UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

URSULO MAURICIO LAINEZ BRICENO,

Petitioner,

v.

E. K. CARLTON, in official capacity, Warden, Federal Detention Center, Miami; GARRETT J. RIPA, in official capacity, Field Office Director of Enforcement and Removal Operations, ICE's Miami Field Office; KRISTI NOEM, in official capacity, Secretary, U.S. Department of Homeland Security; TODD M. LYONS, in official capacity, Acting Director of ICE; PAMELA BONDI, in official capacity, U.S. Attorney General;

Respondents.

Case No. 25-cv-25586-RAR

REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE (TRAVERSE)

PETITIONER'S TRAVERSE

INTRODUCTION

Petitioner Ursulo Lainez Briceno has a loving wife and children, no criminal history, and an unvarnished record of complying with all requirements of the Immigration Court. He came to this country in 2019 seeking asylum, surrendered after entry, was taken into custody, charged, and put into removal proceedings. He was detained for four months, then released on bond. He actively pursued his asylum case until 2023 when, at the request of Respondents, the immigration court dismissed proceedings against him. Respondents' decision to release Petitioner on bond and, subsequently, to terminate the removal case against him demonstrates that Respondents found him not to be a danger or flight risk. Yet, on August 14 of this year, Respondents arrested him in an immigration enforcement sweep and has kept him detained for months, all without providing him any pre-deprivation hearing or even the opportunity to request bond after his detention.

Respondents' actions violate due process. A fundamental tenet of due process is that the government may not deprive a person of their liberty without providing a "pre-deprivation" hearing. Yet that is exactly what Respondents have done. Notably, the Opposition provide no explanation for why it denied Petitioner the pre-deprivation hearing that was required by due process. Nor is there one. Petitioner had no criminal history. He broke no laws to precipitate his re-detention. (He was the passenger in a vehicle that was pulled over on the highway on suspicion of having excessive window tinting.) Indeed, Petitioner was not even in removal proceedings at the time of his re-detention, a function of Respondents' decision in 2023 to dismiss the removal case against him. Due to the conclusion of his removal proceedings in 2023, Respondents' arguments about the applicability of 8 USC §1225(b) are even more inapposite than in the mine run of cases. *See Jennings v. Rodriguez*, 583 U.S. __ (2018) ("Read

most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . Once those proceedings end, detention under §1225(b) must end as well.") At a bare minimum, he is entitled to a bond hearing under §1226(a) now that Respondents have elected to initiate removal proceedings for a second time, and he was afforded that procedural protection previously. 8 U.S.C. §1226(a) would necessarily apply to a person detained at a traffic stop well within the interior of the country, whose prior removal proceedings had previously been dismissed, and who has been in the United States for years.

Respondents trot out various arguments for why Petitioner's requested relief should not be granted. Significantly, however, Respondents provide no evidence of the "urgent, changed circumstances" that would be required to re-detain a person without a hearing. Nor do they allege that Petitioner is a flight risk or danger. If he was, Respondents would not have dismissed proceedings against him in 2023. In such a case, an order releasing Petitioner from detention without more is the proper remedy. *See Guifarro Mena v. Anda-Ybarra*, 25-cv-608 (W.D.TX Dec. 12 2025) at *3 (granting immediate release instead of a new bond hearing in part because the government identified no "articulable, legitimate interest" in the habeas petitioner's continued detention.) Their Opposition is notable, in fact, because it gives no principled reason why this Court should ignore the due process violation. They provide no convincing argument that he is properly detained under Section 1225(b). Therefore, Petitioner respectfully asks this Court to provide the required remedy for this violation of procedural due process: an order releasing Petitioner and prohibiting his re-detention unless and until Respondents prove at a hearing, by clear and convincing evidence, that he is a danger or flight risk.

ARGUMENT

I. The Due Process Clause Protects Petitioner's Liberty Interests.

Petitioner's due process claim is straightforward. The Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), *abrogated on other grounds by Wilkie v. Robbins*, 551 U.S. 537 (2007). Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The Immigration Court released Petitioner on bond in 2019, and that required an assessment that he was neither a danger nor a flight risk. In the ensuing six years when he lived freely in the U. S., the liberty interest created could not be taken away from him without a "pre-deprivation" hearing and a showing of "changed circumstances." *Matter of Sugay,* 17 I&N Dec. 637, 640 (BIA 1981). In 2023, the government reinforced Petitioner's liberty interest when in its discretion, it decided not to pursue deportation proceedings against him. Thereafter, there were no constraints on his freedom, other than for him to obey the law, which he did.

Nonetheless, Respondents arbitrarily and without cause arrested him in August of 2025, with no pending case against him, and no changed circumstances. This is a clear violation of due process. Yet Respondents ignore this procedural due process argument in their Opposition. Their failure to engage with this claim is a concession that Petitioner's rights were violated.

