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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JULIO LLANES TELLEZ, Petitioner-Plaintiff, v. ORESTES CRUZ, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities, Respondents-Defendants.	CASE NO. 5:25-cv-08982-PCP **RESPONDENTS' RETURN TO PETITIONER'S HABEAS PETITION** Date: TBD Time: TBD Location: Courtroom 8 Judge: Hon. P. Casey Pitts

I. INTRODUCTION

Julio Llanes Tellez ("Petitioner") has filed a petition for writ of habeas corpus in which he seeks his immediate release from custody, as well as to enjoin the government from re-detaining him absent a pre-detention hearing before a neutral decision maker. Petitioner unlawfully entered the country without documentation in 2022. He was arrested and subsequently released on an Order of Release on Recognizance, but this release was subject to certain specified conditions, which were communicated to him in Spanish at the time of his release. One of those conditions was that Petitioner not violate "any local, State, or Federal laws or ordinances." He did not abide by that condition. Petitioner was arrested in December 2023 for driving under the influence of alcohol, and he was convicted of that DUI offense on August 29, 2024.

Petitioner's arguments therefore fail for two reasons. First, even without that conviction, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) as an "applicant for admission." Second, to the extent the Court determines that Petitioner is subject to the discretionary detention provision of 8 U.S.C. § 1226(a) rather than mandatory detention under § 1225(b)(2), *see Sequen, et al. v. Albarran, et al.*, No. 25-cv-06487-PCP, 2025 WL 2935630, at *7 (N.D. Cal. Oct. 15, 2025), the government had authority to revoke his bond under § 1226(b) based on his DUI conviction, which was both a material change in circumstances and an unequivocal violation of the conditions of his release under § 1226(a). A DUI conviction provides an "objectively reasonable legal justification to re-arrest an immigrant" under § 1226(b). *Bello Reyes v. McAleenan*, No. 19-cv-03630-SK, 2019 WL 5214051, at *4 (N.D. Cal. July 16, 2019), *rev'd and remanded on other grounds sub nom. Bello-Reyes v. Gaynor*, 985 F.3d 696 (9th Cir. 2021). Because the government was within its rights to revoke Petitioner's conditional parole and detain him, this Court should deny the petition for a writ of habeas corpus.

II. BACKGROUND

A. Factual Background

On or about February 10, 2022, Petitioner—a native and citizen of Nicaragua—entered the U.S. without inspection, admission, or parole. *See* Declaration of Julo Razalan ("Razalan Decl.") ¶ 6 & Ex. A. A Customs and Border Patrol ("CBP") agent encountered him outside of a designated port of entry at the Yuma Sector Border Patrol's area of responsibility. *Id.* The CBP agent determined that he had unlawfully entered

the United States, and apprehended and transported him to the Yuma Border Patrol facility for processing. *Id.* Petitioner admitted that he was a Nicaraguan citizen who had entered the United States without valid immigration documents that would allow him to legally enter, pass through, or remain in the United States, and that he illegally crossed the border into the United States without inspection. *Id.*

Petitioner was released pursuant to an Order of Release on Recognizance ("OREC Release") on February 11, 2022. *Id.* ¶ 7 & Ex. B. The OREC release was specifically predicated on Petitioner's compliance with several conditions of release. *See id.* Ex. B ("you are being released on your own recognizance provided you comply with the following conditions"). Among the conditions that Petitioner needed to abide by was a requirement that he "must not violate any local, State, or Federal laws or ordinances." *Id.* Ex. B. The OREC Release contained a notice in boldface that "[f]ailure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security." *Id.* At the bottom of the OREC Release, Petitioner signed an "Acknowledgment of Conditions of Release on Recognizance," which acknowledged that the release was interpreted and explained to him in Spanish and that he "understood the conditions of [his] release as set forth" in the OREC Order. The acknowledgement signed by Petitioner also stated, "I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice." *Id.*

On December 2, 2023, Petitioner was arrested for driving under the influence of alcohol. *Id.*, ¶ 9 & Ex. D at 4. On August 29, 2024, Petitioner was convicted of this offense and sentenced to 10 days in jail. *Id.* ¶ 10 & Ex. D at 4. On October 17, 2025, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE") Enforcement and Removal Operations ("ERO") agents for violating the conditions of his release due to his DUI arrest and conviction. *Id.* ¶ 11. That same day, Petitioner filed his habeas petition. Dkt. 1. On October 23, 2025, this Court issued an Order to Show Cause, directing the government to file its response to the petition by November 3, 2025. *See* Dkt. 3.[1]

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[1] No summons has issued and Respondents have not been served in this matter. Respondents are making a special appearance and filing this response to the petition as ordered by the Court.

III. ARGUMENT

Under 28 U.S.C. § 2241, a federal court may grant writs of habeas corpus to an individual in custody if such custody is a "violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). No such violation occurred in this case. Petitioner's re-arrest was statutorily authorized and not in violation of Petitioner's constitutional rights. The Court should deny the petition.

A. Detention is Mandatory under 8 U.S.C. § 1225(b)(2)

Petitioner is an "applicant for admission" due to his presence in the U.S. without having been either "admitted or paroled." Such individuals are subject to the mandatory detention framework of 8 U.S.C. § 1225(b). After an analysis, the Board of Immigration Appeals (BIA) recently determined in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025), that based on the plain language of § 1225(b)(2), immigration judges lack authority to hear bond requests or to grant bonds to aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025). Several recent district court decisions have similarly adopted this interpretation of § 1225(b)(2). *See Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))); *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1274–75 (N.D. Fla. 2023). This issue is being litigated in district courts across the country, including the Northern District of California. One of these cases is *Sequen, et al. v. Albarran, et al.*, No. 25-cv-06487-PCP at ECF No. 45.

Respondents acknowledge that in several recent decisions, including *Sequen*, 2025 WL 2935630, this Court has rejected Respondents' arguments and concluded that the petitioners should be deemed detained under § 1226(a).[2] *Id.* at ECF No. 90. Respondents disagree with many of the Court's conclusions, for the reasons set forth in the government's briefing in *Sequen*. *See also Jimenez Molina v. Albarran*,

[2] Respondents recognize that courts in other recent preliminary injunction decisions in this District have also concluded that Section 1225(b) is not applicable to individuals who were conditionally released in the past under § 1226(a). *See, e.g.*, *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025).

No. 25-cv-8427-TLT at ECF No. 18. Respondents submit that Petitioner is properly detained under § 1225(b)(2).

B. Even if Petitioner is Detained Under § 1226(a), Respondents Properly Revoked His Conditional Parole Under § 1226(b)

Petitioner's case, however, is distinct from *Sequen* because his criminal conduct served as a change in circumstances that justified the revocation of his conditional parole status. Therefore, even if this Court determines that Petitioner is detained under § 1226(a), DHS appropriately exercised its authority to detain Petitioner under § 1226(b).

8 U.S.C § 1226(b) states:

> The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

8 U.S.C. § 1226(b). Section 1226's implementing regulations further specify that an individual's conditional parole "may be revoked at any time," whereupon "the alien may be taken into physical custody and detained." 8 C.F.R. § 236.1(c)(9).

Under § 1226(b), the Department of Homeland Security has the authority to revoke bond or parole 'at any time,' even if that individual has previously been released. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). While the statutory language is very broad, the BIA has held that that a previous bond determination may not be revoked by DHS absent a change in circumstances, *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981), and in practice "'DHS generally only re-arrests an alien pursuant to § 1226(b) after a material change in circumstances.'" *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021).

Petitioner's DUI arrest and conviction are precisely the sort of material change in circumstances that trigger DHS's rearrest authority under § 1225(b). Even if he had been released on a bond, "there is no dispute that "ICE has an objectively reasonable legal justification to re-arrest an immigrant already on bond who then is convicted of misdemeanor DUI. The decision to re-arrest Petitioner falls squarely within ICE's power to enforce the INA and aligns directly with its enforcement priorities." *Bello Reyes*, 2019 WL 5214051, at *4. Indeed, even Petitioner's *arrest* alone would have satisfied the standard

because it materially changes the assessment of the danger that he poses to the community. *Id.* (arrest for DUI is "an objectively reasonable legal justification to re-arrest" a petitioner under § 1225(b)); *see also United States v. Cisneros*, No. 19-cr-00280-RS, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021) (defendant was lawfully arrested under § 1225(b) without prior process for an arrest on changes that show danger to the community; "[a]n arrest can be considered in determining whether an immigrant should be detained—not only convictions, and not only arrests for crimes of moral turpitude"). In *Bello Reyes*, the Court noted that "ICE frequently exercises its enforcement discretion to arrest individuals arrested for DUI." *Id.* It so recognized because bonds are "discretionary under the statute," and the statute requires enforcement where certain crimes at issue. *Id.* As the Court recognized in *Bello Reyes*, ICE frequently exercises its "enforcement discretion" to arrest those who commit offenses like DUI. *See* 2024 ICE Annual Report at 18, *available at* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (identifying traffic offenses as the largest category of relevant charges and convictions to result in an administrative arrest).

There is no dispute that Petitioner engaged in criminal activity after his conditional release. DHS exercised its discretion under the statute to re-arrest Petitioner after he was not only arrested for but convicted of—and served jail time for—this DUI offense. Though Petitioner claims that he was given "no notice no explanation of the justification of his detention," *see* Dkt. 1 ¶ 38, the arresting officers informed Petitioner that they were doing so as a result of his past arrest. *See* Razalan Decl. ¶ 11 & Ex. D. In addition to constituting grounds to re-arrest him under § 1226(b), there can be no dispute that this conduct was a direct violation of the conditions of Petitioner's parole.[3] He had been given an explicit, bolded warning that any violation of the conditions of his release would result in his arrest. *See* Razalan Decl. ¶ 7 & Ex. B. Petitioner acknowledged these conditions, and that failure to comply with the conditions could result in the revocation of his conditional parole and detention by DHS. His DUI violation was adjudicated in a court of law during which Petitioner received due process. When even a

[3] That the arrest occurred a little over a year after the conviction has no bearing on whether there is a changed circumstance sufficient to justify re-arrest. As Chief Judge Seeborg held in *Cisneros*, "the government is under no obligation to act with any particular speed" in executing a re-arrest under Section 1226(b) following a criminal arrest or conviction. *Cisneros*, 2021 WL 5908407, at *4 (finding that re-detention under § 1226(b) eight months after the defendant's arrest for a gang-related assault did not render the arrest moot as a change in circumstance).

mere criminal arrest may justify a re-arrest under Section 1226(b), *see Bello Reyes*, 2019 WL 5214051, at *4; *Cisneros*, 2021 WL 5908407, at *4, a conviction leaves little doubt about the propriety of DHS's re-arrest. Under the terms of his OREC release, Petitioner was subject to re-detention without additional notice or process, just like the petitioner in *Bello Reyes* and the defendant in *Cisneros*.

Petitioner asserts that "a single DUI conviction does not place Petitioner in a category of designations that require detention." Dkt. 1 ¶ 29. But Petitioner cites no caselaw in support of this proposition. Instead, Petitioner relies on a regulation—8 C.F.R. § 241.5—that is not even applicable to Petitioner. *See also* Dkt. 1 ¶¶ 18, 23, 26 (citing 8 C.F.R. §§ 241.4, 241.5, and 241.13). Congress enacted a multi-layered statute that provides for the civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Section 1226(a) applies to certain individuals *during* removal proceedings and "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Id.* at 847 (quoting Section 1226(a)). The revocation of a bond or conditional parole under § 1226(a) is governed by § 1226(b) and 8 C.F.R. § 236.1(c)(9). A different detention authority—8 U.S.C. § 1231(a)—governs the detention of an individual subject to a "final order of removal"—one who has been ordered removed from the country and is in the 90-day removal period or the post-removal period. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022); *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2284 (2021). Continued detention and release during the post-removal period is governed by Post Order Custody Review ("POCR") regulations. 8 C.F.R. §241.4. The provisions cited by Petitioner—§§ 241.4, 241.5, and 241.13—are part of these post-removal order regulations and are not applicable here.[4]

None of the cases on which Petitioner relies involve the sort of changed circumstances that have been deemed "objectively reasonable legal justification" for the re-detention of an individual under § 1226(b). In *Y-Z-L-H v. Bostock*, No. 25-cv-965, 2025 WL 1898025, at *13 (D. Or. July 9, 2025), the court based its ruling in part on the fact that the government "ha[d] not provided a reasoned explanation or any changed circumstances that would justify their current departure from their prior decision." By

[4] Even if they were applicable, the POCR Regulations also authorize DHS to return to custody a noncitizen "who has been released under an order of supervision or other conditions of release who violates the conditions of release." *See* 8 C.F.R. § 241.4(*l*)(1).

contrast, the re-arrest here did not occur "solely on the ground that he is subject to removal proceedings." *Saravia*, 280 F.Supp.3d at 1196. Nor have there been "continued re-arrests" here. *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).

Petitioner insists that the Court must apply the *Mathews* balancing test. But as the Ninth Circuit recognized in *Rodriguez Diaz*, "the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*." *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (Bumatay, J., concurring) (citations omitted). Whether the *Mathews* test applies in this context is an open question in the Ninth Circuit. *See Rodriguez Diaz*, 53 F.4th at 1207 (applying *Mathews* factors to uphold constitutionality of Section 1226(a) procedures in a prolonged detention context; "we assume without deciding that *Mathews* applies here"). Any alleged reliance on his conditional liberty, moreover, would not have been reasonable following Petitioner's DUI arrest and conviction given that his release was always conditioned on his compliance with terms of the OREC release, including an explicit prohibition on violating any local, State, or Federal laws or ordinances. The circumstances that could lead to the revocation of Petitioner's release, therefore, were both foreseeable and within his control. He was told as much at the time he was released. Accordingly, Petitioner cannot claim that the government promised him ongoing freedom or that he reasonably believed he would remain at liberty even if he engaged in criminal conduct. *Cf. Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022) (holding released noncitizen had a reduced liberty interest where he "always knew that his release was subject to appellate review"). The government recognizes that any form of detention will implicate an individual's liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But the Constitution does not require the government to acquiesce to an individual's unreasonable expectations.

C. Petitioner is Not Entitled to a Pre-Detention Hearing Under Section 1226(a)

Even if this Court finds that Section 1226(a) applies here, Petitioner still would not be entitled to a pre-detention hearing. For aliens detained under Section 1226(a), "an ICE officer makes the initial custody determination" post-detention, which the alien can later request to have reviewed by an IJ. *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic

process of immigration detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233–34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). Thus, under Section 1226(a), aliens are not guaranteed pre-detention review and may instead only seek review of their detention by an ICE official once they are in custody—a process that the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*, 53 F.4th at 1196–97.

D. Any Court Order Should Not Provide for Immediate Release and Should Not Reverse the Burden of Proof

Immediate release is improper in these circumstances, where Petitioner is subject to mandatory detention and/or is not entitled to a pre-detention hearing. If the Court is inclined to grant any relief whatsoever, such relief should be limited to providing Petitioner with a bond hearing while he is detained. *See, e.g.*, *Javier Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (C.D. Cal. Aug. 13, 2025), ECF No. 12 (ordering the government to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order").

Moreover, at any bond hearing, Petitioner should have the burden of demonstrating that he is *not* a flight risk or danger to the community. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N Dec. 37, 40 (B.I.A. 2006). It would be improper to reverse the burden of proof and place it on the government here. *See Rodriguez Diaz*, 53 F.4th at 1210-12 ("Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases.").

The Ninth Circuit previously held that the government bears the burden by clear and convincing

evidence that an alien is not a flight risk or danger to the community for bond hearings in certain circumstances. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011). But following intervening Supreme Court decisions, the Ninth Circuit has explained that "*Singh's* holding about the appropriate procedures for those bond hearings . . . was expressly premised on the (now incorrect) assumption that these hearings were statutorily authorized." *Rodriguez Diaz*, 53 F.4th at 1196, 1200-01. Thus, the prior Ninth Circuit decisions imposing such a requirement are "no longer good law" on this issue, *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the Supreme Court cases.

IV. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny the Petitioner's writ petition.

DATED: November 3, 2025

Respectfully submitted,

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