for admission" under § 1225(a)(1) because of a 2008 expedited removal leads to absurd results. Under this interpretation, someone who entered the United States 17 years ago, has never been detained, has established deep family and community ties, and has prima facie eligibility for humanitarian relief based on domestic violence is treated identically to someone arriving at a port of entry today.

This interpretation contradicts the purpose of § 1225(a)(1), which Congress enacted to level the playing field between those who present at ports of entry and those who evade inspection—not to create a permanent underclass of long-term residents subject to indefinite mandatory detention decades later based on a single ancient incident. *See Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

The government's position is particularly untenable given Petitioner's prima facie VAWA eligibility. Congress enacted VAWA specifically to protect domestic-violence survivors from detention and removal while their petitions are adjudicated. USCIS issued Petitioner a prima facie determination on January 31, 2024, finding he submitted sufficient evidence to establish eligibility for VAWA relief. That determination has been renewed, confirming USCIS's continued recognition that Petitioner meets threshold requirements for protection. *See* Habeas Petition ¶¶ 27-28.

USCIS policy recognizes that VAWA self-petitioners with prima facie determinations should generally not be removed while their petitions are pending. USCIS Policy Manual, Vol. 6, Part A, Ch. 2. Detaining VAWA beneficiaries while their petitions languish unadjudicated

directly contradicts Congressional intent. Here, USCIS has failed to adjudicate Petitioner's petition for over two years despite prima facie eligibility. This agency delay, combined with ICE's categorical denial of bond hearings, transforms VAWA's protective framework into a trap, precisely what Congress sought to prevent.

VI. PETITIONER'S REMOVAL IS NOT REASONABLY FORESEEABLE UNDER *ZADVYDAS*

The government insists removal is "reasonably foreseeable" because Petitioner's Individual Calendar Hearing is scheduled for December 17, 2025, and Mexico will accept him. Doc. 7 at 2. This claim ignores binding Supreme Court precedent and the specific facts demonstrating removal is not reasonably foreseeable.

Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), immigration detention must be limited to a period "reasonably necessary to bring about [the] alien's removal." Once removal is not "reasonably foreseeable," continued detention violates the Due Process Clause. *Id.* at 689–701. Here, removal is not reasonably foreseeable for multiple independent reasons:

First, Petitioner has prima facie VAWA eligibility. USCIS issued a prima facie determination on January 31, 2024, which has been renewed. Habeas Pet. ¶¶ 27-28. Congress created special protections for domestic-violence survivors, and USCIS policy recognizes individuals with pending VAWA petitions should generally not be removed during adjudication. Despite prima facie status, USCIS has failed to adjudicate his petition for over two years, making any removal timeline entirely speculative.

Second, even if Petitioner's Individual Calendar Hearing results in a removal order—unlikely given his VAWA eligibility—that order would be subject to appeal to the Board of Immigration Appeals, which takes months or years. The timeline for final removal, if it occurs at all, is months or years away—not "reasonably foreseeable" under *Zadvydas*.

Third, USCIS's prolonged delay makes removal not reasonably foreseeable. The agency has had over two years and provided no timeline for completion. Until USCIS adjudicates the petition, removal cannot reasonably be effectuated because Congress intended VAWA beneficiaries with prima facie determinations to remain in the United States during adjudication.

The government's timeline calculations assume lawful agency compliance that its own conduct contradicts. When USCIS has delayed VAWA adjudication for over two years despite prima facie eligibility, assurances about "reasonable foreseeability" lack credibility. Under *Zadvydas*, when removal is not reasonably foreseeable, the Constitution requires release. 533 U.S. at 701.

VII. THE CATEGORICAL DENIAL OF HEARINGS VIOLATES PROCEDURAL DUE PROCESS

The government's response fails to address what procedural protections, if any, were provided to Petitioner before his August 14, 2025 detention. The record reflects no hearing was conducted and no individualized finding was made. ICE identified no basis for detaining Petitioner specifically—much less clear and convincing evidence that he poses flight risk or danger.

The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). Under *Mathews v. Eldridge*, procedural due process protections must precede, not follow, deprivations of liberty. 424 U.S. at 333.

The* Mathews *Factors Overwhelmingly Require a Hearing

Private Interest: Physical liberty is "the most elemental of liberty interests." *Zadvydas*, 533 U.S. at 690. Unlike the disability benefits in *Mathews*, Petitioner faces loss of physical freedom itself, held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir.

2016). His 17-year U.S. residence, verified lack of criminal history (excluding misattributed records), prima facie VAWA eligibility, and deep family ties make this deprivation particularly severe. As a domestic-violence survivor, detention recreates the trauma of his abuse. His separation from his U.S. citizen children (ages 26 and 17) and his wife, combined with inability to prepare for his December 17 hearing, compound the harm.

