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11
12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA
14

15
16 Edgar De Jesus Rivera Sanchez,
17 Petitioner,

18 v.

19 Kristi Noem, Secretary of The Department
of Homeland Security, Pam Bondi,
20 Attorney General, Todd Lyons, Acting
Director, Immigration and Customs
21 Enforcement, Luis Rosa, Jr., Warden,
Florence Servicing Processing Center,

22 Respondents.
23

Case No. 2:25-cv-04424-SHD-MTM

**PETITIONER'S REPLY BRIEF IN
SUPPORT OF ORDER TO SHOW CAUSE**

24 **I. Introduction**

25 This habeas action concerns the re-detention of Petitioner, Edgar De Jesus Rivera Sanchez
26 ("Petitioner"), a citizen of Columbia who was detained and released in November 2024 and re-
27 detained on June 24, 2025. On November 26, 2025, Petitioner filed a Petition for Writ of Habeas
28 Corpus (Dkt. 1) (the "Petition") contending his re-detention without a pre-deprivation hearing

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1 violates the Due Process Clause of the Fifth Amendment. For the reasons explained below, the
2 Petition for Writ of Habeas Corpus should be granted.

3 **II. Relevant Facts**

4 Petitioner is a 57-year-old native and citizen of Colombia. In 2017, Petitioner was in a
5 near fatal car accident. Petitioner suffered a traumatic brain injury, broken ribs, was in a coma
6 for approximately 20 days, and thereafter stayed in a palliative care facility for six (6) months.
7 Following his discharge, Petitioner was left with permanent disabilities and mental health
8 conditions including aphasia and ataxia that render it difficult for him to walk and
9 communicate. In 2019, Petitioner was registered as a disabled person in the country of
10 Colombia. In 2020, he was diagnosed with schizophrenia and bipolar disorder as a result of
11 his injuries and was prescribed antipsychotics and antidepressants, including [REDACTED]
12 [REDACTED] to manage his ongoing illnesses.

13 In November 2024, Petitioner crossed into the United States from Mexico together with
14 his wife, Myriam Restrepo, to join their two (2) adult children living in the United States and
15 was apprehended by border patrol. Petitioner was then released on his own recognizance
16 pursuant to an Order of Release on Recognizance (“OROR”) and upon the determination that
17 he posed neither a danger to the community nor a flight risk. Petitioner was ordered to appear
18 before an immigration judge in Van Nuys, California approximately seven (7) months later.

19 On June 24, 2025, Petitioner appeared in-person, with his wife and without
20 representation before the Van Nuys Immigration Court. After Petitioner’s case was called,
21 the Department of Homeland Security (“Department”) dismissed the proceedings.

22 Outside of court, and following his in-person appearance, Petitioner was arrested
23 without a pre-deprivation hearing. Because Petitioner was not afforded a pre-deprivation
24 hearing, and has not subsequently had a custody redetermination hearing, his Fifth
25 Amendment due process rights are being violated. Petitioner has now been held in detention
26 in excess of five (5) months and has not been receiving adequate medical care or medication,
27 and his health is rapidly deteriorating.

28 ///

1 **III. Legal Argument**

2 **A. Legal Standard**

3 The Constitution guarantees the availability of the writ of habeas corpus “to every
4 individual detained within the United States” including noncitizens. *Hamdi v. Rumsfeld*, 542
5 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2); *see also, Addington v. Texas*, 441
6 U.S. 418, 425 (1979). “The essence of habeas corpus is an attack by a person in custody upon
7 the legality of that custody, and . . . the traditional function of the writ is to secure release from
8 illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of habeas corpus
9 should be granted where the petitioner demonstrates that he is in custody in violation of the
10 Constitution or federal law. 28 U.S.C. § 2241(c)(3). Historically, “the writ of habeas corpus
11 has served as a means of reviewing the legality of Executive detention, and it is in that context
12 that its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).
13 Accordingly, a district court’s habeas jurisdiction includes challenges to immigration
14 detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

15 **B. Petitioner was Entitled to a Pre-Deprivation Hearing Before Detention**
16 **Pursuant to the Fifth Amendment**

