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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BILAL ALPSEN, Petitioner, v. MINGA WOFFORD, in official capacity, Facility Administrator of Mesa Verde Ice Processing Center; SERGIO ALBARRAN, in official capacity, Field Office Director of ICE's San Francsico Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE, KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; PAM BONDI, in official capacity, Attorney General of the United States, Respondents.	Case No. 1:25-cv-01715-KES-HBK **REPLY TO RESPONDENTS' OPPOSITION**

REPLY TO RESPONDENTS' OPPOSITION

Petitioner Bilal Alpsen has a straightforward due process argument. His immediate release is the required remedy. Respondents do nothing to rebut the due process claim. In fact, their Opposition relies on several significant misstatements of law.

Petitioner requests the opportunity to address these arguments further at a hearing.

1. Petitioner's Procedural Due Process Rights Were Violated by Re-Detention After Release on Own Recognizance.

The factual record is not in dispute. On August 21, 2022, Petitioner entered the United States at the southern border. Doc. 2-9. He was detained there for nine days. Doc. 2-8. On August 30, 2022, Petitioner was released on his own recognizance. Doc. 2-8. This release "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). *See also* Doc. 1 at 14-18 (summarizing relevant law). Indeed, the relevant regulations for release on recognizance state that "the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). Once that determination is made, Respondents cannot override that determination later on without a hearing at which changed circumstances are shown by clear and convincing evidence. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) ("[W]here a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance.").

Courts have required Respondents to demonstrate not only "changed circumstances" but also "evidence of urgent concerns" if they seek to re-detain a noncitizen without a hearing. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where

an individual has been released on bond by an IJ"). This rule applies not only to those released on bond but also to those released on their own recognizance. *See Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that, "given the absence of evidence of urgent concerns . . . a pre-deprivation hearing [was] required to satisfy due process," and collecting cases).[1]

For more than three years, Petitioner made the most of this liberty interested, which was created by his release on own recognizance. He filed an affirmative asylum claim, received work authorization, found a job, married a U.S. citizen, started a family, and complied with the rules of his release. In this liberty, he acquired the "enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Meanwhile, throughout this three-year-and-two-month period, Respondents did not initiate removal proceedings against Petitioner. They did not file a Notice to Appear or attempt in any way to remove him from the country until they re-detained him on October 10, 2025.

On October 10, 2025—thirty-eight months and 993 miles from his border crossing—Petitioner was detained *while attending* his ICE check-in. No "pre-deprivation" hearing occurred. There were no "urgent," "changed circumstances" that justified re-detention without a hearing. Respondents' Opposition does not claim otherwise. The Opposition does not mention a single change in his circumstances from the time he was released in August 2022 to the time he

[1] Numerous decisions in the Eastern District of California reach this conclusion. *See* Alvarenga Matute v. Wofford, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, at *2 (E.D. Cal. Oct. 24, 2025); W.V.S.M. v. Wofford, No. 1:25-cv-01489-KES-HBK (HC), 2025 U.S. Dist. LEXIS 228189, at *3 (E.D. Cal. Nov. 19, 2025); Ramandi v. Field Office Dir., ICE Ero S.F., No. 1:25-CV-01462-JLT-EPG, 2025 U.S. Dist. LEXIS 224698, at *2 (E.D. Cal. Nov. 13, 2025); F.M.V. v. Wofford, No. 1:25-cv-01381-KES-SAB (HC), 2025 U.S. Dist. LEXIS 217645, at *3 (E.D. Cal. Nov. 4, 2025); Vilela v. Robbins, No. 1:25-cv-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172, at *3 (E.D. Cal. Nov. 6, 2025); J.A.E.M. v. Wofford, No. 1:25-cv-01380-KES-HBK (HC), 2025 U.S. Dist. LEXIS 211728, at *2 (E.D. Cal. Oct. 27, 2025).

was detained in October 2025. That should dispose of this due process claim in Petitioner's favor.