Risk of Error: Without any hearing, the government makes no individualized assessment. Bond hearings assess two fact-intensive questions—flight risk and danger—that cannot be determined categorically. Unlike *Mathews*, where disability determinations relied on medical records the agency already possessed (424 U.S. at 343-44), custody determinations require individualized evaluation of credibility, family ties, criminal history, and future conduct—precisely where hearings provide greatest value.

Here, a hearing would immediately reveal detention is unnecessary. The government's own evidence shows: (1) Petitioner has 17 years of continuous U.S. residence without immigration violations; (2) his actual criminal history consists only of minor traffic infractions from 2001-2013; (3) he maintained stable employment as a cement construction worker; (4) he has two U.S. citizen children and a wife depending on him; (5) he has prima facie VAWA status providing a statutory path to relief; (6) he has a scheduled Individual Calendar Hearing on December 17, 2025. The categorical policy prevents assessment of these facts and guarantees wrongful detention.

Government Interest: The government has three potential interests: ensuring appearance, protecting public safety, and effectuating removal. None applies here.

Regarding appearance: Petitioner's 17-year continuous presence without any failures to appear, his deep family ties, and his prima facie VAWA eligibility providing likelihood of

obtaining lawful status all eliminate flight risk.

Regarding public safety: Petitioner's verified criminal history shows only minor traffic violations from 2001-2013—over a decade ago. He poses no danger whatsoever. Far from being a source of danger, he is a domestic-violence survivor seeking VAWA protection—precisely the population Congress intended to safeguard.

Regarding effectuating removal: The government has no legitimate interest in detaining someone whose removal is not reasonably foreseeable. Petitioner's prima facie VAWA determination means USCIS found his petition facially meritorious. Even if his Individual Calendar Hearing results in a removal order, appeals to the BIA take months or years. The government cannot justify detention to effectuate removal that may never occur or is years away.

Conditions of supervision—GPS monitoring, weekly reporting to ICE, surrender of travel documents, maintenance of fixed residence—adequately address any conceivable concern at far lower cost than detention. Administrative convenience cannot override constitutional protections. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

Balancing these factors, due process clearly requires a hearing before continued detention. Petitioner's profound liberty interest and the absolute risk of error from categorical denial, combined with the government's minimal interest in detaining him specifically, compel this conclusion.

This case epitomizes what *Mathews* and *Zadvydas* forbid: a categorical policy that detains a long-term resident without individualized justification. Under *Zadvydas*, detention ceases to be constitutional once removal is not reasonably foreseeable; under *Mathews*, process must precede deprivation. Together, these principles mandate at least one bond hearing where the government bears the burden of proving necessity by clear and convincing evidence.

VIII. THE GOVERNMENT'S RELIANCE ON THE 2008 EXPEDITED REMOVAL CANNOT JUSTIFY 2025 DETENTION WITHOUT PROCESS

The government relies heavily on the December 27, 2008 expedited removal at the Nogales port of entry, where Petitioner allegedly presented a permanent resident card that did not belong to him. Doc. 7-1 ¶¶ 12-14. But that single incident seventeen years ago cannot justify categorical denial of a bond hearing in 2025.

Even accepting the government's characterization of that event, it occurred nearly two decades ago when Petitioner was 33 years old. Since then, he has lived continuously in the United States. Independent criminal-records verification shows his only offenses since 2008 are a 2013 seat-belt violation in California—hardly evidence of dangerousness or flight risk. *See* Hellmer Decl. ¶ 7; Exhibit B.

The government's theory that this single 2008 incident permanently classifies Petitioner as an "applicant for admission" subject to mandatory detention defies constitutional principles. Under this interpretation, 17 years of law-abiding residence, family formation, community integration, stable employment, and VAWA-protection eligibility—all occurring *after* the 2008 incident—count for nothing. The government offers no explanation for why Petitioner's demonstrated reliability over 17 years should be disregarded in favor of categorical detention based on an ancient expedited removal.

Moreover, the government's own evidence reveals the arbitrary nature of ICE's enforcement. The Martinez Declaration states ICE "identified a vehicle belonging to Petitioner" in July 2025 and arrested him August 14, 2025, when officers "observed Petitioner entering his vehicle." Doc. 7-1 ¶¶ 15-17. This was not a criminal arrest, an immigration violation, or evidence of flight. It was surveillance of a domestic-violence survivor living peacefully in his community, followed by arrest without any showing of necessity.

The government cannot reconcile its position with *Jennings*' explicit instruction that courts must consider constitutional claims. 138 S. Ct. at 851. If the Constitution requires a hearing—as *Mathews* and *Zinermon* establish—then the statutory label ICE applies is irrelevant.

The government's 2008-event theory also fails under *Zadvydas*, 533 U.S. 678 (2001): a 17-year-old removal order cannot make current detention "reasonably necessary to effectuate removal." Where, as here, humanitarian relief is pending and the agency's own conduct delays adjudication, continued custody bears no rational connection to any legitimate purpose and violates due process.

IX. PETITIONER DEMONSTRATES IRREPARABLE HARM

The government dismisses Petitioner's injury, but Ninth Circuit precedent has consistently held that 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"). The very essence of due process protects individuals from arbitrary deprivation of liberty.

Petitioner faces both inherent constitutional harm of unlawful detention and unique vulnerabilities. He is the primary financial provider for his wife and two U.S. citizen children, ages 26 and 17. His detention resulted in immediate loss of employment and complete elimination of income.

As a domestic-violence survivor with prima facie VAWA eligibility, Petitioner faces acute psychological harm from detention. For survivors, confinement in correctional facilities replicates psychological dynamics of abuse—loss of autonomy, isolation, powerlessness, and dependence on authorities. Congress enacted VAWA precisely to protect survivors from such harm. The emotional and psychological injuries from re-traumatization cannot be remedied with monetary damages.

His Individual Calendar Hearing is scheduled for December 17, 2025—weeks away. Continued detention severely impairs his ability to prepare. While counsel retained a contract attorney to visit the detention facility, such visits are limited and monitored. Detention prevents Petitioner from personally gathering evidence, obtaining witness statements, and securing letters of support essential to his defense and VAWA petition.

Each day of detention deprives Petitioner of liberty that cannot be restored. Courts consistently recognize "*Liberty is a precious right*" that, once lost, cannot be adequately compensated. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

Irreparable harm is not merely likely; it is already occurring.

X. PETITIONER IS LIKELY TO SUCCEED ON MERITS OR AT LEAST RAISES "SERIOUS QUESTIONS"

The Constitution requires a hearing before the government may continue to deprive Petitioner of liberty. The Fifth Amendment provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. At minimum, due process requires notice and an opportunity to be heard before the government deprives an individual of liberty. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

As detailed above, the *Mathews* factors overwhelmingly favor requiring a hearing before Petitioner's continued detention. The government's response does not engage with this constitutional analysis—instead relying on statutory arguments that do not answer the constitutional question *Jennings* preserved for adjudication.

Petitioner's due-process claim clearly satisfies the Ninth Circuit's alternative "serious questions" standard. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). His private interest—freedom from detention—is substantial and protected by the Fifth

Amendment. Against this significant liberty interest, the risk of erroneous deprivation under ICE's no-process approach is unacceptably high.

The government's own evidence demonstrates this risk. ICE attributed serious criminal convictions to Petitioner that belong to different individuals—Carlos Alberto Alvarez-Aguayo (drug trafficking) and Carlos Adrian Rivera Aguayo born 08/24/1975 (traffic violations). Without a hearing where Petitioner can present evidence, contest false attributions, and demonstrate he poses neither flight risk nor danger, the probability of erroneous detention is absolute.

Requiring ICE to provide basic procedural safeguards—a bond hearing where the government must prove by clear and convincing evidence that detention is necessary—imposes minimal burden. The government routinely conducts such hearings. ICE can easily conduct one here. The government's claim that no process is owed at all ignores binding authority and defies due process itself.

This violation is compounded by arbitrary decision-making. The APA requires agencies to "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 failed to verify criminal records before attributing serious felonies to Petitioner, failed to consider his 17-year record of law-abiding conduct, and provided no rational explanation for detention. This pattern of decision-making divorced from individualized assessment exemplifies arbitrary conduct the APA prohibits.

The constitutional questions presented are profound: whether due process permits categorical denial of bond hearings based solely on statutory classifications that ignore individual circumstances, and whether constitutional protections depend on statutory labels rather than

functional reality. These questions go to the heart of our constitutional system and clearly raise "serious questions" warranting preliminary relief.

XI. THE GOVERNMENT'S MANDAMUS ARGUMENT MISCHARACTERIZES THE INTERTWINED NATURE OF THE CLAIMS

The government argues Petitioner's mandamus and APA claims are "not cognizable" in habeas and "premature" because USCIS processing times have not been exceeded. Doc. 7 at 8-9. Both arguments fail.

