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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Khorsheed Khorsheed,
12
13 Petitioner-Plaintiff,
14
15 v.
16 LaRose, et al.
17
18 Respondents-Defendants.

Case No.: 3:25-cv-03346-BTM-KSC

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

1 **A. Petitioner’s Habeas Claims Are Not Barred by 8 U.S.C. § 1252**

2 Section 1252 does not bar jurisdiction here because this action concerns Petitioner’s
3 unlawful detention. Respondents contend Petitioner is subject to the mandatory detention
4 provisions of Section 1225(b)(2), and that ICE had authority to re-detain the Petitioner.

5 Here, Petitioner does not make *any claim or cause of action arising from any decision*
6 *to commence or adjudicate removal proceedings or execute removal orders*. Petitioner does
7 not dispute the commencement or any other aspect of his removal proceedings nor does he
8 have a removal order. In short, Petitioner challenges nothing related to his removal
9 proceedings – he challenges the Respondents’ re-detention and revocation of his conditional
10 parole. Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

11 The government’s contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this Court
12 is similarly unavailing. Petitioner is not seeking “[j]udicial review of all questions of law
13 and fact . . . arising from any action taken or proceeding brought to remove an alien from
14 the U.S.. Again, the Petitioner is not challenging anything with respect to his removal
15 proceedings – he is challenging his unlawful detention. As previously stated, the Petitioner
16 cannot be seeking *judicial review of a final order of removal*, as he does not have a removal
17 order. Petitioner’s removal proceedings continue to be pending in immigration court.

18 This action concerns an unlawful detention and the Supreme Court and Ninth Circuit
19 have rejected the contention that § 1252(g) covers all claims arising from deportation
20 proceedings or imposes a general jurisdictional limitation. *See Dep’t of Homeland Sec. v.*
21 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also
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1 *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018) (“[W]e have limited [§ 1252(g)]’s
2 jurisdiction-stripping power to actions challenging the Attorney General’s discretionary
3 decisions to initiate proceedings, adjudicate cases, and execute removal orders.”)

4 **B. Petitioner is Not Subject to Mandatory Detention**

5 Petitioner is not lawfully detained under § 1225(b)(2) as alleged by Respondents.

6
7 First, Petitioner is not an arriving alien “seeking admission” and he is not in expedited
8 removal proceedings. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) (en
9 banc) held that the phrase “application for admission” refers to the specific point in time
10 when a noncitizen submits an application to *physically enter* the United States. It is not a
11 perpetual status. Although Petitioner may have been seeking admission on October 22, 2024,
12 when he had arrived in the U.S. and apprehended at the border, he was released into the
13 country shortly thereafter. Over a year later, he is no longer “seeking admission”; he is
14 physically present and challenging his detention pending removal proceedings. *United States*
15 *v. Gambino-Ruiz*, 91 F.4th 981, 989-990 (9th Cir. 2024). As such, the mandatory detention
16 provisions of Section 1225(b)(2) do not apply.

17 Respondents rely on *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228 at 5
18 (S.D. Cal. Sept. 24, 2025) (“Heeding the plain language of the statute also does not
19 contradict or render superfluous § 1226” nor “the addition of § 1226(c) by the [Laken
20 Riley] Act. . . .”). That decision, however, did not address the statutory requirement that
21 for Section 1225(b)(2)(A) to apply, the noncitizen must be “seeking admission.” *See*
22 *Ayala-Pinto v. Larose*, 3:25-cv-02971, FN 1 (S.D. Cal.) Date Filed: Nov. 3, 2025
23 (Rejecting Respondents’ reliance on *Chavez* and granting the petition).
24

1 Further, since the filing of the Petition in this matter, the Central District of California
2 has issued *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.
3 November 20, 2025) echoing the numerous other district courts in stating that those
4 noncitizens apprehended inside the U.S. – like the Petitioner – are subject to Section
5 1226(a), and not Section 1225(b). In *Maldonado Bautista*, the Court stated that the
6 “Respondents endorse an interpretation of § 1225 that effectively removes § 1226 from
7 existence.” *Id.* at 15. “If the Court were to accept Respondents’ position that all noncitizens
8 already in the country (regardless of whether they were inspected and authorized by an
9 immigration officer) were ‘applicants for admission,’ then there would be no possible set of
10 noncitizens to which § 1226(a) would apply.” *Id.* Further, the November 25, 2025 District
11 Court order confirms that the court’s prior November 20, 2025 order on partial summary
12 judgment applies to the nationwide class. The court stated explicitly “[w]hen considering
13 this determination with the MSJ Order, the Court extends the same declaratory relief
14 granted to Petitioners to the Bond Eligible Class as a whole.” at 14.
15

16
17 Moreover, the Respondents’ Return does not address why the Order of Release on
18 Recognizance with respect to Petitioner’s release in 2024 specifically states that the release
19 is under Section 1226, yet the Petitioner is now suddenly subject to Section 1225’s
20 mandatory detention provisions. In short, the Respondents’ position that Petitioner is subject
21 to 1225(b)(2) defies both the plain language of the statute, decades of practice by
22 Respondents as well as Ninth Circuit and Supreme Court precedent.
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1 **C. Petitioner’s Parole Revocation and Re-Detention Violates Due Process**

