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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Majid Mohammad Beigi,

Petitioner-Plaintiff,

v.

Christopher J. LaRose, et al.

Respondents-Defendants.

Case No.: 3:25-cv-03193-DMS-MMP

PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS

A. The INA, Agency and Federal Court Precedent as well as the U.S. Constitution Required a Hearing Before a Neutral Adjudicator Prior to Any Re-Incarceration

First, Respondent's argument that Petitioner has no due process rights because he is "an alien at the Threshold of initial entry" is unavailing. Petitioner is not an arriving alien 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 September 22, 2022, when he had arrived in the U.S. and apprehended at the border, he was released into the country shortly thereafter. Nearly three 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).

Second, the statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). However, notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. The BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *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) (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

Third, ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also constrained by the demands of due process. *See 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"). Here, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Petitioner's weighty interest in his freedom from detention.

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or 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 IJ 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). The Court must consider: (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 IJ bond release 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 almost three years preceding his re-detention on July 10, 2025, Petitioner exercised that freedom under an immigration judge's order granting him release on a $2,500 bond. In the three years since his release, Petitioner has started a family, owns a business and has established extensive community ties.

Although Petitioner was released on bond (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).

Respondents' reference to--"on October 10, 2024 (nine months prior to Petitioner's rearrest), while outside of immigration detention, Petition was arrested and charged in a domestic violence incident… It does not appear from Petitioner's allegations or the record that he has sustained a criminal conviction" (Dkt. 5 at 7) and their contention that "Respondents lawfully relied on Petitioner's domestic violence arrest as a change in circumstances warranting Petitioner's re-detention" is unavailing. First, the Due Process Clause of the Constitution requires Respondents to provide a pre-deprivation hearing prior to rearrest before a neutral adjudicator where the government demonstrates by clear and convincing evidence that there has been a material change in circumstances such that Petitioner is now a danger or a flight risk. Second, other than asserting that "respondents lawfully relied on" Petitioner's October 10, 2024 arrest alone (with no charges filed and Petitioner was released shortly after arrest) "as a change in circumstances warranting Petitioner's re-detention," Respondents fail to explain in what way this constitutes any changed circumstances or cite any authority for their proposition. The government cannot plausibly assert that it had a sudden interest in detaining Petitioner on July 10, 2025 nine months prior to Petitioner's rearrest) due to alleged dangerousness based on said arrest and

waited for nine months to arrest Petitioner and without any pre-deprivation hearing.

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.

Respondents may argue that release is improper and "the proper remedy would be directing a bond hearing under § 1226(a)." (*Id.* at 16.) But this argument "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.").

As the above-cited authorities show, the Due Process Clause required notice and a hearing in Immigration Court prior to any re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. See Alliance for the Wild Rockies, 632 F.3d at 1135.

B. Petitioner is not Subject to Mandatory Detention

§ 1226 governs here because: "(1) DHS has consistently treated [Petitioner] as subject to detention on a discretionary basis under § 1226(a);" and "(2) a proper understanding of the relevant statutes, in light of their plain text, overall structure, and . . . case law interpreting them, compels the conclusion that § 1225's provisions for mandatory detention of noncitizens 'seeking admission' [do] not apply to someone like [Petitioner]," who has been residing in the United States for over three years. *See Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588, at *3 (S.D.N.Y. 2025) (emphasis in original).

First, Respondents' own exhibits establish that Petitioner was detained pursuant to Respondents' discretionary authority under § 1226. The October 28, 2022 $2500 IJ bond (Dkt. 5-1 at 6) was issued pursuant to § 236 of the INA, which is codified at 8 U.S.C. § 1226. Thus, "the detention authority consistently applied by the government to [Petitioner] since [his] arrival in the United States has always been § 1226." *Salcedo Aceros v. Kaiser*, Case No. 25-cv-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025).

Second, the statutory text—and its interpretation by the great weight of district courts

to have considered it —establishes that Petitioner was detained under § 1226. *See Quispe v. Crawford*, Civil Action No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025) ("Petitioner's detention is governed by § 1226(a)'s discretionary framework, not § 1225(b)'s mandatory detention procedures, as at least thirty federal district courts around the country . . . have concluded when faced with habeas petitions from comparably situated petitioners."); *Rodriguez v. Bostock*, --- F. Supp. 3d. ---, 2025 WL 2782499, at *1 n.3 (W.D. Wash. Sept. 30, 2025) ("conclud[ing] that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice" and collecting over 20 cases). *But see Chavez*, 2025 WL 2730228, at *5 ("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. . . .")

Section 1225(b)(2)(A) states: "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title." Thus, for § 1225(b)(2)(A) to apply, a noncitizen must be: "(1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted." *Accord Martinez v. Petrenko*, 792 F.3d. 173, 214 (1st Cir. 2015)

The *Rodriguez* court extensively analyzed which statute governs noncitizens in circumstances like Petitioner's. 2025 WL 2782499, at *16–24. It held that noncitizens who entered the United States without inspection but have been "residing in the United States" and were "not apprehended upon arrival" are governed by § 1226's discretionary

detention procedures. Id. at 16–17, 19, 21. The court reasoned that § 1225(b)(2) requires that the noncitizen be "seeking admission," language that "necessarily implies some sort of present-tense action." Id. at 22 (citing *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011 (9th Cir. 2020) (finding that the phrase "arriving in the United States" and its "use of the present progressive, like use of the present participle . . . denotes an ongoing process") (emphasis in original)).

This Court should find the reasoning in *Rodriguez* persuasive and adopt it here. Petitioner had been residing in the United States for almost three years at the time of his arrest on July 10, 2025. (Doc. 5 at 4.) He was not apprehended upon arrival or at the border; rather, he was arrested while appearing for his adjustment of status interview along with his then pregnant U.S. citizen spouse (Doc. 1 at 6). Therefore, he was not "seeking admission" at that time, and his detention falls under § 1226's discretionary detention procedures. *Accord Martinez*, 792 F. Supp. 3d at 223 (concluding that because the petitioner had already been residing in the United States for years when she was detained, "Section 1225(b)(2)(A) . . . simply had no application to her case"); *Oliveros v. Kaiser*, Case No. 25-cv-07117-BLF, 2025 WL 2677125, at *4 (N.D. Cal. Sept. 18, 2025) (concluding that § 1225(b)(2) "does not apply to noncitizens who have been released by DHS on their own recognizance into the interior of the United States").

In sum, §1226 governs this case. §1225 and its mandatory detention provision applies only to individuals arriving to the U.S., while § 1226 applies to those who have previously entered without inspection and are now present and residing in the U.S.

For the foregoing reasons, the Petition should be granted Petitioner be released.

Dated: November 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 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: November 25, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam