UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jorge Luis Torres Villasana Petitioner, Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director; Bobby Thompson, Warden of South Texas ICE Processing Center Respondents.	**Civil Case No. 5:25-cv-1579-OLG**

PETITIONER'S REPLY TO THE RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S WRIT OF HABEAS CORPUS

The Fifth Amendment's Due Process Clause prohibits the government from depriving an individual of liberty without due process of law. The Due Process Clause applies to all "persons" within the borders of the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

This case exemplifies exactly the type of unlawful government action the Fifth Amendment's Due Process Clause was designed to prevent. Petitioner is a lawful permanent resident of the United States who has resided in the U.S. for more than thirty years. The Respondent, U.S. Immigration and Customs Enforcement (ICE), initially detained Petitioner in 2012 but released him on their own accord shortly thereafter, under an order of release on recognizance (OREC), which he has complied with for over thirteen years while seeking relief from removal. *See* Exh. A.

Yet on October 22, 2025, Respondents abruptly re-detained him, without identifying any change in circumstances, without providing notice of the basis for his re-detention, and without affording an interview and opportunity to contest the revocation of his supervised release. The Respondents are presently holding the Petitioner in custody despite his pending U-visa application as the victim of domestic violence perpetrated by his ex-wife, and the despite the fact that he has not had any immigration court hearings during the two months that he has been re-detained, and he currently has no future court date scheduled before the immigration court. Automated Case Information System (last accessed Dec. 26, 2025). As the Fourth Circuit recently emphasized, due process is not dispensable, it is the "foundation of our constitutional order," and its absence "should be shocking not only to judges but to the intuitive sense of liberty that Americans far removed from courthouses still hold dear." *Garcia v Noem*, No. 25-1404, 2025 WL 1135112, at *1 (4th Cir. Apr. 17, 2025). Accordingly, the Court should declare Petitioner's re-detention unlawful and order his immediate release from ICE custody.

I. FACTUAL AND PROCEDURAL SUMMARY

Petitioner has been a lawful permanent resident of the United States since 2005. In 2012, ICE detained Petitioner following a conviction for a felony offense, but ICE released Petitioner shortly thereafter on his own recognizance. *See* Exh. A. Petitioner has complied with the conditions of his release on recognizance for over thirteen years. Petitioner has a pending application for a U-visa as the victim of domestic violence perpetrated by his ex-wife. *See* ECF No. 1.

On October 22, 2025, Respondents redetained Petitioner without providing any notice of the basis for his redetention. To date, Respondents have not interviewed Petitioner nor given him an opportunity to challenge the purported revocation of his release on recognizance, as they have not disclosed the reason for the revocation.

On December 2, 2025, this Court issued an order directing Respondents to respond to Petitioner's habeas petition. *See* ECF. No. 4. On December 19, 2025, Respondents filed their answer. *See* ECF No. 8. In their response, Respondents do not provide any changed circumstances or other justification for the Petitioner's re-detention. Instead, they claim that: (1) Petitioner has failed to exhaust his administrative remedies because he has not yet requested a bond hearing, while at the same time arguing that (2) Petitioner's detention is mandated by 8 U.S.C. § 1226(c). They also claim (3) "Petitioner's detention is constitutional" because "he is eligible to see relief from removal from an immigration judge,"; and (4) even if his constitutional rights were indeed violated, "the relief is not release." As explained below, these arguments are meritless, and the Court should grant Petitioner the relief he seeks.

II. ARGUMENT

A. Petitioner is not required to request a bond hearing in order to exhaust his administrative remedies.

The Respondents argue that "Petitioner has not exercised procedural safeguards for potential relief in immigration court through a motion for bond redetermination or a request for a *Joseph* hearing to contest his charge of removability rendering him subject to § 1226(c)." *See* ECF No. 8 at 1-2. However, in a footnote, Respondents recognize that exhaustion is not required where Petitioner can show that "such efforts are either unavailable, inappropriate, or futile." (citing *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018)).

In addition to the arguments raised in the initial petition, it would be futile for the Petitioner to request a *Joseph* hearing given that Fifth Circuit precedent establishes that he has been convicted of an aggravated felony, precluding his release by an immigration judge under § 1226(c). *United States v. Solis-Campozano*, 312 F.3d 164 (5th Cir. 2002).

B. 8 U.S.C. § 1226(c) does not preclude Respondents from releasing the Petitioner, as they did previously in 2012.

Respondents next argue that "Petitioner's detention is mandated by statute." ECF No. 8 at 3. However, the text of the statute is clear that it only precludes the *Attorney General* (the immigration courts) from releasing non-citizens with certain convictions. Respondents in this case fall under the U.S. Department of Homeland Security, not the Attorney General. Respondents seem to ignore that they previously released the Petitioner on his own recognizance and that 8 U.S.C. § 1226(c) did not preclude them from doing so.

C. Respondents' redetention of Petitioner without a showing of changed circumstances is a violation of the Fifth Amendment and constitutes an unconstitutional application of 8 U.S.C. § 1226(c).

While the Respondents cite *Demore v. Kim*, 538 U.S. 510 (2003) for the broad proposition that "[t]he Supreme Court has upheld mandatory detention under § 1226(c) as facially constitutional," (ECF No. 8 at 4), they make no claim that his *re-detention* after 13 years complied with the Constitution. That is because it plainly did not. Petitioner was not provided with any advance notice or meaningful opportunity to be heard, as required by the Constitution. *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025); *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (both citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

Additionally, the application of 8 U.S.C. § 1226(c) here, 13 years after his release from criminal custody and also 13 years after his initial release by Respondents, is unconstitutional. *See Nielsen v. Preap*, 586 U.S. 392, 419 (2019) (rejecting a facial constitutional challenge to § 1226(c) where the government fails to detain a non-citizen immediately after they are released from criminal custody but expressly preserving the possibility of as-applied challenges to the statute's constitutionality). In their response, the Respondents disingenuously point to the fact that the

Petitioner's *initial* detention was not years after his release (ECF No. 8 at 6), but his initial detention is not the subject of dispute in this case. Again, they provide no constitutional justification for taking the Respondent back into custody after thirteen years and only now choosing to assert the statute prevents his release. This delay, coupled with Mr. Torres's lawful conduct during that time, makes Mr. Torres's "reliance on his freedom...compelling and goes far beyond that present in a typical detention situation under" § 1226(c). *Perera v. Jennings*, 598 F. Supp. 3d 736, 744 (N.D. Cal. 2022) (finding an as-applied constitutional violation where petitioner was not detained until six years after their release from prison). See also *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533 (S.D.N.Y 2014) (holding that petitioner's detention under § 1226(c) without any process "offend[ed] the Constitution," as petitioner "was not taken into immigration detention when released from prison; he was plucked out of the community where he had lived for almost five years following his conviction").

D. The appropriate remedy for Respondents' constitutional violations is release from detention or a bond hearing at which the Respondents bear the burden to demonstrate materially changed circumstances.

Finally, the Respondents argue that "[e]ven if the Court were to find a procedural due process violation here, the remedy is substitute process." ECF No. 8 at 6. However it is unclear what "substitute process" is being suggested. The Respondents cite to *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016), a case in which a petitioner with a final order of removal received delayed post-order custody reviews. However, as the Petitioner in this case does not have a final order of removal and is subject to § 1226(c), he has no statutory right to a "custody review" by Respondents or to a bond hearing. His only relief is pursuant to the Constitution and therefore must be granted by this court.

Petitioner should not be required to await a bond hearing in these circumstances. There is no basis for forcing him to engage in a procedural mechanism designed to challenge a determination that, in his case, never actually occurred. *Lopez v. Sessions*, 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018) (ordering release in the "absence of a deliberative process prior to, or contemporaneous with, the deprivation.") The bond hearing process is not—and was never meant to be—a tool to facilitate mass detention without individualized reasoning or an opportunity to be heard in advance. *See also Chipantiza-Sisalema v. Francis*, 2025 WL 1927931 at *6 (S.D.N.Y. July 13, 2025) ("The suggestion that government agents may sweep up any person they wish, for any reason...without consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment.")

However, should this court find that a bond hearing to be the appropriate remedy in this case, the burden of proof should be placed on *Respondents* to demonstrate both that the Petitioner poses either a danger or a flight risk, *and* that circumstances in his case have materially changed since his release in 2012. *Matter of Sugay,* 17 I&N Dec. 637 (BIA 1981). *See also Lopez-Arevelo,* 2025 WL 2691828 ("Allocating the burden in this manner reflects the concern that '[b]ecause the alien's potential loss of liberty is so severe, he should not have to share the risk of error equally.'")

III. CONCLUSION

Each day that passes inflicts further irreparable harm on the Petitioner. For the foregoing reasons, the Court should grant the Petitioner the relief sought in the habeas petition.

Respectfully submitted,

December 26, 2025

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CERTIFICATE OF SERVICE

I certify that on today's date, December 26, 2025, I electronically filed the above reply by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Respondents' counsel.

/s/ Kathrine Russell
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