Quite clearly, due process was violated when Respondents deprived Petitioner of his liberty without a hearing, after previously having released him on his own recognizance. This Court, other courts in this district, and numerous courts around the country have all come to this same conclusion. Footnote 1, *supra*, and its associated paragraph detail the many cases in this district that have found due process to be violated in similar circumstances. Cases from around the country support the same principle that re-detention without a hearing is forbidden by due process, unless there are urgent, changed circumstances. *See, e.g., Y.M.M. v. Wamsley*, No. 2:25-cv-02075, 2025 U.S. Dist. LEXIS 219064, at *5 (W.D. Wash. Nov. 6, 2025) ("Numerous courts in this district and throughout the Ninth Circuit have recognized this requirement" of a pre-deprivation hearing, "absent evidence of urgent concerns"); *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-CV-5279 (JMF), 2025 U.S. Dist. LEXIS 232130, at *22 (S.D.N.Y. Nov. 25, 2025) ("'The typical remedy for [unlawful] detention is, of course, release.' . . . [A]s far back as 1670, it was said that habeas is a 'remedy by which a man is restored again to his liberty, if he have been against law deprived of it.'") (quoting U.S. Supreme Court decisions).

There is no justification for why Petitioner was re-detained without a pre-deprivation hearing. He is neither a danger nor a flight risk. Respondents do not dispute that point. Rather, they assert that Petitioner is detained under a statute that "does not look to whether the noncitizen can establish . . . they are not a flight risk or a danger to the community." Opp. at 7. This claim rests on an incorrect understanding of the Immigration and Nationality Act, as discussed in Section 2, *infra*. Petitioner has now been detained for two months and a day. He respectfully asks this Court to vindicate his due process rights by ordering his immediate release.

2. Petitioner Could Not Have Been Placed in "Expedited Removal" in October 2025. Nor Was He Placed in "Expedited Removal" in August 2022.

Respondents erroneously claim that they placed Petitioner into "expedited removal" proceedings on October 10, 2025, when they re-detained him. However, that is demonstrably impossible, as a matter of law. Petitioner could not have been placed in expedited removal proceedings in October 2025 for the very simple reason that he had been present in the country for far too long. At the time of Petitioner's re-detention, he had been present in the United States for three years and two months. By statute, expedited removal is limited to those who have been present in the United States for less than two years. Section 1225(b)(1)(A)(iii)(II) of Title 8 states that expedited removal is limited to circumstances when the "alien" "has **not affirmatively shown . . .** that the alien has been **physically present in the United States continuously for the 2-year period** immediately prior to the date of the determination of inadmissibility under this subparagraph." *Id.* (emphasis added). Thus, Section 1225(b)(1) could not have applied to Petitioner in October 2025, because he had three years and two months of presence in the United States. Because Petitioner could not have been placed in expedited removal in October 2025, he could not—and cannot—be subject to the mandatory detention provision for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (requiring mandatory detention for those in expedited removal).

This is a critical fault in Respondents' entire argument. Throughout their Opposition, Respondents seem to argue that they could put Petitioner in expedited removal proceedings some three years and two months after he entered the country.[2] This argument is explicitly foreclosed

[2] Opp. at 1; Opp. at 2 ("Petitioner remains detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii)"); Opp. at 2 (two more mentions); Opp. at 3 ("subject to detention under 8 U.S.C. § 1225(b)(1) and are not owed a bond hearing before an Immigration Judge. 8 U.S.C. § 1225(b)(1)(B)(ii)."); Opp. at 3 ("8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ('Any alien subject to the procedures under this clause shall be detained…')]"); Opp. at 3 ("The Supreme Court has explained

by the text of the statute, as noted above. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (limiting expedited removal to those present for less than two years). Nevertheless, the Opposition presses this legal error repeatedly, claiming 11 times that Petitioner is subject to expedited removal. *See* Footnote 2, *supra*. Furthermore, Respondents' declaration from Deportation Officer Christopher Jerome repeats this error numerous times, including by stating: "Petitioner remains detained pursuant to INA § 235(b)(1)(B)(ii)." Doc. 6-1 at ¶ 14.[3] This is a critical error on the part of Respondents, and it eviscerates their position.

As noted above, it requires only simple arithmetic to demonstrate why Petitioner could not have been placed in expedited removal proceedings when he was detained in October 2025. Petitioner entered the country on August 21, 2022, was released from custody on August 30, 2022, and was re-detained on October 10, 2025. These dates are set out in Petitioner's exhibits. *See*, e.g., Doc. 2-8 at 2-3. Respondents agree to all these facts on the first page of their brief. Opp. at 1. Further, the declaration from Deportation Office Christopher T. Jerome confirms these dates, as well. *See* Doc. 6-1 at ¶¶ 6-8. One need only calculate the time between August 21, 2022 (Petitioner's entry date) and October 10, 2025 (the date Respondents attempt to initiate expedited removal proceedings), to see that this time lapse is far more than two years. Thus, Petitioner was not eligible for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Nowhere in the Opposition do Respondents even attempt to explain how Petitioner could have lawfully been placed in expedited removal proceedings in October 2025, given that he was in the United States for well over the two-year limit on expedited removal. It is abundantly clear,

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that 8 U.S.C. § 1225(b)(1) is 'quite clear' and 'unequivocally mandate[s]' detention."); Opp. at 3 ("§ 1225(b)(1) … thus mandate[s] detention.").

[3] INA 235(b)(1)(B)(ii) is codified at 8 U.S.C. § 1225(b)(1)(B)(ii). Section 1225(b)(1)(B)(iii)(IV) requires mandatory detention for those in expedited removal proceedings.

then, that Respondents cannot rely on expedited removal as justification for mandatory detention.[4]

Nor can they claim that Petitioner was placed in expedited removal proceedings back in 2022. When Petitioner first entered the country on August 21, 2022, Respondents detained him for nine days. Instead of placing him in expedited removal back then, they decided to release him on his own recognizance. Respondents' own paperwork from 2022 shows that Petitioner was never placed in expedited removal. Rather, the "Notice of Custody Determination" that Respondents completed on August 30, 2022, states that the release "on your own recognizance" is made "[p]ursuant to the authority contained in **section 236** of the Immigration and Nationality Act." Doc. 2-8 at 2 (emphasis added). The very next page in that exhibit is the "Order of Release on Recognizance," which also states that the release order is "[i]n accordance with **section 236** of the Immigration and Nationality Act." Doc. 2-8 at 3 (emphasis added). Section 236 of the INA, codified at 8 U.S.C. § 1226, is the statute governing the detention and release of those subject to standard removal proceedings. It is *not* the expedited removal statute. The expedited removal statute is INA Section 235(b)(1) (8 U.S.C. § 1225(b)(1)). Thus, Respondents' own records prove that they did not place Petitioner in expedited removal proceedings back in 2022.

Moreover, the fact that Respondents released Petitioner on his own recognizance and assigned him to check-in with ICE—which he did—is further confirmation that he was never considered to be subject to expedited removal. After all, if he were subject to expedited removal,

[4] Even if Respondents could find a way around this two-year limitation on expedited removal—which they cannot—there would be an additional, insurmountable problem for Respondents' argument: Courts do not allow the government to "switch[] tracks" mid-litigation without regard for a noncitizen's liberty interests. *Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 U.S. Dist. LEXIS 179594, at *21 (N.D. Cal. Sep. 12, 2025); *see 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).

he would have been mandatorily detained. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (requiring mandatory detention for those in expedited removal). The very first time that anyone attempted to subject Petitioner to expedited removal was in October 2025, more than three years after he entered the country. The declaration from Deportation Officer Jerome concedes this point, putting October 10, 2025, as the date that Respondents decided "to process him for Expedited Removal under 235(b)(1)." Doc. 6-1 at ¶ 8. But there was no lawful authority to initiate expedited removal proceedings against Petitioner in October 2025. And Respondents have offered no explanation for how they could have done so, despite the clear, two-year limitation on expedited removal.

This is a major error on the part of Respondents. Their incorrect claim that Petitioner was subjected to expedited removal upon his re-detention this past October effectively unwinds their entire defense to Petitioner's due process claim. Repeatedly, Respondents argue that Petitioner's re-detention cannot violate due process because Petitioner is subject to expedited removal and expedited removal requires mandatory detention. Opp. 6, 7. But that logic fails because Petitioner could not have been placed in expedited removal.