II. To Re-Detain a Person Without a "Pre-Deprivation" Hearing, Respondents Must Show "Urgent" "Changed Circumstances." They Have Not Done So.

When the Immigration Court releases a detainee, as it did with Petitioner back in 2019, that release necessarily "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk," *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D.

Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Once that determination is made, Respondents cannot override it at a later point unless they hold a hearing at which a "change of circumstances" is shown by clear and convincing evidence. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

Respondents identify no "change in circumstances," much less "urgent" ones that could permit re-detention without a hearing. Nor could they. During the six years in which Petitioner enjoyed his liberty interest, he did everything that society hopes a person would do including raising his family, taking a job, and working to settle his immigration status.[1] *See Morrissey*, 408 U. S. at 482. ("… a parolee can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life."). During those six years he "relied on at least an implicit promise" that his bond would be revoked "only if he fails to live up to the [bond] conditions." *Id.* Petitioner lived up to the conditions. Respondents do not identify "changed circumstances," "urgent" or otherwise, that could justify depriving him of his liberty without a hearing. *Guillermo M. R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025).

It is important to observe how assiduously Respondents avoid addressing the due process analysis. Instead of analyzing the case in terms of Supreme Court cases like *Zinermon v. Burch*, 494 U.S. 113(1990), which require *pre*-deprivation hearings to satisfy due process, they fall back to a discredited statutory argument. Respondents claim that Petitioner is appropriately classified under § 1225(b) and subject to mandatory detention. Respondents' statutory argument has been thoroughly rejected by district courts here and across the nation,

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[1] Respondents raise that Petitioner's bond may have been "cancelled upon satisfaction" in January of 2024 R. Opp, p. _, but provide no evidence he was ever reimbursed, and fail to explain how that cancellation justifies his re-arrest in 2025. For due process purposes, the critical fact is that he was found not to be a danger or flight risk and that finding entitled him to bond.

and there is no new reason offered for this Court to accept Respondents' discredited position. Moreover, Respondents' position on bond eligibility does not resolve the anterior constitutional violation: the violation of procedural due process that occurred when he was re-detained without a "pre-deprivation" hearing.

III. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225

This Court should find that Petitioner is subject to 8 U.S.C. § 1226(a), not §1225(b)(2). It is undisputed that, after Petitioner entered the country, he was not subjected to 1225(b)(2) mandatory detention. The government provided Petitioner a bond hearing. The IJ released Petitioner on bond. Thus, he was not subject to mandatory detention. Quite the opposite, the governing statute, 8 U.S.C. § 1226(a), required his release.

Six years later, however, Respondents seek to reverse course and "unilaterally reclassify" Petitioner "as 'detained' pursuant to Section 1225(b)(2))." Courts have concluded that the government cannot simply "switch[] tracks" mid-litigation without regard for a noncitizen's liberty interests. *Aceros*, 2025 U.S. Dist. LEXIS 179594 at *21; s*ee also Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 U.S. Dist. LEXIS 228110, at *10-11 (N.D. Cal., Nov. 19, 2025) ("The Court is persuaded by the many district courts that have found Section 1225 inapplicable to noncitizens who were conditionally released in the past under Section 1226"). To do so would amount to an impermissible post hoc rationalization. *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025).

Furthermore, Respondents' argument for mandatory detention under Section 1225(b)(2) would fail on basic grounds of statutory interpretation. *See* Petition at ¶¶ 76-97. As they must, Respondents concede that their statutory argument is not a winning one, acknowledging that "courts in this District" have rejected these arguments in granting habeas petitions seeking

bond hearings. In fact, Respondents own up to presenting this discredited argument only to "maintain and preserve these arguments for the record in this case." Respondents' Opposition ("Opp") at 5, n.4. This is a wise concession considering that the government's position has been rejected in roughly 700 federal cases from more than 225 different district judges in the past few months.[2] As Professor Stephen Vladeck of Georgetown University Law Center wrote recently:

> I can't recall any other example of a federal policy that provoked quite so much litigation in such a short period of time—or litigation in which so many judges from across the geographical and ideological spectrum so overwhelmingly *rejected* the executive branch's new interpretation of the relevant statutes.[3]

Courts in this district are no exception.[4] *See Boffill v. Field Off. Dir.*, No. 25-CV-25179-JB, 2025 WL 3246868, at *7 (S.D. Fla. Nov. 20, 2025) ("Indeed, other Courts in this Circuit and District have uniformly rejected Respondents' expansive interpretation of section 1225.") *citing Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-cv-24292, ECF No. [41], (S.D. Fla. Oct. 10, 2025) ("respondent's interpretation of the INA 'directly contravenes the statute' and 'disregards decades of settled precedent.'"); *Pizarro Reyes*, 2025 WL 2609425, at *7 ("Finally, the BIA decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every

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[2] See Kyle Cheney, *More than 220 Judges Have Now Rejected the Trump Admin's Mass Detention Policy*, POLITICO (Nov. 28, 2025), https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861 ("At least 225 judges have ruled in more than 700 cases that the administration's new policy . . . is a likely violation of law and the right to due process."). For a partial list, see: *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *5-9 (D. Mass. July 24, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 U.S. Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz. Aug. 11, 2025). The list of case citations rejecting this interpretation is lengthy and growing. *See* Doc. 1 at 9-10 (collecting cases); *see Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, at *4 n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases).

[3] Steve Vladeck, *The Immigration Detention Flood*, ONE FIRST (Dec. 1, 2025), https://www.stevevladeck.com/p/195-the-immigration-detention-flood.

[4] The breath of authority supporting Petitioner's position is from this district and districts across the country, and not limited as Respondents imply to decisions in the Ninth Circuit. See, Opp at 14.

District Court that has been confronted with the same question of statutory interpretation."); *Puga*, No. 25-24535, 2025 WL 2938369, at *3-6; *Merino v. Ripa*, No. 25-23845, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025); *Alvarez v. Morris*, 25-cv-24806, ECF No. [6], (S.D. Fla Oct 27, 2024) (collecting cases).

Respondents simply have no satisfying explanation for how their reading of the statute can account with basic tenets of statutory interpretation. For example, consider the recent passage of the Laken Riley Act of 2025, Pub. L. No. 119-1, 139 Stat. 3 (2025). In the Laken Riley Act, Congress desired to detain more people who had entered without inspection and were in removal proceedings. But it did not simply declare that all those who entered without inspection were subject to mandatory detention. Rather, it provided that all those who entered without inspection *and* had criminal histories would be subject to mandatory detention. There is no reason Congress would have create this two-pronged test—(1) entry without inspection and (2) criminal history—if Section 1225(b)(2)(A) already required detention of every person who entered without inspection, as Respondents claim. This point has been made repeatedly by district courts around the country.[5]

Under the Supreme Court's decision in *Loper Bright v. Raimondo*, a federal court owes no deference to an agency's interpretation of a statute. 603 U.S. 369, 385, 401 (2024). Instead, the federal court is required to independently interpret the meaning and scope of the statute

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[5] *See Maldonado v. Olson,* No. 25-CV-3142 (SRN/SGE), ---F.Supp.3d---, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025). ("Respondents' one-size-fits-all application of § 1225(b)(2) . . . would violate fundamental canons of statutory construction. . . . The Court will not find that Congress passed the Laken Riley Act to "perform the same work" that was already covered by § 1225(b)(2)."); *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); ("Applying section 1225 to noncitizens 'already in the country,' as Respondents argue . . . would make a recent amendment to section 1226—adopted in 2025 by the Laken Riley Act—superfluous. This is a presumptively dubious result…") (internal citations and quotation marks omitted); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("Respondents' interpretation of the statutes would render this recently amended section superfluous.").

using the traditional tools of statutory construction. *Id.* One court after the other has found the BIA's reasoning in *Yajure Hurtado* to be unpersuasive. *See, e.g., Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 U.S. Dist. LEXIS 228110, at *11 (N.D. Cal., Nov. 19, 2025) ("The Court finds that *Yajure Hurtado* 'merit[s] little deference due to its inconsistency with earlier BIA decisions' and because 'its reasoning is [] at odds with the text of sections 1225 and 1226'"), *citing Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025).

Respondents' reliance on *Matter of M- S-* is equally unpersuasive and inconsistent with earlier BIA decisions and agency practice. *See Matter of X-K-, 23 I&N Dec. 731)* It appears to be a red herring in this case. Respondents provide no evidence that the decision to afford bond to Petitioner in 2019 was in response to the injunction under *Padilla.* If it was, Respondents could have re-arrested Petitioner after the lifting of the injunction in 2022. *See, Padilla v. ICE,* No. 19-35565, 41 F.4th 1194 (9th Cir. 2022). Regardless, Respondents' authority to detain Petitioner was extinguished pursuant to any provision of 1225(b) once proceedings against him were dismissed in 2023. The Supreme Court itself has made that clear. *See Jennings v. Rodriguez*, 583 U.S. __ (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . Once those proceedings end, detention under §1225(b) must end as well.").

With no pending proceedings against Petitioner at the time of his arrest in August 2025, Section 1225(b)(2)(A) just does not apply. Petitioner is not one of a class of "aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities," as Respondents suggest. Opp at 12. He entered the country and surrendered to the authorities. He

lived an exemplary, law-abiding life here for six years. These were the compelling equities that led Respondents to dismiss proceedings against him in 2023. When they did, they extinguished any option of placing him in mandatory detention under Section 1225.

IV. CONCLUSION

For the foregoing reasons, this Court should grant habeas relief and order Petitioner's release from Respondent's custody.

Respectfully Submitted, Date: December 15, 2025

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