A. Mandamus and Habeas Claims Are Inextricably Intertwined

Courts routinely address mandamus claims alongside habeas petitions where agency delay directly prolongs unlawful detention. The claims here are inextricably intertwined because USCIS's unreasonable delay in adjudicating Petitioner's VAWA self-petition directly makes his detention unlawful under *Zadvydas*.

Under Zadvydas, *detention must be limited to a period reasonably necessary to effectuate removal. 533 U.S. at 689. Here, removal is not reasonably foreseeable precisely because Petitioner has prima facie VAWA eligibility and Congress intended VAWA beneficiaries to remain in the United States during adjudication. USCIS's delay in adjudication thus perpetuates detention that serves no legitimate governmental purpose.*

The government's attempt to sever the mandamus claim from habeas ignores this direct causal link. Each day USCIS delays adjudication, Petitioner's detention becomes less constitutionally defensible under Zadvydas *because removal becomes less reasonably foreseeable. Mandamus relief compelling timely USCIS adjudication is thus essential to remedying the unlawful detention.*

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B. USCIS Processing Times Do Not Excuse Unreasonable Delay for Vulnerable VAWA Petitioners

The government contends delay is not unreasonable because current USCIS processing time for Form I-360 petitions is 44 months. Doc. 7 at 9. This argument ignores the unique circumstances of VAWA petitioners and the statutory mandate for expedited processing of protection-based applications.

Congress enacted VAWA to protect domestic-violence survivors, and delays in adjudication—particularly when combined with detention—defeat that protective purpose. Courts recognize vulnerable populations like VAWA petitioners are entitled to more expeditious processing than routine immigration benefits. See Laing v. Ashcroft, 370 F.3d 994, 1000-01 (9th Cir. 2004).

Moreover, USCIS processing times are averages, not deadlines, and courts compel expedited adjudication where circumstances warrant. Here, USCIS has had Petitioner's petition for over two years—ample time to adjudicate, particularly given the agency already issued a prima facie determination finding the petition facially meritorious. The agency provided no explanation for delay and no timeline for completion.

When a prima facie eligible VAWA petitioner is detained and USCIS delay makes removal not reasonably foreseeable under Zadvydas, mandamus relief is appropriate to compel adjudication within a reasonable period. The government's reliance on average processing times cannot justify indefinite delay that directly prolongs unconstitutional detention.

Maintaining Petitioner's liberty during adjudication preserves, rather than disturbs, the status quo. Granting interim release merely restores the constitutional baseline that existed before ICE's categorical detention policy.

XII. 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 denied promotes public confidence in the immigration system's fairness and legitimacy. Requiring ICE to justify detention of a domestic-violence survivor with prima facie VAWA protection enhances public trust. *See Hernandez*, 872 F.3d at 996.

ICE faces minimal hardship from complying with constitutional requirements. Petitioner lived peacefully in the community for 17 years, working steadily and supporting his family. Providing a bond hearing where the government must demonstrate detention is necessary creates no public-safety risk or administrative burden.

By contrast, ICE's categorical denial of bond hearings—including for VAWA survivors—undermines constitutional integrity and erodes public confidence that immigration enforcement respects fundamental rights.

The government's reliance on misattributed criminal records to justify detention demonstrates precisely why hearings are essential. Without individualized assessment, ICE detained someone based on serious felonies committed by others. This is not hypothetical harm—it is an ongoing constitutional violation.

When balancing equities, the public's interest overwhelmingly favors Petitioner's position: maintaining procedural fairness and constitutional integrity. The equities decisively favor granting injunctive relief.

Granting this injunction not only vindicates one petitioner's rights but reinforces a constitutional baseline for all detainees in Arizona facilities: that liberty cannot be taken without a hearing. Such judicial clarity benefits the public by ensuring that enforcement aligns with constitutional boundaries and congressional intent.

XIII. CONCLUSION

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

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

2. Enjoin Respondents from detaining Petitioner absent: (a) a bond hearing before a neutral adjudicator, (b) individualized findings based on clear and convincing evidence that he poses a flight risk or danger to the community, and (c) adequate notice and opportunity to be heard;

3. Issue a writ of mandamus compelling USCIS to adjudicate Petitioner's VAWA self-petition within 60 days or another time period the Court deems reasonable; and

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

ICE's categorical denial of bond hearings to a domestic violence survivor with prima facie VAWA protection and 17 years of continuous law-abiding residence, based on misattributed criminal records and an ancient expedited removal, violates fundamental due process and cannot stand.

Dated: November 12, 2025

Respectfully submitted,

/s/ Hillary Walsh
Hillary Walsh

Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I electronically transmitted this **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HEBEAS CORPUS AND 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:

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