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7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11
12 D.J.R.G.,

13 Petitioner,

14 v.

15 Christopher CHESTNUT, Administrator,
California City Detention Facility; Sergio
16 ALBARRAN, Acting Field Office Director,
San Francisco Immigration and Customs
17 Enforcement; Todd LYONS, Acting Director,
United States Immigration and Customs
18 Enforcement; Kristi NOEM, Secretary of the
United States Department of Homeland
19 Security; Pamela BONDI, Attorney General of
the United States, acting in their official
20 capacities,

21 Respondents.

Case No. 1:25-cv-1747-DC-EFB

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27
28 **PETITIONER'S TRAVERSE**
IN SUPPORT OF PETITION
FOR HABEAS CORPUS

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INTRODUCTION

1
2 More than three years after he was released from the southern border, Petitioner
3 D.J.R.G. was detained at a routine check-in appointment with U.S. Immigration and Customs
4 Enforcement (“ICE”). The government has made no claim that he is a flight risk nor a danger,
5 nor could they: he was diligently complying with ICE’s requirements, diligently pursuing
6 immigration relief, and had no criminal record. Following his release mandated by this court,
7 nothing has changed in that regard. As such, there is no constitutionally permissible basis for his
8 re-arrest and re-detention.
9

10 He thus seeks a writ of habeas corpus declaring that his re-arrest and re-detention violate
11 the substantive and procedural due process guarantees of the Fifth Amendment; declaring that
12 he is statutorily ineligible for expedited removal proceedings; and ordering that he may not be
13 re-detained without a hearing before a neutral decision-maker on at least seven days’ notice in
14 which the government would need to show, by clear and convincing evidence, that changed
15 circumstances have rendered him a danger or a flight risk.
16

17 He also seeks orders mandating that harms flowing from his unjust detention be undone
18 by restoring him to the same reporting scheme he was subject to prior to his recent arrest – ICE
19 check-ins, with no electronic monitoring, – unless a change is deemed necessary at a future
20 hearing before a neutral decision-maker in which the government would need to show, by clear
21 and convincing evidence, that increased monitoring is justified.¹
22

23 Lastly, he seeks that this court order the government to make whole the harms of his
24 unlawful detention by returning the documents that they confiscated from him upon his arrest –
25 including his old and new driver’s licenses, his employment authorization document, his Social
26

27
28 ¹ The preliminary injunction in this case already enjoined the government from putting
Petitioner under electronic monitoring.

1 Security card, and his passport.

2 As Respondents stated in their response to this Court's order to show cause (ECF 14), no
3 intervening facts or controlling authority have arisen that would alter the merits analysis in this
4 case. Thus, this Court should continue to find in Petitioner's favor as it has done in granting
5 preliminary relief. Because Respondents have incorporated their prior arguments by reference,
6 Petitioner briefly addresses below why those arguments are not meritorious. If there are any
7 other issues that the Court wishes Petitioner to address, Petitioner asks for the opportunity to
8 submit additional briefing.
9

10 ARGUMENT

11 **I. Respondents have not distinguished the instant case from others where relief was** 12 **granted.**

13 This Court's minute order of December 9, 2025 directed Respondents to "substantively
14 address whether any provision of law or fact in this case would distinguish it from this court's
15 decision in *Labrador-Prato v. Noem et al.*, 1:25-cv-01598-DC-SCR, 2025 WL 3458802 (E.D.
16 Cal. Dec. 2, 2025), and other similar cases previously decided by this court, or indicate that the
17 matter is not substantively distinguishable." ECF 7. Respondents' subsequent brief affirmed,
18 "There is no provision of law or any fact here which substantively distinguishes this case from
19 *Labrador-Prato*." ECF 11 at 2. In the rest of the brief, Respondents cited to no district court
20 rulings except in their analysis of the *Mathews* factors; in that section, they cited three other cases
21 from the Eastern District of California which found that immigration detention may constitute
22 irreparable harm – supporting Petitioner's position – and referenced a single case from the
23 Northern District in support of their argument on harm. ECF 11 at 10-11. In their most recent
24 filing, Respondents have offered no arguments nor case citations; they have only incorporated by
25 reference their prior claims. ECF 14 at 2.
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1 In granting a preliminary injunction, this Court signaled its finding that Petitioner was
2 likely to succeed on the merits. Since then, Respondents have presented no additional facts,
3 arguments, or case law to disturb that conclusion. To the extent that they have incorporated the
4 arguments from their original brief, those arguments are briefly addressed and rebutted here.
5 Those same claims have been proffered in a large number of cases, and have overwhelmingly
6 been rejected by courts in this district and across the country.
7

8 **II. Respondents' claims that Petitioner is subject to mandatory detention under 8 U.S.C. §**
9 **1225 are unavailing.**

10 In their opposition to the motion for a temporary restraining order, Respondents argued
11 that detention is required under 8 U.S.C. § 1225(b)(1) because Petitioner is subject to expedited
12 removal, and that mandatory detention also applies under § 1225(b)(2) because he entered the
13 United States without inspection. Court after court has found that both claims fail.
14

15 **A. Petitioner is not amenable to expedited removal, and thus cannot be detained**
16 **under 8 U.S.C. § 1225(b)(1).**

17 Respondents incorrectly claim that Petitioner is subject to expedited removal. First, they
18 ignore the fact that he had already been in the United States for well over three years at the time
19 ICE detained him – well beyond the maximum two-year limit authorized by statute. ECF 11 at 7;
20 8 U.S.C. § 1225(b)(1)(A)(iii)(II). *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,
21 109 (2020) (affirming that a necessarily element of expedited removal is having not “been
22 physically present in the United States continuously for the 2-year period immediately prior to the
23 date of the determination of inadmissibility”); *see also El Gamal v. Noem*, 790 F. Supp. 3d 551,
24 555 (W.D. Tex. 2025) (holding in the habeas context that expedited removal did not apply to
25 noncitizens continually present for more than two years). Governments have usually applied
26 expedited removal to a smaller class of people; when the present administration tried to expand it
27 to the fullest scope authorized by law, that action was stayed. *Make the Road New York v. Noem*,

1 No. 25-CV-190 (JMC), 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).² Even if the
2 government's aggressive new policy had not been stayed, Petitioner would still be outside its
3 statutory bound. Respondents' only explanation for why expedited removal should apply is that
4 "he entered the country unlawfully on or about September 23, 2022." ECF 11 at 7. Such a broad
5 claim, implying that anyone who ever had an unlawful entry is forever subject to expedited
6 removal, plainly contradicts the text of § 1225(b)(1) -- not to mention the entire framework of §
7 1226, which governs arrests in the interior. At the time of Petitioner's entry, the government
8 could have chosen to place him in expedited removal, but they elected to release him instead. The
9 statute and the Constitution do not allow them to change their mind over three years later.
10

11 Furthermore, their argument is undercut by holdings in recent litigation. In *Coalition for*
12 *Humane Immigrant Rights v. Noem*, the D.C. District Court found that, under the plain language
13 of the statute, anyone who has been paroled "at any point in time" – as has Petitioner – is not
14 subject to expedited removal. No. 1:25-cv-00872-JMC, 2025 WL 2192986 at *22 (D.D.C. Aug.
15 1, 2025); 8 U.S.C. § 1225(b)(1)(A)(iii)(II).³ See also *Maklad v. Murray*, No. 1:25-CV-00946 JLT
16 SAB, 2025 WL 2299376, at *5 (E.D. Cal. Aug. 8, 2025). In *National TPS Alliance v. Noem*, a
17 declaratory judgment issued last month has restored the protections of Temporary Protected
18 Status ("TPS") to individuals who, like Petitioner, were covered under the 2023 Venezuelan TPS
19 designation and who are members of the National TPS Alliance. 25-CV-01766-EMC, 2025 WL
20 3539156 at *3 (N.D. Cal. Dec. 10, 2025); see ECF 4 at 3, 22-23; see also Dec. of Jay Martin
21 Steinman, Exh. 1. With those protections in place, he cannot be detained by immigration
22 authorities nor removed. 8 U.S.C. § 1254a(a)(1)(A), (d)(4).
23
24

25
26 ² The stay of the policy expanding expedited removal has persisted pending appeal. *Make the*
27 *Road New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *37 (D.C. Cir. Nov. 22, 2025). A
28 separate part of the district court's stay was reversed. *Id.*

³ As with *Make the Road*, the D.C. Circuit denied a stay of the district court's action pending
appeal. *Coalition for Humane Immigrant Rights v. Noem*, No. 25-5289, 2025 WL 2649100, at
*1 (D.C. Cir. Sept. 12, 2025).

1 **B. Respondents have not presented a cogent argument regarding the applicability**
2 **of mandatory detention under 8 U.S.C. § 1225(b)(2), and attempts to argue its**
3 **applicability in other cases have routinely failed**

4 In the “Argument and Analysis” section of their initial brief, Respondents offer no
5 argument about the specific applicability of 8 U.S.C. § 1225(b)(2) to Petitioner. They only quote
6 *Jennings* for the general proposition that § 1225(b)(2) contemplates mandatory detention. ECF 11
7 at 7-8; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). They have not made a coherent case as
8 to why the statute covers Petitioner’s situation.

9 In other cases, the government has articulated multiple arguments suggesting that §
10 1225(b)(2) covers individuals who were long ago detained at the border and released – and,
11 indeed, anyone and everyone in the United States who has not been formally admitted. That
12 interpretation, contradicting decades of settled understanding, has been roundly rejected in this
13 court and in hundreds of cases nationwide. *See e.g., Lepe v. Andrews*, 2025 WL 2716910, at *3-9
14 (E.D. Cal. Sep. 23, 2025) (Sherriff, J.) (rejecting the government’s proposed interpretation of
15 Section 1225(b)(2)(A)); *Barco Mercado v. Francis*, 2025 WL 3295903, at *3 (S.D.N.Y. Nov. 26,
16 2025) (documenting over 300 cases in which courts have rejected the government’s new
17 interpretation of § 1225). This Court has laid out multiple reasons as to why § 1225(b)(2) does
18 not have the reach that the government claims; *inter alia*, it “(1) disregards the plain meaning of
19 section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would
20 render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of
21 prior statutory interpretation and practice.” *Lepe*, 2025 WL 2716910, at *4. In the instant case,
22 Respondents have made no attempt to engage with those prior conclusions of this Court.
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1 **III. Respondents have failed to undermine Petitioner’s claim that his time in the United**
2 **States following initial release has created a compelling interest that outweighs any**
3 **interest of Respondents.**

4 Respondents, in their initial brief, present several reasons as to why they believe Petitioner
5 did not have a protected liberty interest that compels his release. Citing to *Morrissey*, they claim
6 that immigration parole, unlike criminal parole, creates no such interest; that his parole had
7 expired anyhow; and that parole is revocable at any time. *Morrissey v. Brewer*, 408 U.S. 471
8 (1972); ECF 11 at 9. They state that the *Mathews* factors need not apply in the immigration
9 context, and if they do, the government’s interest is heightened. *Id.* at 9-10. They claim that
10 people who were not formally admitted to the United States have no rights that are not expressly
11 authorized by statute. *Id.* at 10. Lastly, they aver that the government and the public have an
12 interest in the “steady enforcement of [] immigration laws,” and that Petitioner’s release thus
13 creates a public injury which outweighs any private benefit. *Id.* at 11-12. In other cases before this
14 Court, none of these arguments have carried the day, and they do not do so here.

15
16 **A. The fact of release from immigration detention creates a constitutional**
17 **liberty interest no matter what one’s status is, and no matter what is the**
18 **process governing their release**

19 By now, it has been well established that the release of a noncitizen, and their subsequent
20 development of community ties, creates a constitutional liberty interest independent of the
21 Immigration and Nationality Act. *See, e.g., Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO
22 (HC), 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025) (“A protected liberty interest may arise
23 from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49
24 (1997). Even when a statute allows the government to arrest and detain an individual, a protected
25 liberty interest under the Due Process Clause may entitle the individual to procedural protections
26 not found in the statute.”) Nor are the guarantees of the Fifth Amendment limited by immigration
27 status: “[T]he Due Process Clause applies to all ‘persons’ within the United States, including
28 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*

1 *Davis*, 533 U.S. 678, 693 (2001). *See also* *Guillermo M. R. v. Kaiser*, No. 25-CV-05436, 2025
2 WL 1983677, at *4 (N.D. Cal. July 17, 2025) (“It is well-established that the liberty interest that
3 arises upon release is ‘*inherent* in the Due Process Clause’”) (emphasis in original) (internal
4 citation omitted). The government’s statutory authority to detain border crossers does not give
5 them unlimited power to return to custody those that they have released. *See, e.g., Pinchi v.*
6 *Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (“Even when ICE has the initial discretion to
7 detain or release a noncitizen pending removal proceedings, after that individual is released from
8 custody she has a protected liberty interest in remaining out of custody.”).

10 As a holding rooted in constitutional guarantees rather than statutory details, *Morrissey* is
11 broadly applicable. Contrary to Respondents’ claims, it has consistently been held to apply in the
12 immigration context. *See, e.g., Id.; Arzate*, 2025 WL 2230521 at *5-6; *David G.M. v. Chestnut*,
13 No. 1:26-CV-00369-TLN-CSK, 2026 WL 127613, at *3 (E.D. Cal. Jan. 17, 2026); *Ortega v.*
14 *Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). In fact, it has been found that its conclusions
15 may be even more compelling in a civil immigration case than for criminal parolees. *Id.* The
16 liberty interests it describes have been applied to noncitizens released under various procedures,
17 including humanitarian parole, conditional parole, and bond. *See, e.g., Maklad*, 2025 WL
18 2299376; *R.A.N.O. v. Wofford*, No. 1:25-CV-01535-KES-EPG (HC), 2026 WL 40507 (E.D. Cal.
19 Jan. 6, 2026); *Perez v. Albarran*, No. 1:25-CV-01540-DAD-CSK (HC), 2025 WL 3187578 (E.D.
20 Cal. Nov. 14, 2025); *Guillermo M.R.*, 791 F. Supp. 3d. The lapse of a specified period of parole
21 does not abrogate that interest. *See, e.g., Qasemi v. Ladeon*, 25-cv-10029 (LJL), 2025 WL
22 3654098 (S.D.N.Y. Dec. 17, 2025).

25 **B. The *Mathews* factors favor Petitioner, despite Respondents’ assertions
26 to the contrary.**

27 This Court should reject Respondents’ attempt to extend *Thuraissigiam*, a challenge to
28 admission procedures that expressly did not involve a request for release from custody, to this

1 challenge to physical detention. Respondents mischaracterize Petitioner as “a noncitizen subject
2 to expedited removal,” ECF 11 at 7, to erroneously argue that he is within the category of
3 noncitizens who “lack any liberty interest in avoiding removal or to certain additional [due
4 process] procedures” *Id.* at 10 (citing *United States ex rel Knauff v. Shaughnessy*, 338 U.S. 537,
5 544 (1950); *Thuraissigiam*, 591 U.S. at 138-139; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
6 These cases relate to due process rights regarding *admission* into the United States, and are
7 therefore inapposite to Petitioner’s challenge to his re-detention, without a hearing, when he had
8 been in full compliance with his release conditions. *See Hernandez v. Wofford*, No. 1:25-CV-
9 00986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025) (citing *Padilla v.*
10 *ICE*, 704 F. Supp. 3d 1163, 1170-72 (W.D. Wash. 2023)) (discussing *Thuraissigiam* and
11 explaining the distinction between a challenge to admission and a challenge to detention).
12

13 Respondents erroneously claim that the multi-factor “balancing test” of *Mathews v.*
14 *Eldridge*, 424 U.S. 319, 335(1976), does not apply here. In fact, the very cases Respondents
15 cite, ECF 11 at 10, did apply *Mathews*. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-8
16 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining “it remains a flexible test”);
17 *accord Pinchi v. Noem*, 2025 WL 2084921 *3 n.2 (discussing *Rodriguez-Diaz*); *Landon v.*
18 *Plasencia*, 459 U.S. at 34-35 (applying *Mathews* to due process challenge to immigration
19 hearing procedures).
20