2 Respondents contend that “while some courts have recognized due process limitations
3 on the authority of the government to revoke parole depending on the facts of the case, to
4 imply into existence a broad bar on any release revocation by ICE—assigning that authority
5 instead strictly to immigration courts—is inconsistent with the statutory scheme.” (See Dkt.
6 No. 5, p. 17 lines 1-4.)
7

8 Numerous courts have, however, determined ICE’s authority to revoke conditional
9 parole is constrained by the due process clause – including the Supreme Court in *Morrissey*
10 *v. Brewer*, 408 U.S. 471, 480-82 (1972) (a parolee’s liberty involves significant values within
11 the protection of the Due Process Clause of the Fourteenth Amendment) and the Ninth
12 Circuit in *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s
13 discretion to incarcerate non-citizens is always constrained by the requirements of due
14 process”). The guidance of the BIA provided by *Matter of Sugay*, 17 I&N Dec. 647 (BIA
15 1981)—that ICE should not re-arrest a noncitizen absent changed circumstances—is
16 insufficient to protect Petitioner’s weighty interest in his freedom from detention.

17 In accordance with the Supreme Court and Ninth Circuit, federal district courts in
18 California have also repeatedly recognized that the demands of due process and the
19 limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in DHS’s
20 stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
21 on bond, like Petitioner, before ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp.
22 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at
23 *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
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1 783561, at *2 (N.D. Cal. Mar. 1, 2021).

2 But “even when ICE has the initial discretion to detain or release a noncitizen pending
3 removal proceedings, after that individual is released from custody she has a protected
4 liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032
5 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022 WL 1443250,
6 at *2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts . . . facing facts similar to the
7 present case and finds Petitioner raised serious questions going to the merits of his claim that
8 due process requires a hearing before an IJ prior to re-detention.”)); see *Padilla v. U.S. ICE*,
9 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme Court has consistently held
10 that non-punitive detention violates the Constitution unless it is strictly limited, and,
11 typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to
12 ensure that the imprisonment serves the government’s legitimate goals.”)

13
14 Petitioner’s re-arrest and the revocation of his release on conditional parole without a
15 pre-deprivation hearing violate the Due Process Clause. The Due Process Clause prohibits
16 deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V.
17 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including
18 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
19 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts analyze procedural due process claims
20 such as this one in two steps: the first asks whether there exists a protected liberty interest
21 under the Due Process Clause, and the second examines the procedures necessary to ensure
22 any deprivation of that protected liberty interest accords with the Constitution. See *Kentucky*
23 *Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

1 To determine which procedures are constitutionally sufficient to satisfy the Due
2 Process Clause, Courts apply the three-part test established in *Mathews v. Eldridge*, 424 U.S.
3 319 (1976), which are: (1) “the private interest that will be affected by the official action;”
4 (2) the “risk of an erroneous deprivation of such interest through the procedures used, and
5 the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the
6 Government’s interest including the function involved and the fiscal and administrative
7 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

8 All three factors support a finding that the revocation of Petitioner’s conditional
9 parole release without an opportunity to be heard deprived Petitioner of his due process
10 rights. First, Petitioner has a significant liberty interest in remaining out of custody pursuant
11 to his conditional parole. For over three months preceding his re-detention on January 26,
12 2025, Petitioner exercised that freedom under an immigration officer’s decision to grant him
13 conditional parole after a determination that he presented neither a flight risk nor a danger to
14 the community. In the three months following his release, Petitioner had been abiding by
15 the terms of his release, had violated no laws and has established extensive community ties.

16 Although Petitioner was released on conditional parole (and thus under government
17 custody), he retained a weighty liberty interest under the Due Process Clause of the Fifth
18 Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47
19 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S.
20 471, 482-483 (1972). “Even individuals who face significant constraints on their liberty or
21 over whose liberty the government wields significant discretion retain a protected interest in
22 their liberty.” *Pinchi*, 792 F. Supp. 3d at 1032. Although the initial decision to detain or
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1 release an individual may be within the government’s discretion, “the government’s decision
2 to release an individual from custody creates ‘an implicit promise,’ upon which that
3 individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the . .
4 . conditions of release.’” Id. (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); see
5 also *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment— from government custody,
6 detention, or other forms of physical restraint—lies at the heart of the liberty [the Due
7 Process Clause] protects.”); *Morrissey*, 408 U.S. at 482 (“Subject to the conditions of his
8 parole, he can be gainfully employed and is free to be with family and friends and to form
9 the other enduring attachments of normal life.”); *Oliveros v. Kaiser*, No. 25-CV-07117-
10 BLF, 2025 WL 2677125, at *7 (N.D. Cal. Sept. 18, 2025)

11 “Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s
12 parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez Salazar*
13 *v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3,
14 2025); see also *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679,
15 at *7 (E.D. Cal. July 11, 2025) (finding where, as here, Petitioner “has not received any bond
16 or custody redetermination hearing,” the “risk of an erroneous deprivation of liberty is
17 high”). “Civil immigration detention is permissible only to prevent flight or protect against
18 danger to the community.” *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690).

