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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FEDERICO NAVARRO PEREZ, Petitioner-Plaintiff, v. CHRISTOPHER J. LAROSE, et al. Respondents-Defendants.	Case No.: 25-cv-2620-RBM-JLB **PETITIONER'S SUPPLEMENTAL BRIEFING PURSUANT TO THE COURT'S OCTOBER 29, 2025 ORDER** HON. RUTH BERMUDEZ MONTENEGRO UNITED STATES DISTRICT JUDGE

Petitioner Federico Navarro Perez submits the following supplemental brief in response to the Court's October 29, 2025 Order:

A. MR. NAVARRO PEREZ HAS FULL DUE PROCESS RIGHTS AS SOMEONE WHO HAS BEEN RESIDING WITHIN THE U.S.

Simply put, Mr. Navarro Perez is not a noncitizen "on the threshold of entry" seeking initial admission. He is a noncitizen who was lawfully paroled into the United States on December 12, 2024, and has established significant ties during his nearly ten

months of residence. Moreover, because Mr. Navarro Perez' parole has not been terminated in accordance with the law (including Respondents' own regulation), Mr. Navarro Perez is not just a "person" with due process rights within the U.S., he is a parolee with significant due process rights in the United States. As such, he is entitled to the full panoply of due process protections guaranteed by the Fifth Amendment to "all persons" within the United States, regardless of their status under an "entry fiction."

In Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), the Supreme Court addressed the procedural limitations on habeas review for initial admission. It did not eliminate the substantive due process rights of noncitizens physically present in the United States against fundamental deprivations like indefinite detention or detention in unconstitutional conditions. As Judge Lopez recently held in Kadir v. Larose, No. 25cv1045-LL-MMP, 2025 WL 429180, at *2 (S.D. Cal. Oct. 15, 2025), "Thuraissigiam addressed the limits on judicial review of the procedures governing admission, not the core substantive rights of a noncitizen physically present in the United States against indefinite detention or other fundamental deprivations of liberty."

The Fifth Amendment's Due Process Clause applies to everyone within the United States, and Petitioner has been living in the U.S. for ten months. This protection is not contingent on immigration status or the "entry fiction." Petitioner's liberty interest in freedom from physical restraint is profound and protected. Zadvydas v.

Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011). "[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." Zadvydas, 533 U.S. at 693.

Denying Petitioner a forum to challenge his unlawful detention would raise a "serious constitutional question" under Webster v. Doe, 486 U.S. 592, 603 (1988). As Judge Sabraw recognized in Domingo-Ros v. Archambeault, No. 25-cv-1208-DMS-DEB, 2025 WL 27541, at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny any judicial forum for a colorable constitutional claim. Applying the entry fiction to Petitioner would be impermissibly elevating a statute above the Constitution.

In sum, Petitioner has significant due process rights by virtue of having lived within the U.S. for ten months and his current detention is in violation of those due process rights for the reasons discussed above and in the traverse.

B. MR. NAVARRO PEREZ IS NOT SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(B)(2)

Being misclassified and improperly designated as being subject to mandatory detention under Section 1225(b)(2) by the Respondents means virtually infinite detention in violation of Mr. Navarro Perez' due process rights. Mr. Navarro Perez is not subject to mandatory detention under Section 1225(b)(2) under well-established Ninth Circuit and Supreme Court precedent. See Torres v. Barr, 976 F.3d 918, 923-924

(9th Cir. 2020) (en banc); see also United States v. Gambino-Ruiz, 91 F.4th 981, 989-990 (9th Cir. 2024); see also Jennings v. Rodriguez, 583 U.S. 281, 288, 301 (2018).

Temporal Limitation of "Seeking Admission"

The Ninth Circuit in Torres v. Barr held that the phrase "application for admission" refers to the specific point in time when a noncitizen submits an application to *physically enter* the United States. It is not a perpetual status. Although Petitioner may have been seeking admission[1] on December 12, 2024, at a Port of Entry, he was paroled into the country shortly thereafter. Nearly ten months later, he is no longer "seeking admission"; he is physically present and challenging his detention pending removal proceedings. *United States v. Gambino-Ruiz*, 91 F.4th 981, 989-990 (9th Cir. 2024).

Section 1226 is the Default Rule

As the Supreme Court stated in Jennings v. Rodriguez, 583 U.S. 281, 288, 301 (2018), § 1226 is the "default rule" applying to "aliens already present in the United States." Petitioner, having been paroled and residing here for ten months, falls squarely within this category. His arrest occurred at his immigration court hearing in San Diego, not at the border seeking entry.

[1] Under *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013), asylum is not an admission. So, one who arrives at a port of entry seeking asylum is not seeking admission.

The Arrest Warrant Contradicts § 1225(b)(2)

Respondents issued a Form I-200 Warrant for Arrest of Alien (Exhibit 3).[2] Warrants are specifically authorized under 8 U.S.C. § 1226(a) for aliens detained under that section, not under § 1225(b)(2), which authorizes warrantless detention at the border. The existence of this warrant is strong evidence that Respondents themselves are proceeding under § 1226, not § 1225(b)(2).

Parole Terminates "Seeking Admission" Status

Parole under 8 U.S.C. § 1182(d)(5)(A) permits physical presence but is not admission. Still, it signifies a change in status from one "seeking admission" at the border to a noncitizen physically present under a grant of parole. The subsequent termination of that parole (which Petitioner contests as unlawful)[3] does not retroactively transform him back into one "seeking admission" months later for detention purposes. His status at the time of arrest is that of a paroled noncitizen present in the interior.

