

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

MAYNOR ESPINOZA HERNANDEZ

Petitioner,

v.

SAMUEL OLSON, et al.,

Respondents.

Case No. 25-cv-1670-BHL

Hon Brett J. Ludwig
United States District Judge

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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Argument

I. Contrary to the government's position and this Court's decision in *Cirrus Rojas*, Petitioner Espinoza Hernandez is detained under 8 U.S.C. § 1226(a).

A. DHS released Petitioner under 8 U.S.C. § 1226.

Respondents correctly state that the Petitioner was not released on an order of his Own Recognizance (“OREC”), an error in the statement of facts in the original Petition. Instead, he was determined to be an Unaccompanied Child (“UC”) upon his entry into the United States. (Decl. Supervisory Det. and Deport. Off. Joseph Canella, pg. 2, ¶ 7; I-213, dated September 2, 2016, pg. 2). Once that determination was made, different rules determine Petitioner’s custody arrangements and removal proceedings. *See* Public Law 110–457, Trafficking Victims Protection Reauthorization Act of 2008 (“TVRPA”), which required him to be transferred to the Office of Refugee and Resettlement (“ORR”) and then to a safe sponsor to care for the child as soon as possible. *See id.* Petitioner was transferred to his cousin’s care on November 16, 2016. Importantly, on September 2, 2016, before the transfer to Petitioner’s cousin took place, Petitioner’s Custody Determination stated that he was being detained pursuant to section 1226, which allows for foreign nationals to apply for bond, not section 1225(b)(2). *See* Custody Determination, 12-4 Response. Respondents, having determined in 2016 that Petitioner’s custody and detention were pursuant to section 1226, cannot now purport to detain him pursuant to 1225(b)(2).

B. The Supreme Court’s 2018 decision in *Jennings v. Rodriguez* affirms Petitioner’s contention that only 8 U.S.C. § 1226(a) authorizes his detention as an individual detained within the United States rather than at its border.

The Supreme Court in 2018, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), affirmed the same custody statutory scheme that has always existed when it stated: “U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under

§§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c). The primary issue is the proper interpretation of §§1225(b), 1226(a), and 1226(c).” *Id.* at 285. It does not assert at any point in the decision that the “in the country” means after having been admitted on a visa, as opposed to being an unaccompanied minor seeking asylum, another a lawful way to enter the United States. *See* 8 U.S.C. § 1232 (enhancing efforts to combat the trafficking of children); 8 U.S.C. § 1158 (asylum). *Jennings* only affirmed foreign nationals seeking admission at the border are governed under section 1225(a) and (b), whereas those already inside the country, not necessarily after having been admitted, are governed under § 1226. Indeed, in *Jennings*, Justice Alito specifically states on page 284 that “[s]ection 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.” *Id.* at 284. Alito goes on to say that “[t]he Attorney General may issue a warrant for the arrest and detention of an alien ‘pending a decision on whether the alien is to be removed from the United States’ under § 1226. *Id.* To be clear, Petitioner was admitted by an immigration officer when he lawfully requested asylum and then issued a warrant on both September 2, 2016, and, again, on September 9, 2025. (Decl. Supervisory Det. and Deport. Off. Joseph Canella, pg. 2.)

C. Myriad courts have rejected the government’s novel reinterpretation of 8 U.S.C. § 1225(b)(2); only a dozen decisions, including this Court in *Cirrus Rojas*, have affirmed the government’s alternative reading.

Numerous district court decisions across the nation have concluded that foreign nationals are wrongly being detained under 1225(b)(2) rather than under 1226(a) and have granted applicants’ habeas corpus petitions because the interpretation of these statutes set forth in *Yajure Hurtado* is a completely new interpretation of detention and custody rules under the Immigration and Nationality Act, nearly thirty years after its enactment. Precisely coinciding with this large

departure from prior interpretation is a new presidential administration and thus appears politically motivated rather than motivated by adherence to rules of statutory construction. See *Hoffman Memo*, February 18, 2025; Interim Guidance Regarding Detention of Authority for Applicants for Admission (“For custody purposes, these aliens are now treated in the same manner that ‘arriving aliens’ have historically been treated.”).

