

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

<p>LASHA NIKABADZE ,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MIGUEL VERGARA, <i>et. Al.</i>,</p> <p style="text-align: center;">Respondents.</p>	
--	--

Civil Action No. 5:25-CV-236

PETITIONER’S REPLY TO
RESPONDENTS’ ANSWER TO PETITION
FOR WRIT OF HABEAS CORPUS

**REPLY TO GOVERNMENT’S ANSWER TO PETITIONER’S PETITION FOR WRIT
OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

PRELIMINARY STATEMENT

Petitioner, LASHA NIKABADZE (“Mr. Nikabadze”), respectfully submits the instant Reply to Respondent’s Opposition to the Petitioner’s Writ for Habeas Corpus (“Petition”). Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing §2254 cases. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners’ Motion for Partial Summary Judgment). Further, on December 18th, 2025, the Court issued another order granting a request to enter a final judgment as to eligible classes and declaratory relief.

The Petitioner is a member of the Bond Eligible Class, under the second category, because at his second arrest in September 2025, he was apprehended at a checkpoint in the interior of the United States. Therefore, Respondents are bound by the judgment in Maldonado Bautista, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

Petitioner initially entered the United States on or about December 17, 2021, at or near San Luis, Arizona. A Border Patrol (“BP”) officer encountered him and arrested him at the border. He was thereafter released by DHS. He established his domicile in the state of New York. The petitioner did everything that he was required to do. He affirmatively filed his asylum application with U.S. Citizenship and Immigration Services with received date of December 13, 2022 and receipt issued on January 10, 2023. (“USCIS”). He received his work authorization on January 22, 2025. Asylum Office-DHS-USCIS, issued a Notice to Appear on January 2, 2025, charging him as inadmissible pursuant to section 212(a)(6)(i) and 212(a)(7)(A)(I) of the Immigration and Nationality Act. Despite processing him under 1229a, and charging him as someone who is “present,” not “arriving,” without inspection or parole, Respondents argue that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)¹. Petitioner was re-arrested on September 16, 2025 when he stopped at a checkpoint. By this time, Petitioner had been living continuously in the country for three years. Given the fact that Mr. Nikabadze was present in the United States for 3 years before he was taken into custody in 2025, it makes little sense to treat him now as someone who is “arriving,” especially considering that he had been present with the knowledge and approval of the Department of Homeland Security since 2022. In fact, DHS released him on his parole, which necessitates making a finding that he is not a danger or a flight risk.

Therefore, Petitioner’s detention violates the declaratory judgment issued in Maldonado Bautista, and his detention violates both the Immigration and Nationality Act (“INA”) and Petitioner’s Fifth Amendment rights and due process of law.

¹ Respondents state that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1). However, the only grounds of inadmissibility that can be charged are limited to section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

ARGUMENT

THE COURT HAS JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 2241(c)(3) to grant a writ of habeas corpus to a person in custody in violation of the Constitution, laws, or treaties of the United States. *Demore v. Kim*, 538 U.S. 510, 517 (2003). “[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)(citing the Suspension Clause). A habeas petitioner has “the burden of sustaining his allegations by a preponderance of evidence.” *Walker v. Johnston*, 312 U.S. 275, 286 (1941). A court considering a habeas petition must “determine the facts, and dispose of the matter as law and justice require.” 28 U.S.C. § 2243. When the Court finds a petitioner’s constitutional rights have been violated, the petitioner is entitled to the issuance of a writ. *Id.*

Full removal proceedings under § 1229a are mutually exclusive from expedited removal under § 1225. Congress expressly provided that proceedings under § 1229a “shall be the sole and exclusive procedure” for determining removability once DHS elects that pathway. 8 U.S.C. § 1229a(a)(3). Once DHS elected that statutory framework, § 236(a) governed custody.

PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION

PROCEEDINGS

Non-citizens who have entered the United States are entitled to basic procedural protections, including notice and an opportunity to be heard. The Supreme Court has long held that noncitizens within the United States are entitled to procedural due process. *Yamataya v. Fisher*, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903); *Bridges v. Wixon*, 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). Our immigration laws distinguish between individuals seeking

initial admission and those who have already entered the country. *Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). Noncitizens who are physically present in the United States “undeniably have due process rights.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 191, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

The petitioner is not an arriving alien. DHS arrested him at an immigration checkpoint (3) years after his initial entry and immediately placed him into full removal proceedings under 8 U.S.C. § 1229a, through the issuance of a second Notice to Appear. Those proceedings are governed by 8 C.F.R. § 1003.12-1003.41 and § 1240.26. Individuals in § 240 proceedings are detained, if at all, under 8 U.S.C. § 1226(a). DHS treated Petitioner accordingly, and he remains in those proceedings today.

Although civil removal proceedings do not confer the “same bundle” of constitutional protections applicable in criminal trials, they do guarantee a full and fair hearing and meaningful procedural safeguards. *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). In *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), the First Circuit held that when a noncitizen is detained under § 1226(a) and a bond hearing is provided, due process requires the Government to bear the burden of justifying continued detention—clear and convincing evidence for dangerousness and a preponderance for flight risk.

Petitioner is a long-term resident placed squarely in the statutory framework of § 1229a and § 1226. Thus, he is entitled to the due-process protections available in those proceedings, including meaningful consideration of release under § 1226(a).

Accordingly, Petitioner, who remains in full § 240 removal proceedings, is entitled to the due-process protections afforded to individuals in those proceedings. DHS’s effort to deny him those protections by mischaracterizing his statutory posture has no basis in fact or law.

**DHS WAIVED THE ABILITY TO DETAIN UNDER § 1225(b)(1) AND DETENTION IS
ULTRA VIRES**

The Government's position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1) fails for an additional, independent reason: DHS waived any ability to rely on § 1225(b)(1) when it chose to process Petitioner under § 1229a and place him in full removal proceedings pursuant to 8 U.S.C. § 1229a. The record demonstrates that DHS (1) issued and filed a Notice to Appear initiating § 240 removal proceedings, and (2) processed him through the custody framework of § 1226(a). *See* Notice to Appear.

THE APPROPRIATE REMEDY IS RELEASE, NOT A BOND HEARING

Here, the Petitioner is not challenging prolonged mandatory detention; he is alleging that he is detained in violation of due process rights and the unlawful use of statutory authority to detain him. *See e.g., M.S.L. v. Bostock*, No. 6:25-cv-01204, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025). Release is appropriate because when the DHS re-arrested Petitioner, it intentionally attempted to place him into mandatory detention under § 1225, intentionally depriving him of constitutional rights, and subjecting him unnecessarily to prolonged detention. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Those factors 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 "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. "The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a

meaningful manner and at a meaningful time.” *M.S.L. v. Bostock*, No. 25-cv-1204 WL 2430267, at *8 (citing *Mathews*, 424 U.S. at 348). *See also Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *12 (D.N.J. Sept. 26, 2025)(finding that immediate release is appropriate).

Private Interest

Petitioner was arrested by DHS at his initial entry. He was arrested, detained, and processed upon arrival. DHS also determined that Petitioner was not a flight risk or a danger under 8 C.F.R. 236. He applied for affirmative asylum, who then referred the matter to Immigration Court by placing him 8 U.S.C. 1229a proceedings, and in fact, his case was to be heard for a bond, which was withdrawn due to ICE’s release. However, due to a recent policy, Petitioner was re-arrested, detained, and Respondents now take the position that he is not bond eligible, despite there being no material change from the time he was released to the time he was re-arrested. As Courts have recognized, the interest in being free from physical detention is the “most elemental of liberty interests.” *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Courts have recognized that those granted conditional parole have a protected liberty interest in their continued liberty. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). A number of district courts have held that in the immigration context, once detained and released from immigration custody, noncitizens acquire “a protectable liberty interest in remaining out of custody on bond.” *See Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 at *12 (D. Ariz. Aug. 11, 2025).

Risk of Erroneous Deprivation

The Court must also consider whether 8 U.S.C. § 1225(b) creates a risk of “erroneous deprivation of individuals’ private rights” and the degree to which alternative procedures could

ameliorate these risks. *Martinez v. Sec. of Noem*, No. 5:25-CV-01101 JLT SKO, 2025 WL 2581185, at *11 (E.D. Cal. Sept. 5, 2025). In Petitioner's case, like so many others who are arrested and detained in the interior, immigration judges decline to exercise jurisdiction, finding that the Board has stripped them of the ability to consider anyone for bond who has not been admitted. Petitioner's hearing did not provide an opportunity to contest the existence, nature, or significance of any supervision violations, or to otherwise make an individualized assessment of the need to re-detain him. Therefore, without relief from this Court, Petitioner will continue to be erroneously deprived of his liberty.

Government Interest

Civil detention is different from imprisonment. While the Government has an interest to ensure that noncitizens are not flight risks or dangers to the community, its detention process cannot be punitive. Petitioner entered the country on December 17, 2021. He was not placed into expedited removal proceedings nor denied entry. Instead, DHS-USCIS Asylum Office, made a decision to place him into removal proceedings under 240 proceedings and release Petitioner into the country on his own recognizance. This decision to release Petitioner three years ago, in and of itself, reflects the DHS's determination by the government that he was not a danger to the community or a flight risk. See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal 2017), aff'd 905 F.3d 1137 (9th Cir. 2018). Petitioner did not abscond, nor has he committed any crime. In fact, Petitioner was re-arrested when stopped at an immigration checkpoint, as was required. Since Petitioner has met the *Mathews* test, this Court should find that his detention without any individualized assessment of flight risk or danger deprives Petitioner of his constitutional rights. Petitioner therefore contends that release is the appropriate remedy to this deprivation.

CONCLUSION

For the reasons described above, Petitioner's Petition should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to his statutory eligibility for release.

December 19th, 2025

Respectfully Submitted,

/s/ David H. Square _____

DAVID H. SQUARE, ESQ.
LAW OFFICE OF DAVID H. SQUARE, PLLC
225 PALM BLVD.
BROWNSVILLE, TX 78520
T: (956) 421-1010
F: (956) 421-4015
E: david@lawofficeofdhs.com
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I, David H. Square, hereby certify that the foregoing document was served on Counsel for the Government on December 19th, 2025 by the ECF electronic filing system.

/s/ David H. Square
David H. Square, Esq.