19 Here, there is no evidence that Petitioner’s detention would serve either purpose.
20 “Since DHS’s initial determination that Petitioner should be paroled because [he] posed no
21 danger to the community and was not a flight risk, there is no evidence that these findings
22 have changed.” *Gonzales Salazar*, 2025 WL 3063629, at *3 (citing *Saravia v. Sessions*, 280
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1 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (“Release reflects a determination by the
2 government that the noncitizen is not a danger to the community or a flight risk.”). *See*
3 *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *1, 8 (granting habeas petition and
4 ordering bond hearing where ICE re-detained the petitioner the day after an immigration
5 judge denied the petitioner’s application for asylum).

6 Third, Respondents’ interest in detaining Petitioner without a hearing is low. *See*
7 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“If the government wishes to
8 re-arrest [the petitioner] at any point, it has the power to take steps toward doing so; but its
9 interest in doing so without a hearing is low.”); *Pinchi*, 792 F. Supp. 3d at 1036 (“Detention
10 for its own sake, to meet an administrative quota, or because the government has not yet
11 established constitutionally required pre-detention procedures is not a legitimate government
12 interest.”). “Therefore, because Respondents detained Petitioner by revoking [his] parole in
13 violation of the Due Process Clause, [his] detention is unlawful.” *Gonzalez Salazar*, at *5.
14 See also, *Doe v. Becerra*, 2:25-cv-00647, (E.D. Cal. 2025); *Rodriguez-Flores v. F. Semaia et*
15 *al.*, No. CV 25-6900 JGB (JCX), 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).

17 Based on the *Mathews* factors, due process requires Petitioner to be released from
18 custody and receive a bond hearing before an IJ before he can be re-detained.

19 **D. The Appropriate Remedy is Immediate Release**

20 Simply directing a bond hearing under § 1226(a) as the proper remedy
21 “misapprehend[s] the purpose of a pre-detention hearing: if Petitioner is detained, he will
22 already have suffered the injury he is now seeking to avoid.” *Jorge M.F. v. Jennings*, 534 F.
23 Supp. 3d 1050, 1055 (N.D. Cal. 2021); *see also E.A. T.-B. v. Wamsley*, --- F. Supp. 3d ---,
24

1 2025 WL 2402130, at *6 (W.D. Wash. 2025) (“Although the Government notes that
2 Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot
3 serve as an adequate procedural safeguard because it is after the fact and cannot prevent an
4 erroneous deprivation of liberty.”); *Domingo v. Kaiser*, Case No. 25-cv-05893, 2025 WL
5 1940179, at *3 (N.D. Cal. July 14, 2025) (“Even if Petitioner[] received a prompt post-
6 detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have
7 already suffered the harm that is the subject of his motion; that is, his potentially erroneous
8 detention.”).

9 This is not a case of someone who entered without inspection but was never
10 previously detained. As affirmed recently by the Central District of California, the remedy
11 for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No. 5:25-cv-
12 01873-SSS-BFM (C.D. Cal. November 20, 2025). This case concerns the class of non-
13 citizens who entered without inspection, were detained shortly after entry, were then
14 released, but then later re-detained. In other words, this is a re-detention case involving the
15 due process violation of the Petitioner not being provided with a hearing prior to being re-
16 detained. As such, the appropriate remedy for such a violation is immediate release.

17
18 Courts in this district have joined a growing chorus of district courts that have
19 recognized that noncitizens have a significant liberty interest in both “continued freedom
20 after release on own recognizance,” and have ordered release. *Alegria Palma v. Larose*, No.
21 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and
22 in “freedom from imprisonment” after “the government grants a [noncitizen] parole into the
23 country,” *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL 2770629, at *3 (S.D.
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1 Cal. Sept. 26, 2025) (emphasis added). *See also Prieto-Cordova*, No. 25-cv-2824-CAB-
2 DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-
3 RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Sayed Naser Noor v. Christopher*
4 *LaRose*, et al., No. 25-CV- 1824-GPC-MSB, 2025 WL 2800149, at *14 (S.D. Cal. Oct. 1,
5 2025) (explaining that a petitioner is no longer an “arriving” noncitizen after release by
6 Respondents, including when a courtroom arrest occurs while INA section 240 proceedings
7 remain ongoing); *N.A. v. LaRose et. al.* Case No.: 25-cv-2384-RSH-BLM (S.D. Cal. Oct. 7,
8 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC), 2025 WL 3145562 (E.D.
9 Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL
10 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025
11 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025
12 WL 2829511 (E.D. N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC,
13 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-
14 01723-MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*,
15 No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).
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18 Just recently, this Court ordered the immediate release of a noncitizen re-detained
19 without the required notice or hearing. *Sanchez Avalos v. Noem*, No. 3:25-cv-02906-CAB-
20 VET (S.D. Cal. November 24, 2025). The noncitizen there – like the Petitioner – was re-
21 detained without due process after having previously been detained and released on his own
22 recognizance. As such, immediate release (and not a bond hearing) is also the appropriate
23 remedy here.
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1 Dated: December 10, 2025 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system.

Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: December 10, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam

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