The majority of district courts who have considered the statutory construction issues relating to these newly issued BIA cases, have decided, the Immigration and Nationality Act, taken as a whole, does not indicate that all foreign nationals, who entered the United States without inspection or whose period of parole has expired, are applicants for admission, and thus subject to mandatory detention while they apply for relief from deportation. Petitioner attaches as **Exhibit A** a list of 224 district court decisions rejecting *Yajure Hurtado* and finding that only 8 U.S.C. § 1226(a) authorizes the detention of noncitizens whose entry with inspection was not recent.

Per Judge Eric Komitee of the United States District Court for the Southern District of New York, only a dozen courts who have considered the *Matter of Yajure Hurtado* have agreed with the BIA:

[B]y the Court’s count, there are scores of decisions — in this Circuit and beyond — on the Section 1226(a) side of the split. See, e.g., *Morales Chavez v. Dir. of Detroit Field Off.*, No. 25-CV-2061, 2025 WL 3187080, at *7 & nn.5-6 (N.D. Ohio Nov. 14, 2025) (collecting cases); *Contreras-Cervantes v. Raycraft*, No. 25-CV-13073, 2025 WL 2952796, at *8 & n.4 (E.D. Mich. Oct. 17, 2025) (same); *Rodriguez Vasquez v. Bostock*, — F. Supp. 3d —, No. 25-CV-5240-TMC, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sept. 30, 2025) (same). By contrast, the Court has found only a dozen — all out of Circuit — that have adopted the Section 1225(b)(2)(A) position. See *Manzo Valencia v. Chestnut*, No. 25-CV-1550 WBS JDP, 2025 WL 3205133, at *2-4 (E.D. Cal. Nov. 17, 2025); *Cortes Alonzo v. Noem*, No. 25-CV-1519 WBS SCR, 2025 WL 3208284, at *2-5 (E.D. Cal. Nov. 17, 2025); *Montoya Cabanas v. Bondi*, No. 25-CV-4830, 2025 WL 3171331, at *3-6 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 25-CV-9785-SVW-AJR, 2025 WL 3199872, at *4-8 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 25-CV-168-JMD, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 25-CV-1463, 2025 WL 3095972 (W.D. La. Nov. 4,

2025); *Barrios Sandoval v. Acuna*, No. 6:25-CV-1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cirrus Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 25-CV-177, Dkt. No. 9, at 1, 4-9 (N.D. Tex. Oct. 24, 2025); *Vargas Lopez v. Trump*, — F. Supp. 3d —, No. 8:25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Sixtos Chavez v. Noem*, — F. Supp. 3d —, No. 3:25-CV-2325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *see also Alvarenga Pena v. Hyde*, No. 25-CV-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (applying Section 1225(b)(2)(A) without discussion).

Guzman Cardenas v. Almodovar, No. 25-CV-9169 (JMF), 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025).

Further, as the government acknowledges, another judge from this district found in *Ramirez Valverde v. Olson*, No. 25-CV-1502, 2025 WL 3022700 (E.D. Wisc. Oct. 29, 2025)—a day prior to this Court’s decision in *Cirrus Rojas*—that the government’s reinterpretation was “unpersuasive.” *Id.* at *4. While this Court in *Cirrus Rojas* concluded that “[noncitizens] ‘seeking admission’” was synonymous with “applicants for admission,” 2025 WL 3033967, at *8, the *Ramirez Valverde* court recognized:

[S]uch a reading is inconsistent with the basic canon of statutory interpretation that *when Congress uses different words in a statute it intends different meanings*. *See, e.g.*, Statutory Interpretation in the Federal Courts § 3.05[2][c]. **To overcome the canon, especially when Congress took care to define “an applicant for admission,” there must be strong evidence that Congress intended “[a noncitizen] seeking admission” to be understood synonymously with “applicant for admission.” But the court has no such evidence.** Having defined “applicant for admission,” the court must conclude that by later using “[a noncitizen] seeking admission,” Congress intended the terms to have different meanings. Thus, the court must turn to the question of what “[a noncitizen] seeking admission” means.

Supra, at *3 (emphasis added). Like many courts across the country, the *Ramirez Valverde* court ultimately concluded:

“[A noncitizen] seeking admission” is a noncitizen who, at the time of his arrest, is *actively and presently* pursuing inspection and authorization by an immigration officer to lawfully enter the United State[s]. This definition calls to mind the noncitizen stopped *at or near* the border *before or soon* after his entry into the

United States. **It cannot be said to encompass a person who, despite having never been “admitted,” has been living in the United States for years.**

Id. (emphasis added).

This Court’s *Cirrus Rojas* decision is also inconsistent with opinions from the Western District of Wisconsin and all courts throughout the Seventh Circuit. *See Guaita Quinapanta v. Bondi*, No. 25-CV-795-WMC, 2025 WL 3157867, at *7 (W.D. Wis. Nov. 12, 2025) (“with only one exception, district courts within the Seventh Circuit have also uniformly followed the majority of other courts holding in favor of petitioner’s interpretation and finding § 1226(a) applicable.”).

D. The INA’s statutory scheme and provisions support Petitioner’s reading of 8 U.S.C. §§ 1225(b)(2) and 1226(a).

1. Congress would not have provided at 8 U.S.C. § 1255(i) a means for noncitizens who entered without inspection to adjust status to that of permanent resident while simultaneously expecting the mandatory detention of such individuals.

The provisions at section 1255(i) further undermine the government’s reinterpretation of section 1225(b)(2). Congress enacted 8 U.S.C. § 1255(i), colloquially known as 245(i), in 1994 and again in 2000 to allow undocumented foreign nationals to adjust their status to permanent residents after coming into the United States without having been inspected or paroled. *See* § 1255(i)(1)(A)(i). Exact statistics are not readily available, but it is a near certainty that millions of immigrants have benefited from this section of the law, allowing adjustment of status after an unlawful entry. *See Citizenship and Immigration Statuses of the U.S. Foreign-Born Population*, available at <https://www.congress.gov/crs-product/IF11806> (publication date September 14, 2024).

There is no indication in the reauthorization of that law in 2000 that Congress contemplated that applicants under this amnesty program would be detained under 1225(b) for

years or decades, depending on the category of their case, as they waited for their priority dates to become current. See *Department of State's Visa Bulletin*, available at, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (For example, USCIS is currently processing sibling petitions, category F4, from Mexico, that were filed on or before April 8, 2001. That would have been twenty-four years of detention under § 1225(b). Notably, a requirement to benefit from the amnesty stemming from law is that the Applicant be physically present in the United States on December 20, 2001, if the petition was submitted between January 14, 1998, and April 30, 2001. 8 U.S.C. § 1255(i)(1)(C) (“in the case of a beneficiary of a petition for classification . . . filed after January 14, 1998, [the beneficiary must have been] physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000 (enacted on December 21, 2000)”)).

Moreover, exiting and reentering the U.S. without inspection after being “unlawfully present in the United States for an aggregate period of more than 1 year” triggers a permanent bar of inadmissibility under 8 U.S.C. § 1182(a)(9)(c)(i)(I), thus essentially requiring that the unlawful entrants live in the United States for decades without lawful status. Thus, the only logical conclusion is that Congress, when enacting section 1255(i), contemplated applicants waiting for their priority date to become current, over multiple years or decades, while residing in the United States unlawfully after an unlawful entry. See §1182(a)(9)(c)(I)(i) and 1255(i)(1)(A)(i).

Requiring these applicants to remain in mandatory detention for decades does not comport with the intention behind that amnesty enactment. See *General Counsel Opinion on 245(i)* (Feb. 19, 1997) (“As we have previously noted, [it] is clear from the Senate and House floor debates that Congress enacted section 245(i) of the Act primarily in order to reduce

consular case load burdens and increase Service revenues, thereby increasing the government's overall ability to combat immigration fraud.”).

2. **Applying for asylum is not synonymous with “seeking admission” when the definition of asylee includes those who are “physically present” in the United States in addition to those “arriv[ing]” here.**

Section 1101(a)(4) defines an applicant for admission as someone trying to enter the United States and not someone applying for a benefit or visa. (“The term “application for admission” has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.”

Petitioner sought admission to the country nine years ago when he entered the United States to request asylum. Indeed, the definition of an asylee is someone *already* in the United States. *See* 8 U.S.C. § 1158(a)(1) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.”). Merely applying for asylum, as the government argues, cannot render one an “applicant for admission” when those who are already admitted, such as noncitizens present in the United States with B-1/B-2 tourist visas or F-1 student visas, routinely apply for asylum with they fear return to their home country.

Petitioner was detained and released to a shelter and then a family member to pursue his application for Special Immigrant Juvenile Status and/or asylum. He was not seeking to enter the United States after living in the U.S. for nine years when he was detained two months ago. He was lawfully waiting for USCIS to make a decision on his asylum application pursuant to the *J.O.P.* settlement. He has committed no crimes and attended all his court hearings, thus poses no

danger to the community or flight risk, and should not have been detained on September 25, 2025.

Furthermore, the I-213 from September 26, 2025, is unreliable, such that the reason for Petitioner's new arrest is unclear. The Form I-213 states that he is from Honduras on page two, but on the third page, it states three times that he is from Nicaragua. Likewise on page two, the I-213 says he has no criminal history, but page 3 says he was suspected of criminal activity. (Page two is correct; Petitioner has never been arrested for committing any crime inside or outside the United States.)

3. The "age-out" provision of the TVPRA requires Petitioner's release.

Unaccompanied minors present special considerations because they are afforded special protection to avoid detention as much as possible. *See* 6 U.S.C. § 279(a) (reciting importance of transfer to Office of Refugee Resettlement and then to family member or sponsor.) *See also* *Godinez-Lopez v. Ladwig*, No. 2:25-cv-02962-SHL, 2025 WL 3047889, at *6 (W.D. Tenn. Oct. 31, 2025) (finding that "the arrest and detention of a noncitizen without a criminal history who has been continuously present for three years in the United States is governed by § 1226(a)" despite his entry without inspection as an unaccompanied minor who was transferred to ORR custody and then released to his aunt).

The Washington state court in *Torres v. Wamsley*, No. C25-5772 TSZ, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025), observed that the Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008 requires that, when an unaccompanied migrant child reaches the age of 18 and is transferred to the custody of DHS, DHS must:

consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative[s] to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may

include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.

8 U.S.C. § 1232(c)(2)(B); *Torres, supra*, at *4. Petitioner contends that this provision requires his release because his current confinement is not “the least restrictive setting available” given the absence of danger he poses to his community and his low risk of flight.

4. Section 1225 applies only to the expedited removal of recent arrivals.

The Tennessee court in *Godinez-Lopez v. Ladwig*, No. 2:25-cv-02962-SHL, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025), held that the INA should be analyzed as a whole when determining the meaning of a given statute. *Id.* For a large and complicated statutory scheme, as with the INA, the titles of the respective sections are critical to statutory interpretation. In this case section 1225 is titled “Inspection by immigration officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing.” On the other hand, section 1226, relating to eligibility to be released on bond from immigration detention is titled “Apprehension and Detention of Aliens.” Nowhere in that section does it state that the Applicant must have been lawfully admitted to the United States to qualify for a bond under section 1226(a). The *Godinez-Lopez* court asserts that section 1226(c) requiring mandatory detention based on being inadmissible (i.e., not admitted) and deportable (having lawfully been admitted) for having committed certain crimes superfluous. *Id.* at *9 (“ICE’s interpretation of section 1225(b)(2)(A) would render section 1226(c) superfluous.”).

Lending support for the assertion that section 1225(a) and (b) apply to recent arrivals, section 1225(b)(1)(A)(iii)(II) states that the asylum screening procedures described in that section apply only to people who have been in the United States for less than two years. Indeed, section 1225(b)(2)(B) states that section 1225(b)(2)(A) only applies to foreign nationals who are not described in section 1225(b)(1), which references asylum applicants who have been in the United States less than two years. *See* 8 U.S.C. § A)(iii)(II) (“An alien described in this clause is

an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.”) (emphasis added).

Finally, contrary to what the Respondents state on page 7 of their Answer, nowhere in a plain reading of the statute does it specify that it governs only the detention of foreign national who have been admitted but are subject to removal proceedings. In fact, §1226(a)(3) states that “the Attorney General may not provide the alien with work authorization unless the alien is lawfully admitted for permanent residence or otherwise would be provided such work authorization.” That last group of people inherently includes people who entered without inspection, including applicants for adjustment of status under 8 U.S.C. § 1255(i) and those seeking adjustment through parole or asylum. *See id.*

II. Petitioner is legitimately concerned that he will be inappropriately detained for an indefinite and potentially long period of time based on his status as an aged-out UAC with a pending asylum application in the exclusive jurisdiction of USCIS rather than an immigration judge, and DHS cannot object to the continuance of his removal proceedings under the *J.O.P.* class action.

As previously recited in the Petition and Response, Petitioner has been living in the United States for nine years, applied for asylum at the age of 19, and was waiting for a decision inside the United States. *See* Petition and Response. Petitioner’s removal proceedings were properly administratively closed by immigration court in July of 2021 per the *J.O.P.* class action settlement, which mandates that USCIS has exclusive jurisdiction over asylum claims that are protected under the class action, which is the case here. *See J.O.P. v. DHS*, No. 19-01944 (D. Md. filed July 1, 2019). Petitioner is a class member because (1) he was an unaccompanied minor at the time of his

entry; (2) he filed his asylum application with USCIS; (3) he was over age 18 when he filed his asylum application; and (4) he has not received an adjudication on his asylum application. *See id.*

As the Washington state court observed in *Torres*, “Petitioner is an aged-out UAC with a pending asylum application, which (i) is within the jurisdiction of a USCIS asylum officer (instead of an immigration court operated by EOIR, a component of the United States Department of Justice), . . . and (ii) [would] preclude[] . . . ‘recalendared’ removal proceedings from advancing forward.” 2025 WL 2855379, at *4. “Petitioner’s asylum application cannot be adjudicated by an immigration judge, and DHS cannot object to the continuance of removal proceedings while the asylum application remains pending before USCIS.” *Id.* Thus, “Petitioner has a legitimate concern that he will be inappropriately detained for an indefinite and potentially long period of time.” *Id.* “A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the government’s statutory reinterpretation would result in Petitioner’s lengthy detention, this Court must order his immediate release.

III. Due process requires the government to provide Petitioner with an evidentiary hearing prior to re-detaining him.

Supreme Court precedent recognizes that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued release. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee and often on others.”). *See also Tello v. Barr*, No. 19-cv-01312-CRB, 2025 WL 2280544, at *1–2 (N.D. Cal. July 29, 2025) (finding jurisdiction to review a habeas claim “seeking to prevent DHS from detaining him”). Under *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Young v. Harper*, 520 U.S. 143 (1997), revocation of parole is a “grievous

loss” that can be taken away only upon review at a hearing before a neutral arbiter, regardless of whether government agents otherwise have statutory authority to detain. *Morrissey*, 408 U.S. at 482, 489; *Young*, 520 U.S. at 148.

If a parolee serving out a sentence for a violent crime, and subject to highly restrictive conditions of release, has a sufficiently strong liberty interest to be entitled to a hearing prior to re-incarceration, then a noncitizen freed from civil detention on bond or from ORR custody likely has a similar entitlement. In an order granting a preliminary injunction in *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025), the court commented:

This Court has been unable to identify any other context in which government agents could permissibly take someone who had been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter. The Court issued a notice of questions the day prior to oral argument inviting [the government] to identify any examples of a court blessing the constitutionality of such an arrangement. [The government’s] counsel conceded that they could identify none. To the contrary, numerous district courts have uniformly recognized that there are, at the very least, serious questions as to whether due process requires non-citizens released by a valid order from an IJ to receive a hearing before a neutral arbiter either before or immediately after re-detention. The Court has been unable to identify any court that has agreed with [the government’s] position that those non-citizens may be re-detained without any such hearing for at least six months, and [the government] has identified none.

Guillermo, supra, at *7 (footnote omitted).

In a footnote, the *Guillermo* court identified the following cases as examples of the “numerous” courts recognizing the “serious questions” regarding re-detention: *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1606294 (N.D. Cal. May 20, 2022); *Enamorado v. Kaiser*, No. 25-cv-04072- NW, 2025 WL 1382859 (N.D. Cal. May 12, 2025);

Garcia v. Bondi, No. 25-cv-05070-JSC, 2025 WL 1676855 (N.D. Cal. Jun. 14, 2025); *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854 (N.D. Cal. Jun. 14, 2025); *Doe v. Becerra*, No. 25-cv-00647-DJC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025); *Garro Pinchi v. Noem*, No. 25-cv-05632-RFL, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *Singh v. Andrews*, No. 25-cv-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Castanon Domingo v. Kaiser*, No. 25-cv-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14, 2025). *See id.* at *7 n.4.

The *Guillermo M.R.* court concluded, “There is a substantial risk that Petitioner will be erroneously deprived of his liberty interest absent a pre-detention hearing before a neutral arbiter.” *Id.* at *7. Without relief from this Court in the form of immediate release or a bond hearing where the government has the burden of showing that he is a danger to society or flight risk such that he must be detained, Petitioner will be entirely subject to the whims of ICE’s arresting agents or their supervisors at headquarters to reconsider the agency’s unilateral detention decision. Section 241.4(l)(1) requires notice and “an initial informal interview [with ICE] promptly” after return to custody “to respond to the reasons for revocation.” There is no further description of procedural safeguards imposed by this “informal interview,” nor is there any provision permitting consideration by a neutral arbiter. Three months later, ICE is required to perform a records review and interview, including an “evaluation of any contested facts.” 8 C.F.R. § 241.4(l)(3). Once again, there is no opportunity to have a neutral party evaluate ICE’s unilateral determination of the contested facts. 8 C.F.R. § 241.4(h) and (k) contemplate further custody review by ICE, with the same limitations. The lack of any neutral review creates a heightened risk of deprivation for Petitioner.

The government has not advanced any arguments that Petitioner is not entitled to a pre-deprivation evidentiary hearing as a matter of due process. Petitioner has no criminal record, has never missed a court hearing, and his I-589 asylum application is still pending at USCIS, there was no reason to re-detain him. Thus, this Court should order his immediate release or a bond hearing placing the burden on the government to establish that he is a danger to society or flight risk such that he must remain detained.

Conclusion

For the foregoing reasons, this Court should grant Petitioner immediate release or order the government to provide him a bond hearing within 7 days wherein the government carries the burden of showing that he is a danger to society or flight risk such that he must remain detained.

DATED this 24th day of November 2025.

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