Indeed, this error on the part of Respondents illustrates why a pre-deprivation hearing is required by due process. Respondents took away Petitioner's liberty without any hearing and, as a result, this basic error about expedited removal was never corrected. Had they afforded him due process, he and his immigration attorney could have easily explained that he could not be subjected to "expedited removal." Because due process was violated by re-detention without a hearing, Respondents have caused Petitioner to remain unlawfully detained for more than two months.

3. Respondents Fail To Address Petitioner's Procedural Due Process Claim, Focusing Instead on Prolonged Detention.

Petitioner's due process claim is based on a violation of procedural due process. This due process violation occurred when he was re-detained without either a hearing or urgent, changed circumstances. This procedural due process claim is set out clearly in Petitioner's initial briefing and in Section 1 of this Reply. Yet Respondents do not address, much less refute, this procedural due process argument. Instead, they focus on due process as applied to *prolonged detention*—a claim that is not present in Petitioner's case.[5] Respondents' citations also rely on prolonged detention cases, rather than those involving re-detention without a hearing. Respondents' failure to address Petitioner's actual claim—re-detention without a hearing—should be seen as a concession that Petitioner's procedural due process rights were violated.

4. Respondents' General Arguments About Due Process Are Unpersuasive.

Although Respondents do not specifically address Petitioner's re-detention claims, Respondents do make some general arguments about due process. These should be rejected, as well. Respondents seem to argue that:

(1) this Court "should decline to engage in any of the various multi-factor balancing tests applied by *some courts* in the Ninth Circuit," Opp. at 5 (emphasis added); and

(2) even if one applies the *Mathews* factors, "detention is mandatory under the applicable statute," so there is no risk of erroneous deprivation, Opp. at 6.

Neither argument can succeed.

The first argument is a non-starter. To say that "some" courts in the Ninth Circuit have applied the *Mathews* factors to these cases is quite an understatement. There is an avalanche of district court caselaw applying the *Mathews* factors and finding procedural due process violations where detention occurs without a "pre-deprivation" hearing. These are the cases cited

[5] *See* Opp. at 4 ("Petitioner's detention is not indefinite."); Opp. at 5 ("[D]ecisions to prolong one's own detention may be difficult…"), *id.* (referring to "Petitioner's own delays prolonging such detention"); *id.* ("[T]here is no indication that Respondents have caused any delay in Petitioner's removal proceedings.").

in Section 1, *supra*. Respondents provide no reason for this Court to go in a different direction from those other decisions.

The second argument is also unavailing. When Respondents argue that there is no risk of erroneous deprivation because Petitioner is subject to mandatory detention, they just reprise their earlier claim that Petitioner is subject to mandatory detention because he was placed in expedited removal. Opp. at 6-7. But, as noted in Section 2, Petitioner could not have been subjected to expedited removal in October 2025, and he was not subjected to it in August 2022. This critical legal error on the part of Respondents means that their due process defenses fail.[6]

Conclusion

When Petitioner was released from immigration detention on his own recognizance back in 2022, he was vested with a protected liberty interest. Three years and two months later, Respondents took that liberty interest away from him without a "pre-deprivation" hearing. This action violates due process and requires Petitioner's immediate release. Respondents cannot justify mandatory detention based on their claims about expedited removal, because expedited removal was foreclosed by the plain text of the expedited removal statute.

Petitioner respectfully asks the Court to grant the writ of habeas corpus and order his immediate release.

Date: December 11, 2025

Respectfully Submitted,
/s/ Jonathan Abel
Jonathan Abel
Attorney for Petitioner

[6] Although Respondents do not raise an argument about mandatory detention pursuant to the new policy for those who entered without inspection, such a claim under Section 1225(b)(2)(A) would also be foreclosed by a wall of district court decisions from this district and around the country. *See, e.g., Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (rejecting new interpretation of Section 1225(b)(2)(A) and collecting cases); Doc. 1 at 30-31 (collecting cases). *See also* 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.").

CERTIFICATE OF SERVICE

I hereby certify that, this 11th day of December, 2025, I filed a copy of the foregoing Reply to Respondents' Opposition through the CM/ECF system, which gave service to all counsel of record.

By: /s/Jonathan Abel

Jonathan Abel

Attorney for Petitioner