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**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY**

_____	)	
ALVARO OROZCO ALFONSO,	)	
Petitioner,	)	CASE NO: 2:25-cv-17371
	)	
v.	)	(Padin, J.)
	)	
LUIS SOTO, et al.,	)	ELECTRONICALLY FILED
Respondents.	)	
_____	)	

**PETITIONER’S REPLY BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF HABEAS CORPUS**

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**PRELIMINARY STATEMENT**

When Petitioner Alvaro Orozco Alfonso entered the United States in 2021, immigration officials began, but never completed, the process of placing him in expedited removal proceedings. Instead, they released him from custody and he relocated to New Jersey, where he lived without incident for nearly four years and filed an asylum application. Nonetheless, on November 6, 2025, Respondents summoned him for a credible fear interview and then detained him, without the opportunity for a bond hearing, under 8 U.S.C. § 1225(b)(1). This was unlawful. Mr. Orozco Alfonso is not subject to mandatory detention under § 1225(b)(1), because he was subjected to expedited removal upon entry to the country, and cannot now be placed in expedited removal proceedings after he has been in the United States for more than two years. Additionally, his re-detention without any pre-deprivation procedural protections violated due process.

This Court previously ordered Mr. Orozco Alfonso's release during the pendency of his habeas petition so that he could care for his daughter, who was  and has unfortunately since passed away. Memorandum Order (Doc. No. 5) (citing *Lucas v. Hadden*, 790 F.2d 365 (3d Cir. 1986)). The Court should now grant the habeas petition, order that Mr. Orozco Alfonso remain at liberty, and enjoin Respondents from re-detaining him under § 1225(b)(1) or without a pre-deprivation hearing.

## ARGUMENT

### **I. Mr. Orozco Alfonso Was Unlawfully Detained Under § 1225(b)(1)**

When Respondents detained Mr. Orozco Alfonso on November 6, 2025, they unlawfully subjected him to mandatory detention under 8 U.S.C. § 1225(b)(1). Respondents argue that this designation was correct because Mr. Orozco Alfonso was “placed into expedited removal proceedings and passed a credible-fear screener interview” when he entered in the United States in 2021. Resp. (Doc. No. 10) at 1-2. To the contrary, Mr. Orozco Alfonso was never properly placed in expedited removal proceedings. Therefore, his 2025 detention under § 1225(b)(1) was unlawful, and he could only have been detained under 8 U.S.C. § 1226(a).

Expedited removal allows the government to quickly deport noncitizens who have not been admitted or paroled and cannot show they have been “physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(iii). The statute and implementing regulations prescribe the procedures for expedited removal. *See* 8 U.S.C. § 1225(b)(1); 8 C.F.R. § 235.3. An immigration officer must inform the noncitizen of the charges against him on Form I-860, Notice and Order of Expedited Removal, and the noncitizen shall be given an opportunity to respond. 8 C.F.R. § 235.3(b)(2). Then, “[a]fter obtaining supervisory concurrence . . . the examining immigration official shall serve the [noncitizen] with Form I-860.” *Id.*

Contrary to Respondents' representation, immigration officials never completed these steps and thus never placed Mr. Orozco Alfonso in expedited removal proceedings when he entered the country in 2021. TRO Exh. 3 (Doc. No. 3-6), at 2. Instead, immigration officials filled out part of the I-860, but never obtained the required supervisory concurrence or served the form on Mr. Orozco Alfonso. *Id.* Nor did they proceed to schedule the credible fear interview as required by 8 U.S.C. §§ 1225(b)(1)(A)(ii) and 1225(b)(1)(B). Instead, they released Mr. Orozco Alfonso pursuant to 8 U.S.C. § 1226, which does not apply to people in expedited removal proceedings. Pet., Exh. A (Doc. No. 1-3); *see Matter of M-S-*, 27 I&N Dec. 509, 512 (A.G. 2019). Therefore, Mr. Orozco Alfonso was not placed in expedited removal proceedings in 2021. *See Vicente Cifuentes v. Soto*, No. 25-18029, 2025 WL 3771380, at \*2 (D.N.J. Dec. 31, 2025) ("DHS cannot now retroactively resurrect that [expedited removal] order to justify detention under § 1225(b) absent evidence that the order ever took legal effect."); *Rodriguez-Acurio v. Almodovar*, No. 25-6065, 2025 WL 3314420, at \*18 (E.D.N.Y. Nov. 28, 2025) (relying on the fact that the government treated a similarly-situated respondent as though he were subject to § 1226).

Mr. Orozco Alfonso cannot now be subjected to expedited removal, because he has lived in the United States for more than two years. 8 U.S.C. § 1225(b)(1)(A)(iii); *see Rivas Rodriguez v. Rokosky*, No. 25-17419, 2025 WL

3485628, at \*2 (D.N.J. Dec. 3, 2025); *Lopez v. Lyons*, No. 2:25-cv-3174, 2025 WL 3124116, at \*2 (E.D. Cal. Nov. 7, 2025); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at \*7 (S.D. Mich. Oct. 29, 2025); *Rico-Tapia v. Smith*, No. 25-00379, 2025 WL 2950089, at \*7 (D. Hawaii Oct. 10, 2025). Therefore, Mr. Orozco Alfonso was unlawfully detained under § 1225(b)(1) in November 2025, when he could only have been detained under § 1226(a). *Vicente Cifuentes*, 2025 WL 3771380, at \*3; *Rivas Rodriguez*, 2025 WL 3485628, at \*2.

The Court should remedy this violation of law by ordering that Mr. Orozco Alfonso remain out of custody subject to the conditions that were in effect prior to November 6, 2025, and enjoin Respondents from re-detaining Mr. Orozco Alfonso under § 1225(b)(1). *See* Memorandum Order (Doc. No. 5), at 4 (ordering Mr. Orozco Alfonso's release during the pendency of this petition); *Vicente Cifuentes*, 2025 WL 3771380, at \*4 (ordering release); *Rivas Rodriguez*, 2025 WL 3485628, at \*3 (same); *Ramos v. Rokosky*, No. 25-cv-15892, 2025 WL 3063588, at \*9 (D.N.J. Nov. 3, 2025) (same). As Judge O'Hearn explained in a similar case:

[B]ecause Petitioner's arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore Petitioner is to immediately release him and enjoin the Government from further similar transgressions . . . the Court declines to allow Respondents to transform an unlawful detention into a lawful one through alternative, retrospective, *post hoc* justification presented mid-litigation, as doing so would give the Government a free pass to violate a person's statutory and constitutional rights first and search for authority later.

*Rivas Rodriguez*, 2025 WL 3485628, at \*3 (cleaned up). For the same reasons, this Court should order that Mr. Orozco Alfonso remain released, and enjoin Respondents from subjecting him to expedited removal or detaining him under § 1225(b) in the future.

## **II. Mr. Orozco Alfonso's November 2025 Detention Violated Due Process**

Noncitizens like Mr. Orozco Alfonso who are living in the United States have due process rights. *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). Respondents' argument that there are no constitutional limits on their power to detain Mr. Orozco Alfonso is unavailing. *See* Resp. at 3 (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020)). *Thuraissigiam* limited the due process rights of some noncitizens "regarding admission" to the United States, not relating to their detention. *Thuraissigiam*, 591 U.S. at 140. As a Court in this Circuit recently explained:

*Thuraissigiam* involved a challenge to the arriving alien's removal, and the Supreme Court concluded that the Due Process Clause does not require review of that determination or how it was made. Nowhere in that decision did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever.

*A.L.*, 761 F. Supp. 3d at 825. To the contrary, numerous courts in this district and around the country have found that Respondents must comply with due process when detaining noncitizens in the interior. *See, e.g., Mardet v. Jamison*, No. 25-

7169, 2025 WL 3772152, at \*3 (E.D. Pa. Dec. 31, 2025); *Barco Mercado v. Francis*, 2025 WL 3295903, at \*12 (S.D.N.Y. Nov. 26, 2025); *Contreras Maldonado v. Cabezas*, No. 25-13004, 2025 WL 2985256, at \*5 (D.N.J. Oct. 23, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-cv-432-DB, 2025 WL 2937880, at \*4 (W.D. Tex. Oct. 16, 2025); *Rivera Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496, at \*10 (D.N.J. Sept. 26, 2025).

Due process requires notice and an opportunity to be heard before the government deprives a person of his liberty. *Khouzam v. Att’y Gen. of the U.S.*, 549 F.3d 235, 257 (3d Cir. 2008) (quoting *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Gayle v. Warden Monmouth C’ty Corr. Institution*, 12 F.4th 321, 331 (3d Cir. 2021) (applying *Mathews* to review the constitutionality of detention procedures); *Contreras Maldonado*, 2025 WL 2985256, at \*5 (same). In determining the process due under the Fifth Amendment, courts weigh (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335; *Gayle*, 12 F. 4th at 331. Mr. Orozco Alfonso challenges the constitutionality of his initial re-detention on November 6,

2025, not the length of his detention. *Cf.* Resp. at 3 (discussing due process challenges to prolonged detention); *see also Rodriguez-Acurio*, 2025 WL 3314420, at \*31 (distinguishing a due process challenge to re-detention from a prolonged detention claim and finding a due process violation in a similar case).

Mr. Orozco Alfonso's detention on November 6 without any procedural protections violated due process. Pet. at ¶¶ 61-65. First, Mr. Orozco Alfonso has a very weighty interest in being free from detention, particularly because Respondents released him in 2021 and he did not violate any terms of his release. *See Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796, at \*16 (W.D.N.Y. July 16, 2025); *Trejo v. Warden of ERO El Paso East Montana*, No. 25-cv-401, 2025 WL 2992187, at \*8 (W.D. Tex. Oct. 24, 2025). Therefore, he relied on an "implicit promise" that his release would not be revoked without reason, and "possesses a protected liberty interest in [his] continued liberty." *Espinoza v. Kaiser*, No. 1:25-cv-1101, 2025 WL 2581185, at \*9 (E.D. Cal. Sept. 5, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).

Second, the risk of erroneous deprivation was very high because there was no individualized determination that re-detention was necessary at the time Respondents re-detained Mr. Orozco Alfonso. *See Contreras Maldonado*, 2025 WL 2985256, at \*5. Due process required, at minimum, a meaningful opportunity to be heard and to respond to the reasons for the re-detention. *Munoz Materano v. Arteta*,

No. 25-cv-6137, 2025 WL 2630826, at \*13-15 (S.D.N.Y. Sept. 12, 2025). Contrary to Respondents' suggestion, the process he received in relation to his credible fear interview and removal proceedings was not sufficient, because it had no bearing on whether Respondents would detain him. *See* Resp. at 3. Indeed, Respondents detained him even though he passed the credible fear interview.

Finally, the government had no legitimate interest in re-detaining Mr. Orozco Alfonso without providing any process to determine whether his detention was necessary. *See Munoz Materano*, 2025 WL 2630826, at \*15. Respondents do not have an interest in detaining noncitizens who are neither a flight risk nor a danger to the community. *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020). Mr. Orozco Alfonso has no criminal history and has diligently complied with immigration processes, including by appearing at the November 6 interview despite knowing that he might be detained. Therefore, continuing to detain him would be an unnecessary drain on government resources while imposing “substantial societal costs.” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021).

Again, the appropriate remedy for this due process violation is to order that Mr. Orozco Alfonso remain out of custody and enjoin Respondents from re-detaining him without the appropriate procedural protections. *See, e.g., Rodriguez-Acurio*, 2025 WL 3314420, at \*32; *Singh v. Lewis*, No. 25-133, 2025 WL 3298080, at \*6 (W.D. Ky. Nov. 26, 2025); *Barco Mercado*, 2025 WL 3295903, at \*13;

*Contreras Maldonado*, 2025 WL 2985256, at \*7; *Rivera Zumba*, 2025 WL 2753496, at \*10. “[T]he application of the *Mathews* factors and constitutional due process . . . necessitated a bond hearing prior to Petitioner’s detention . . . . Because that hearing did not occur, Petition should not now be in custody.” *Mardet*, 2025 WL 3772152, at \*3. If Respondents wish to detain Mr. Orozco Alfonso again, they should first provide him a pre-deprivation hearing to determine whether such detention is necessary. See *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025).

### **CONCLUSION**

For the foregoing reasons, Mr. Orozco Alfonso respectfully moves this Court to grant his petition for writ of habeas corpus, order that he remain released, and enjoin Respondents from detaining him again under § 1225(b) or without a pre-deprivation hearing to determine whether re-detention is necessary.

Dated: January 7, 2026

Respectfully submitted,

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LUIS SOTO, et al.,		)	
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on January 7, 2026, she served a copy of the attached

**REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

by electronic service pursuant to Local Rule 5.2 to the following individuals:

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