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[2] The government has not authenticated its exhibits. Counsel's footnote—"The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel." (Return at 1 n.1)—is insufficient.

[3] As discussed in detail in the petition and traverse, the parole termination not only violated the Respondents' own regulation, but also the INA and APA, and the Fifth Amendment.

C. EVEN IF § 1225(b)(2) APPLIES, PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

Even assuming that § 1225(b)(2) somehow applies, Petitioner's prolonged detention without an individualized bond hearing violates substantive due process. As such, this Court must apply the factors addressed in *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020), recently applied by Judge Huie in *Mingzhi Gao v. Larose*, No. 25-cv-2084-RSH-SBC, 2025 WL 495253, at *4 (S.D. Cal. Sep. 26, 2025).

The *Kydyrali* factors favor the release of the Petitioner as follows:

Duration of Detention / Likelihood of Final Order of Removal

The Petitioner has been detained since July 30, 2025. While not yet "unreasonably prolonged" in absolute terms, the lack of any individualized assessment or prospect for release makes the detention inherently punitive and unconstitutional under Mathews v. Eldridge, 424 U.S. 319 (1976). Petitioner's merits hearing is October 31, 2025, the day this briefing is being submitted. If the Petitioner does not prevail, he will appeal. As such, any order of removal would not be final and the appeal would cause impermissibly prolonged if not indefinite detention of the Petitioner.

Government's Interest

The government's interest is minimal. The Form I-213 (Exhibit 4) contains no allegations of danger to the community or flight risk. Respondents offer no justification beyond the bare assertion of mandatory detention. Policy quotas or administrative

convenience are insufficient interests to override liberty interests. (Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs).

Delay By Petitioner or the Government

The Petitioner has not delayed his case. The Petitioner's next court hearing is November 21, 2025.

Conditions of Detention

As stated in the petition, Mr. Navarro Sanchez is suffering greatly in detention. Mr. Navarro Sanchez is very depressed, has anxiety, difficulty sleeping and has lost a significant amount of weight. Moreover, due to the unnecessarily invasive and traumatizing practice at the Otay Mesa Detention Center of conducting strip searches of every detainee after every visit by family / friends, Mr. Navarro Sanchez has not been able to have in-person visits by his family or friends.

Petitioner's Liberty Interest & Risk of Error

As discussed in Petitioner's Traverse, as a parolee the Petitioner has a profound liberty interest in freedom from physical restraint. Morrissey v. Brewer, 408 U.S. 471 (1972). The risk of erroneous deprivation is high without an individualized hearing. The Petitioner cannot be a danger or flight risk as he was granted parole previously and nothing has changed since that time. As Judge Huie found in *Gao*, the prior parole "was evidence that the petitioner was not a flight risk or danger to the community." 2025 WL 495253, at *4. Indeed, Petitioner's court hearing attendance and compliance with all laws of this country during his ten months living in the U.S. makes him even

less of a flight risk than when the parole determination was initially made. The arbitrary mass email termination of parole in violation of Respondents' own regulation, the INA and the APA exacerbates the risk of error and underscores the need for individualized review.

Fiscal/Administrative Burden

The burden of releasing Petitioner is nil and the burden of providing a bond hearing is negligible compared to the substantial cost of detention ($158/day/detainee) and the constitutional imperative. Release is fiscally prudent and administratively simple.

In sum, the balance of factors tips sharply in favor of – at a minimum – requiring an individualized bond hearing to assess Petitioner's flight risk and dangerousness. The government's bare reliance on a statutory classification (actually a misclassification) cannot substitute for the individualized determination required by due process before depriving a person of liberty for a significant period. (*Kydryali*, 499 F. Supp. 3d at 772; *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).

Petitioner, however, asserts that a bond hearing is the bare minimum of due process that can be afforded – and that given the facts here – outright release is the most appropriate remedy. First, Petitioner's parole was not terminated in accordance with the Respondents' own regulation, the INA or the APA. Petitioner's parole is

therefore still valid. The detention of a parolee is particularly egregious in that a parole is at least an implicit promise that the government will not take away one's freedom during the time for which it was authorized. Morrissey v. Brewer, 408 U.S. 471, 482-483 (1972).

Petitioner received his parole by waiting patiently in Mexico for a CBPOne appointment, only to receive a mass email purporting to end that parole and be taken into custody while yet again doing the right thing – attending his court hearing. The evidence filed by the Respondents establish that nothing has changed since the initial determination was made to parole him into the country. He entered this country lawfully, has no criminal history and has attended all his court hearings. For all these reasons, releasing the Petitioner outright is the most appropriate remedy.

D. CONCLUSION

Petitioner Federico Navarro Perez, as a noncitizen physically present in the United States for nearly ten months under a grant of parole, possesses the full due process rights of any "person" under the Fifth Amendment. He is not one "seeking admission" subject to mandatory detention under § 1225(b)(2); his status and the circumstances of his arrest place him under § 1226. Even assuming § 1225(b)(2) applies, his prolonged detention without an individualized bond hearing violates substantive due process under the *Kydyrali* factors, as applied in *Gao*. The prior grant of parole is compelling evidence that he poses neither a flight risk nor a

danger. The Court should grant the Petition and order Petitioner's release, or at a minimum, order an immediate bond hearing under the *Kydyrali* framework.

Dated: October 31, 2025,

By: /s/ Kirsten Zittlau
Kirsten Zittlau
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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: October 31, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau