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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Vinayak NAYYER, Petitioner-Plaintiff, v. Christopher J. LAROSE, et al. Respondents-Defendants.	Case No.: 3:25-cv-03111-AGS-DDL **PETITIONER'S TRAVERSE**

A. Petitioner's Habeas Claims Are Not Barred by 8 U.S.C. § 1252

Section 1252 does not bar jurisdiction here because this action concerns Petitioner's unlawful detention. Respondents contend Petitioner is subject to the mandatory detention provisions of Section 1225(b)(2), and that ICE had authority to re-detain the Petitioner.

Here, Petitioner does not make *any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.* Petitioner does not dispute the commencement or any other aspect of his removal proceedings nor does he have a removal order. In short, Petitioner challenges nothing related to his removal proceedings – he challenges the Respondents' re-detention and revocation of his conditional parole. Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

The government's contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this Court is similarly unavailing. Petitioner is not seeking *"[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the U.S.*. Again, the Petitioner is not challenging anything with respect to his removal proceedings – he is challenging his unlawful detention. As previously stated, the Petitioner cannot be seeking *judicial review of a final order of removal,* as he does not have a removal order. Petitioner' removal proceedings continue to be pending in immigration court.

This action concerns an unlawful detention and the Supreme Court and Ninth Circuit have rejected the contention that § 1252(g) covers all claims arising from deportation proceedings or imposes a general jurisdictional limitation. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also

Arce v. United States, 899 F.3d 796, 800 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders.")

B. Petitioner is Not Subject to Mandatory Detention

Petitioner is not lawfully detained under § 1225(b)(2) as alleged by Respondents.

First, Petitioner is not an arriving alien "seeking admission" and he is not in expedited removal proceedings. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) (en banc) 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 on April 22, 2016, when he had arrived in the U.S. and apprehended at the border, he was released into the country shortly thereafter. Almost ten years 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). As such, the mandatory detention provisions of Section 1225(b)(2) do not apply.

Respondents rely on *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 at 5 (S.D. Cal. Sept. 24, 2025) ("Heeding the plain language of the statute also does not contradict or render superfluous § 1226" nor "the addition of § 1226(c) by the [Laken Riley] Act. . . ."). That decision, however, did not address the statutory requirement that for Section 1225(b)(2)(A) to apply, the noncitizen must be "seeking admission." *See Ayala-Pinto v. Larose*, 3:25-cv-02971, FN 1 (S.D. Cal.) Date Filed: Nov. 3, 2025 (Rejecting Respondents' reliance on *Chavez* and granting the petition).

Further, since the filing of the Petition in this matter, the Central District of California has issued *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. November 20, 2025) echoing the numerous other district courts in stating that those noncitizens apprehended inside the U.S. – like the Petitioner – are subject to Section 1226(a), and not Section 1225(b). In *Maldonado Bautista*, the Court stated that the "Respondents endorse an interpretation of § 1225 that effectively removes § 1226 from existence." Id. at 15. "If the Court were to accept Respondents' position that all noncitizens already in the country (regardless of whether they were inspected and authorized by an immigration officer) were 'applicants for admission,' then there would be no possible set of noncitizens to which § 1226(a) would apply." Id. Further, the November 25, 2025 District Court order confirms that the court's prior November 20, 2025 order on partial summary judgment applies to the nationwide class. The court stated explicitly "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." at 14.

Moreover, the Respondents' Return does not address why the Order of Release on Recognizance with respect to Petitioner's release in 2016 specifically states that the release is under Section 1226, yet the Petitioner is now suddenly subject to Section 1225's mandatory detention provisions. In short, the Respondents' position that Petitioner is subject to 1225(b)(2) defies both the plain language of the statute, decades of practice by Respondents as well as Ninth Circuit and Supreme Court precedent.

C. Petitioner's Parole Revocation and Re-Detention Violates Due Process

Respondents contend that "while some courts have recognized due process limitations on the authority of the government to revoke parole depending on the facts of the case, to imply into existence a broad bar on any release revocation by ICE—assigning that authority instead strictly to immigration courts—is inconsistent with the statutory scheme." (See Docket 4, p. 14 lines 22-25.)

Numerous courts have, however, determined ICE's authority to revoke conditional parole is constrained by the due process clause – including the Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972) (a parolee's liberty involves significant values within the protection of the Due Process Clause of the Fourteenth Amendment) and the Ninth Circuit in *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 guidance of the BIA provided by *Matter of Sugay*, 17 I&N Dec. 647 (BIA 1981)—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Petitioner's weighty interest in his freedom from detention.

In accordance with the Supreme Court and Ninth Circuit, federal district courts in California have also repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or conditional parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, ***before*** ICE re-detains him. *See, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,

2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

But "even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts . . . facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention.")); *see Padilla v. U.S. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.")

Petitioner's re-arrest and the revocation of his release on parole conditioned on a payment of bond without a pre-deprivation hearing violate the Due Process Clause. The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts analyze procedural due process claims such as this one in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

To determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, Courts apply the three-part test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which are: (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." *Id.* at 335.

All three factors support a finding that Respondents' revocation of Petitioner's release on parole conditioned on a payment of bond without an opportunity to be heard deprived Petitioner of his due process rights. First, Petitioner has a significant liberty interest in remaining out of custody pursuant to his conditional parole. For over nine years preceding his re-detention on May 26, 2025, Petitioner exercised that freedom under an immigration judge's decision to him parole conditioned on a payment of bond after a determination that he presented neither a flight risk nor a danger to the community. In the nine years following him release, Petitioner has established extensive community ties.

Although Petitioner was released on conditional parole (and thus under government custody), he retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). "Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Pinchi*, 792 F. Supp. 3d at 1032. Although the initial decision to detain or

release an individual may be within the government's discretion, "the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[] to live up to the . . . conditions of release.'" Id. (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); see also *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects."); *Morrissey*, 408 U.S. at 482 ("Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life."); *Oliveros v. Kaiser*, No. 25-CV-07117-BLF,. 2025 WL 2677125, at *7 (N.D. Cal. Sept. 18, 2025)

"Second, the risk of an erroneous deprivation of such interest is high as Petitioner's parole was revoked without . . . giving [him] an opportunity to be heard." *Gonzalez Salazar v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where, as here, Petitioner "has not received any bond or custody redetermination hearing," the "risk of an erroneous deprivation of liberty is high"). "Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690).

Here, there is no evidence that Petitioner's detention would serve either purpose. "Since DHS's initial determination that Petitioner should be paroled because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Gonzales Salazar*, 2025 WL 3063629, at *3 (citing *Saravia v. Sessions*, 280

F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). *See Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *1, 8 (granting habeas petition and ordering bond hearing where ICE re-detained the petitioner the day after an immigration judge denied the petitioner's application for asylum).

Third, Respondents' interest in detaining Petitioner without a hearing is low. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("If the government wishes to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."); *Pinchi*, 792 F. Supp. 3d at 1036 ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest."). "Therefore, because Respondents detained Petitioner by revoking [his] parole in violation of the Due Process Clause, [his] detention is unlawful." *Gonzalez Salazar*, at *5. See also, *Doe v. Becerra*, 2:25-cv-00647, (E.D. Cal. 2025); *Rodriguez-Flores v. F. Semaia et al., No. CV 25-6900 JGB (JCX), 2025 WL 2684181* (C.D. Cal. Aug. 14, 2025).

Based on the *Mathews* factors, due process requires Petitioner to be released from custody and receive a bond hearing before an IJ *before* he can be re-detained.

D. The Appropriate Remedy is Immediate Release

Respondents' argument that the proper remedy would be directing a bond hearing under § 1226(a) "misapprehend[s] the purpose of a pre-detention hearing: if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid." *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021); *see also E.A. T.-B. v. Wamsley*, ---

F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty."); *Domingo v. Kaiser*, Case No. 25-cv-05893, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

This is not a case of someone who entered without inspection but was never previously detained. As affirmed recently by the Central District of California, the remedy for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. November 20, 2025). This case concerns the class of non-citizens who entered without inspection, were detained shortly after entry, were then released, but then later re-detained. In other words, this is a re-detention case involving the due process violation of the Petitioner not being provided with a hearing prior to being re-detained. As such, the appropriate remedy for such a violation is immediate release.

Courts in this district have joined a growing chorus of district courts that have recognized that noncitizens have a significant liberty interest in both "continued freedom after release on own recognizance," and have ordered release. *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in "freedom from imprisonment" after "the government grants a [noncitizen] parole into the country," *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL 2770629, at *3 (S.D.

Cal. Sept. 26, 2025) (emphasis added). *See also Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Sayed Naser Noor v. Christopher LaRose*, et al., No. 25-CV- 1824-GPC-MSB, 2025 WL 2800149, at *14 (S.D. Cal. Oct. 1, 2025) (explaining that a petitioner is no longer an "arriving" noncitizen after release by Respondents, including when a courtroom arrest occurs while INA section 240 proceedings remain ongoing); *N.A. v. LaRose et. al.* Case No.: 25-cv-2384-RSH-BLM (S.D. Cal. Oct. 7, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC), 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

Just recently, this Court ordered the immediate release of a noncitizen re-detained without the required notice or hearing. *Sanchez Avalos v. Noem*, No. 3:25-cv-02906-CAB-VET (S.D. Cal. November 24, 2025). The noncitizen there – like the Petitioner – was re-detained without due process after having previously been detained and released on his own recognizance. As such, immediate release (and not a bond hearing) is also the appropriate remedy here.

Dated: December 1, 2025

Respectfully submitted,

By: /s/ Bashir Ghazialam
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 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: December 1, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam