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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Edgar De Jesus Rivera Sanchez,  
Petitioner,  
13 v.  
14 Kristi Noem, *et al.*,  
15 Respondents.

No. 2:25-cv-04424-SHD (MTM)

**RESPONSE TO ORDER TO SHOW  
CAUSE**

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17 **I. Introduction.**

18 Respondents, by and through undersigned counsel, hereby respond to the Court's  
19 Order to Show Cause (Doc. 3).

20 **II. Relevant Facts.**

21 Petitioner is a citizen of Columbia who entered the United States in November 2024  
22 Doc. 1 ¶ 2. Petitioner was apprehended by border patrol and then released on an Order of  
23 Recognizance and directed to appear before an Immigration Judge in 2025. *Id.* On June 24,  
24 2025, Petitioner appeared for his first immigration court hearing, at which DHS moved to  
25 dismiss immigration proceedings without prejudice. *Id.* ¶ 3. Following the proceeding,  
26 Petitioner was arrested and taken into immigration custody where he remains. *Id.* ¶ 4.  
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28

1           **III. A pre-detention hearing is an improper extra-statutory remedy to which**  
2           **Petitioner is not entitled and due process does not require.**

3           There is no statutory or regulatory requirement that entitles Petitioner to a “pre-  
4           deprivation” hearing, much less one involving burden-shifting against the government. *See*  
5           *generally* 8 U.S.C. §§ 1225; 1226; 1231. For this Court to read one into the immigration  
6           custody statute would be to create a process for which the statutory and regulatory scheme  
7           do not provide. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022).

8           This extra-statutory remedy is both improper and superfluous. If Petitioner were to  
9           be re-arrested and detained by Immigration and Customs Enforcement (ICE), he is already  
10          entitled to a review of custody determinations under the Immigration and Nationality Act.  
11          “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the  
12          arrest and detention of an alien ‘pending a decision on whether the alien is to be removed  
13          from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Further,  
14          “‘[e]xcept as provided in [§ 1226(c)]’ the Attorney General ‘may release’ an alien detained  
15          under § 1226(a) ‘on... bond’ or ‘conditional parole.’” *Id.* Thus, the current statutory and  
16          regulatory procedures in place for noncitizens, like Petitioner, detained under section  
17          1226(a) already provide for bond hearings and custody determinations shortly after arrest  
18          and are continuously available throughout the detention and removal process.

19          Moreover, implementing the procedures for hearing prior to re-detention would be  
20          both and unfeasible and unmanageable. If a Notice to Appear is issued that subjects  
21          Petitioner to new removal proceedings that result in a removal order, ICE would need to  
22          take him into custody to facilitate his removal. Similarly, if he is released but ICE determines  
23          he has become a flight risk or danger, ERO would need to re-detain him. ICE should not  
24          be—and is not—required to give Petitioner advance notice of its intention to re-detain him  
25          under those circumstances, much less to prove that detention is warranted prior to its  
26          occurrence. The Supreme Court has upheld the constitutionality of basic processes of  
27          providing hearings post-detention. *See, e.g., Reno v. Flores*, 507 U.S. 292, 309 (1993)  
28          (rejecting a procedural due process claim that “the INS procedures are faulty because they  
do not provide for automatic review by an immigration judge of the initial deportability and

1 custody determinations”); *Abel v. United States*, 362 U.S. 217, 233-34 (1960) (noting the  
2 “impressive historical evidence of acceptance of the validity of statutes providing for  
3 administrative deportation arrest from almost the beginning of the Nation”).

4 Instead of a guarantee of pre-detention review by an Immigration Judge, aliens  
5 detained under § 1226(a) are provided with multiple avenues to seek review of their  
6 detention once they are in custody – a process which the Ninth Circuit has already held is  
7 constitutionally sufficient. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir.  
8 2022). The Ninth Circuit held that that the “existing agency procedures” sufficiently protect  
9 liberty interest of aliens and “mitigate the risk of erroneous deprivation.” *Id.* at 1209. “In  
10 short, the agency’s decision to detain Rodriguez Diaz was subject to numerous levels of  
11 review, each offering Rodriguez Diaz the opportunity to be heard by a neutral  
12 decisionmaker. These procedures ensured that the risk of erroneous deprivation would be  
13 ‘relatively small.’” *Id.* (quoting *Yagman v. Garcetti*, 852 F.3d 859, 865 (9th Cir. 2017)).

14 Other courts, including those in this judicial circuit, have rejected the premise that  
15 the Constitution requires an extra hearing *before* an alien can be arrested under 8 U.S.C. §  
16 1226(b). *See, e.g., United States v. Cisneros*, No. 19-CR-00280-RS-5, 2021 WL 5908407,  
17 at \*4 (N.D. Cal. Dec. 14, 2021) (“[t]he law does not require a hearing before arrest” where  
18 a noncitizen released from ICE custody had been picked up by the San Francisco Police  
19 Department for assault). Other courts have also recognized that there is no “due process  
20 right to a pre-detention hearing where a noncitizen, subject to pending removal  
21 proceedings...is at risk of being re-detained after being at liberty for more than two years.”  
22 *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at \*11 (S.D.N.Y. Aug. 20,  
23 2021); *accord Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at  
24 \*8 (N.D. Okla. June 12, 2025) (“On careful consideration of the statute, the implementing  
25 regulations, and the BIA’s decisions in *Sugay* and *Valles-Perez*, the Court rejects  
26 petitioner’s claim that the DHS has no authority to revoke a bond issued by an immigration  
27 judge.”).

28 Moreover, it is well established that “detention during deportation proceedings [is] a  
constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523

1 (2003); *see also Reno*, 507 U.S. at 306; *Carlson v. Landon*, 342 U.S. 524, 538 (1952)  
2 (“Detention is necessarily a part of this deportation procedure.”). In every case in which  
3 detention incident to removal proceedings has arisen, the Supreme Court has concluded that  
4 it is constitutional. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it  
5 clear that detention, or temporary confinement, as part of the means necessary to give effect  
6 to the provisions for the exclusion or expulsion of aliens would be valid.”). Moreover, the  
7 Ninth Circuit also held in *Rodriguez Diaz* that the Due Process Clause does not require a  
8 second bond hearing when a petitioner is subject to ongoing detention. *Rodriguez Diaz*, 53  
9 F.4th at 1203. The procedural process provided to Petitioner, if he is re-arrested, is  
10 constitutionally adequate and no additional process should be required.

11 Under these circumstances, Petitioner does not have a cognizable liberty interest in a  
12 pre-detention hearing. The procedural process provided to Petitioner, if re-arrested, is  
13 constitutionally adequate and no additional process is required. “Procedural due process  
14 imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or  
15 ‘property’ interests within the meaning of the [Fifth Amendment] Due Process Clause.”  
16 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of  
17 [procedural] due process is the opportunity to be heard ‘at a meaningful time and in a  
18 meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

19 To determine whether procedural protections satisfy the Due Process Clause, courts  
20 consider three factors: (1) “the private interest that will be affected by the official action”;  
21 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and  
22 the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the  
23 Government’s interest, including the function involved and the fiscal and administrative  
24 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

25 The first factor favors Respondents. The Supreme Court has long recognized that due  
26 process as applied to aliens in matters related to immigration does not require the same  
27 strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when  
28 exercising its “broad power over naturalization and immigration, Congress regularly makes  
rules regarding aliens that would be unacceptable if applied to citizens.” *Diaz*, 426 U.S. at

1 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are  
2 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.  
3 at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the  
4 individuals subject to immigration detention possess at least a limited liberty interest, it has  
5 also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634  
6 F.3d 1081, 1086-87 (9th Cir. 2011). Accordingly, this factor does not indicate that Petitioner  
7 must be afforded a pre-detention hearing.

8 The second *Mathews* factor also favors Respondents. Under the existing procedures,  
9 aliens including Petitioner face little risk of erroneous deprivation. As explained above,  
10 there is no risk of erroneous deprivation because Section 1226(a) already provides multiple  
11 avenues of custody review once a noncitizen has been detained. These regulatory  
12 procedures and custody redetermination hearings once subject to detention are more than  
13 adequate and unquestionably provide Petitioner notice and opportunity to be heard during  
14 their detention.

15 The third *Mathews* factor—the value of additional safeguards relative to the fiscal  
16 and administrative burdens that they would impose—weighs heavily in favor of  
17 Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation  
18 hearing—adds little value to the system already in place in which noncitizens receive  
19 opportunities for bond hearings and custody redeterminations. Petitioner's proposed  
20 safeguard would disrupt the removal process. Because the hearing Petitioner proposes  
21 would, by definition, involve a non-detained individual, there would be hurdles to efficiently  
22 scheduling a hearing. There is no administrative process in place for giving an alien a  
23 hearing resembling a bond hearing before an immigration judge prior to detention.  
24 Petitioner's proposed safeguard presents an unworkable solution to a situation already  
25 addressed by the current procedures which allow for custody redeterminations and bond  
26 hearings immediately once the noncitizen is detained.

27 The additional procedure requested would have a significant impact on the removal  
28 system. It would require ICE and the Executive Office of Immigration Review to set up a  
novel administrative process for Petitioner who—for all intents and purposes—represents a

1 large portion of the noncitizen population who may be re-detained. Therefore, considering  
2 all of the *Mathews* factors together, due process does not require a pre-deprivation hearing.

3 For these reasons, Petitioner was not entitled to a pre-detention bond hearing and  
4 must seek a bond hearing custody determination from an immigration judge now that he is  
5 in detention. The petition does not indicate whether Petitioner has requested a bond hearing  
6 with an immigration judge. For these reasons, the habeas petition should not be granted.

7 Respectfully submitted this 9th day of December, 2025.

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