17 Civil detention in the immigration setting is typically only justified when the noncitizen
18 presents a risk of flight or a danger to the community. *Zadvydas v. Davis*, 533 U.S. at 690
19 (2001); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). In his Petition,
20 Petitioner contends that the Due Process Clause bars Respondents from re-detaining him
21 without first providing him with a hearing where it must prove he is a flight risk or danger to
22 the community. (*See* Dkt. 1 at ¶¶21-22). In their opposition, Respondents do not contend that
23 they made an evidence-based determination that Petitioner was a danger or a flight risk
24 following the issuance of his OROR, or that he had violated the conditions of his release. Nor
25 do Respondents allege Petitioner has ever committed a crime or that he was re-arrested in
26 connection with a criminal proceeding. Instead, Respondents argue that a pre-detention
27 hearing is not required by existing case law and is not feasible.

28 Specifically, Respondents cite to a single case in this circuit, *United States v. Cisneros*,

1 No. 19-CR-00280-RS-5, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021), and two cases
2 outside of this judicial circuit, *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at
3 *11 (S.D.N.Y. Aug. 20, 2021); accord *Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS,
4 2025 WL 1669356, at *8 (N.D. Okla. June 12, 2025) for the proposition that the Constitution
5 does not require an extra hearing before an alien can be re-arrested. Yet, each of the cases cited
6 are easily distinguished because all three matters involved immigrants who were arrested in
7 connection with a pending criminal matter. For example, in *Cisneros*, the Court wrestled with
8 whether an immigrant's cell phone was properly seized and admissible in evidence and
9 concluded that "The government was within its rights to re-arrest Galdamez because his alleged
10 participation in the assault counted as a change in circumstances." *Cisneros*, 2021 WL
11 5908407, at *1. In that case, an officer signed "an I-200: a one-page check-the-box form
12 warrant authorizing an arrest for an immigration violation" and the Officer then arrested him."
13 No such facts are present here.

14 Similarly, in *King*, an out of circuit case that is not binding on this Court, the court noted
15 that the "Petitioner was arrested for allegedly "slapp[ing] and punch[ing]" his ex-partner,
16 Margarita Cruz." *King*, 2021 WL 3727614, at *6. Even there, the court noted that it found
17 "persuasive the logic employed by the "[n]umerous district courts in the Second Circuit,
18 including this Court, [that] have consistently applied these principles to hold that where, as
19 here, the Government seeks to detain a noncitizen pending removal pursuant to § 1226(a), the
20 Fifth Amendment Due Process Clause requires the Government to bear the burden of proving,
21 by clear and convincing evidence, that such detention is justified." *Id.* at *7.

22 *Salvador v. Noem*, the other out of circuit case, is similarly unavailing. In that case,
23 DHS detained a citizen of Mexico. Unlike the present case, the petitioner in *Salvador* was not
24 released on his own recognizance but was being held in a criminal justice center in Tulsa,
25 Oklahoma. *Salvador F.-G. v. Noem*, 2025 WL 1669356, at *1.

26 By contrast, numerous courts in this judicial circuit have concluded that immigrants do
27 have a Due Process right under the Fifth Amendment to a pre-deprivation hearing. The same
28 issues presented in the present Petition have been addressed in Federal Courts in the Eastern

1 and Central District Courts of California, the Western District of Washington and across the
2 nation. *See e.g., Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK (HC), 2025 U.S. Dist.
3 LEXIS 224966, at *9 (E.D. Cal. Nov. 14, 2025) (granting petitioner’s application for a
4 preliminary injunction and concluding that Respondents are enjoined and restrained from re-
5 detaining petitioner for any purpose, absent exigent circumstances, without providing petitioner
6 notice and a pre-detention hearing before an immigration judge where respondents will have
7 the burden to demonstrate a change in circumstances by clear and convincing evidence.); *Polo*
8 *v. Chestnut*, No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346, at *39-40 (E.D. Cal. Oct. 17,
9 2025) (granting a preliminary injunction in favor of petitioner and permanently enjoining
10 respondents from rearresting petitioner without constitutional protections, which “include at a
11 minimum, predeprivation notice of at least seven days before a deprivation hearing at which
12 the government will bear the burden of demonstrating by clear and convincing evidence that
13 [Petitioner] is likely to flee or pose a danger to the community if not arrested and at which
14 Petitioner may be represented by her counsel.” Respondents were also ordered to not impose
15 further additional restrictions on petitioner, like electronic monitoring, unless that is determined
16 to be necessary at a later custody hearing.); *Perez-Mendez*, 2025 U.S. Dist. LEXIS 207266, at
17 *2. (granting petitioner’s application for preliminary injunction and finding “Respondents may
18 not re-detain Petitioner without a bond hearing on the merits where the government must prove
19 by clear and convincing evidence that Petitioner is a danger to the community and a flight risk
20 such that physical custody is required.”); *see also Rodriguez v. Bostock*, No. 3:25-CV-05240-
21 TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025) (granting petitioner’s
22 preliminary injunction, and finding that petitioner is likely to succeed on the merits, that his
23 detention should be governed under Section 1226(a), and enjoining respondents from denying
24 bond on the basis that he is detained pursuant to 8 U.S.C. § 1225(b)(2).); *see also Bautista v.*
25 *Santaacruz*, No. 5:25-cv-01873-SSSBFM, 2025 U.S. Dist. LEXIS 171364, *24 (C.D. Ca. Jul.
26 28, 2025) (ordering that “Respondents are enjoined from continuing to detain Petitioners unless
27 they are provided an individualized hearing before an immigration judge pursuant to 8 U.S.C.
28 § 1226(a) within 7 days of the date of this Order”); *Rosado v. Figueroa*, No. CV 25-02157

1 PHX DLR (CDB), 2025 WL 2337099, at *12–13 (D. Ariz. Aug. 11, 2025), *report and*
 2 *recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR
 3 (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (noting that although ICE had “initial
 4 discretion to detain or release a noncitizen pending removal proceedings,” after that individual
 5 was “released from custody they have a protected liberty interest in remaining out of custody.”
 6 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on
 7 preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released
 8 from immigration detention] have a liberty interest in remaining out of custody on bond.”);
 9 *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (“[T]his
 10 Court joins other courts of this district facing facts similar to the present case and finds
 11 Petitioner raised serious questions going to the merits of his claim that due process requires a
 12 hearing before an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021
 13 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

14 The same result is warranted here.

15 **C. The *Mathews* Factors Demonstrate Petitioner Was Entitled to a Pre-** 16 **Deprivation Hearing**

17 In their opposition, Respondents do not argue that Petitioner is *not* entitled to Due
 18 Process under the Fifth Amendment simply because he is an immigrant. Rather, Respondents
 19 appear to concede Petitioner’s detention involves a significant deprivation of liberty.
 20 *Addington*, 441 U.S. at 425 (noting “[c]ivil commitment for any purpose constitutes a
 21 significant deprivation of liberty that requires due process protection.”) Instead, Respondents
 22 only contend that the relevant *Mathews* factors identified in *Mathews v. Eldridge*, 424 U.S.
 23 319, 335 (1976) favor the Respondents and do not require a pre-deprivation hearing. They are
 24 mistaken.

25 **1. Petitioner Has a Strong Private Interest**

26 “Due process ‘is a flexible concept that varies with the particular situation.’” *Zinerman*
 27 *v. Burch*, 494 U.S. 113, 127 (1990)). The Supreme Court has identified three factors that the
 28 court must consider in determining what process is constitutionally required: (1) “the private

1 interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of
2 such interest through the procedures used, and the probable value, if any, of additional or
3 substitute procedural safeguards;” and (3) “the Government’s interest, including the function
4 involved and the fiscal and administrative burdens that the additional or substitute procedural
5 requirement would entail.” *Mathews* 424 U.S. at 335.

6 As to the first factor, Petitioner has a significant private interest in remaining free from
7 detention. “Freedom from imprisonment—from government custody, detention, or other forms
8 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
9 *Zadvydas*, 533 U.S. at 690. As noted above, Petitioner was released on his own recognizance
10 in 2024 prior to being re-detained in 2025. The length of time of the release strengthens
11 Petitioner’s interest in his continued release. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D.
12 Cal. 2025) (“Moreover, the actions of the Government in allowing Petitioner to remain in the
13 community for over five years strengthen Petitioner’s liberty interest. Governmental actions
14 may create a liberty interest entitled to the protections of the Due Process Clause.”); *see also*
15 *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7 (N.D.
16 Cal. Sept. 12, 2025) (noting the release on own recognizance order “implied a promise that she
17 would not be re-detained so long as she abided by the terms of her release.”) Here, Petitioner
18 had been out of custody for more than 7 months and was released on his recognizance. His
19 detention denies him that freedom. Accordingly, the first factor weighs heavily in favor of
20 granting the Petition.

21 2. Risk of Erroneous Deprivation is High

22 As to the second factor, the risk of erroneous deprivation is high without a custody
23 redetermination hearing. Several courts have already found that such a risk is high in similar
24 cases. *See, e.g., Salcedo Aceros*, 2025 WL 2637503, at *12 (finding that the petitioner’s risk of
25 erroneous deprivation was high because a hearing would likely reveal that the petitioner still
26 presented no public safety or flight risk); *see also Calderon*, 2025 WL 2430609, at *3 (“Where
27 an individual has not received a bond or redetermination hearing, the risk of an erroneous
28 deprivation of liberty is high.”); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RFL, 2025 WL

1 1853763, at *2 (N.D. Cal. July 4, 2025) (finding a risk of erroneous deprivation without a bond
2 hearing pre-detention where the petitioner was re-detained after having been released on her
3 own recognizance at the border by immigration officials). Civil immigration detention, which
4 is “nonpunitive in purpose and effect[.]” is only justified when a noncitizen presents a risk of
5 flight or a danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla*, 704 F. Supp. 3d
6 at 1172. Yet here, there is no evidence of a risk of flight or a danger. Nor do Respondents
7 suggest such a justification exists in support of Petitioner’s re-detention. Accordingly, it is
8 clear this factor also militates strongly in favor of granting Petitioner the relief he seeks.

9 3. The Government’s Interest is Minimal

10 Finally, although the Department has an interest in enforcing immigration laws, the
11 Government’s interest in re-detaining petitioner without a hearing is “low.” *Ortega*, 415 F.
12 Supp. 3d at 970; *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D.
13 Cal. March 3, 2025). “In immigration court, custody hearings are routine and impose a minimal
14 cost.” *Salcedo Aceros*, 2025 WL 2637503, at *12 (internal quotation marks omitted) (*quoting*
15 *Singh*, 2025 WL 1918679, at *7). Thus, Respondents’ interest in detaining Petitioner without
16 a hearing should not outweigh the cost of providing the additional process to which Petitioner
17 is due. Accordingly, the final factor also weighs heavily in favor of granting Petitioner the
18 relief he seeks.

19 Together, the *Mathews* factors clearly show that before Respondents could lawfully re-
20 detain Petitioner, he was entitled to a bond hearing. “[T]he root requirement’ of the Due
21 Process Clause” is “that an individual be given an opportunity for a hearing *before* he is
22 deprived of any significant protected interest.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S.
23 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); *see Zinermon*, 494
24 U.S. at 127 (“[a]pplying [the *Mathews*] test, the Court usually has held that the Constitution
25 requires some kind of a hearing *before* the State deprives a person of liberty”). This result is
26 consistent with the decisions of countless other courts in this circuit who have ruled on this
27 issue, and have held that the burden is on the Government to prove that Petitioner is a flight
28 risk or danger to the community by *clear and convincing* evidence. *See, e.g., Ramirez Clavijo*

1 v. *Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4–6 (N.D. Cal. Aug. 21, 2025)
2 (reaching the same conclusion); *Garcia*, 2025 WL 1927596, at *5 (same); *Pinchi*, 2025 WL
3 1853763 at *1 (same); *Ortega*, 415 F. Supp. 3d at 970 (same); *Doe*, 2025 WL 691664, at *6
4 (same); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)
5 (same); *Romero*, WL 1443250, at *4 (same); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020
6 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020) (same).

7 **IV. Conclusion**

8 For the foregoing reasons, (1) the Petition should be granted and (2) Respondents should
9 be ordered to return Petitioner to his home city in Sun Valley, California.

10
11 Dated: December 11, 2025

12 /s/ Lee E. Sheldon
13 Melissa L. Shingles
14 Lee E. Sheldon
15 LITTLER MENDELSON, P.C.
16 Attorneys for Petitioner,
17 Edgar De Jesus Rivera Sanchez

18 I hereby certify that I electronically
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