21 Respondents further claim that “the Ninth Circuit [has not] embraced the *Mathews* test.”
22 ECF 11 at 9. As noted above, however, the Ninth Circuit has applied the *Mathews* factors to
23 immigration detention. *See also Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017)
24 (applying *Mathews* factors in immigration detention context). Moreover, the Ninth Circuit has
25 unequivocally held that the *Mathews* test is the applicable standard for procedural due process
26 claims. *See Johnson v. Ryan*, 55 F.4th 1167, 1179–80 (9th Cir. 2022) (applying the *Mathews* test
27 **in a non-immigration case**) (citing *Mathews*, 424 U.S. at 333).
28

1 The Due Process Clause applies to “all ‘persons’ within the United States, including
2 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
3 *Zadvydas*, 533 U.S. 678, 693 (2001). Once a petitioner has established a protected liberty interest,
4 as Petitioner has done here, courts in this circuit apply the *Mathews* test to determine what
5 procedural protections are due. As acknowledged by Respondents, ECF 11 at 10, district courts
6 regularly employ the *Mathews* test for immigration detention. *See Labrador-Prato*, 2025 WL
7 3458802 at *4-5; *see also R.A.N.O.*, 2026 WL 40507 .

8 Respondents argue that even if the *Mathews* factors were to apply, the harm Petitioner
9 would suffer is “inherent in detention.” ECF 11 at 10 (citing *Lopez Reyes v. Bonnar*, No 18-cv-
10 07429-SK, 2018 WL 7474861 at *10 (N.D. Cal. Dec. 24, 2018)). This ignores that courts in this
11 Circuit have repeatedly recognized “the irreparable harms imposed on *anyone* subject to
12 immigration detention.” *Hernandez*, 872 F.3d at 995 (emphasis added); *see also, e.g., J.O.L.R.*,
13 2025 WL 2908740, at *6; *Pinchi*, 792 F.Supp.3d at 1036; *Singh*, 2025 WL 1918679, at *9; *Ortega*
14 *v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *5 (N.D. Cal. June 26, 2025); *Diaz v.*
15 *Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal June 14, 2025); *Lewis v. Garland*,
16 No. EDCV 22-296 JGB (AGRx), 2023 WL 8898601, at *4 (C.D. Cal. July 31, 2023); *Singh v.*
17 *Garland*, No. 1:23-cv-. 01043-EPG-HC, 2023 WL 5836048, at *9 (E.D. Cal. Sept. 8, 2023). The
18 irreparable harm is compounded when the detention is likely unconstitutional, for “the deprivation
19 of constitutional rights unquestionably constitutes irreparable injury.” *United Farm Workers v.*
20 *Noem*, 785 F. Supp. 3d 672, 740 (E.D. Cal. Apr. 29, 2025) (quoting *Melendres v. Arpaio*, 695
21 F.3d 990, 1002 (9th Cir. 2012)).

22 Respondents identify their interest in the “steady enforcement of its immigration laws.”
23 ECF 11 at 10, quoting *Demore*, 538 U.S. at 523 *et al.* Yet the government has no interest in
24 wielding that authority to unconstitutionally detain Petitioner, and others like him, without any
25 due process. The government “cannot reasonably assert that it is harmed in any legally cognizable
26 sense by being enjoined from constitutional violations.” *Zepeda v. INS*, 753 F. 2d 719, 727 (9th
27 Cir. 1983); *see also Rodriguez v. Robbins*, 715 F. 3d 1127, 1145 (9th Cir. 2013) (the government
28 “cannot suffer harm from an injunction that merely ends an unlawful practice” implicating
“constitutional concerns”). Conversely, “the public has a strong interest in upholding procedural

1 protections against unlawful detention.” *Vargas v. Jennings*, 2020 WL 5074312 at *4. That
2 interest is always served by ensuring that such “procedures comply with the Constitution.”
3 *Hernandez*, 872 F.3d at 996. *See also Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

4 For the unrebutted reasons explained here and in Petitioner’s Memorandum of Points and
5 Authorities, ECF 5-1, the *Mathews* factors apply, and demonstrate that Petitioner had a liberty
6 interest that was infringed upon, and was entitled to a pre-deprivation hearing in which the
7 government would bear the burden of proof. His due process rights were violated when he was
8 denied this process before being detained.

9 **CONCLUSION**

10 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 11 1. Grant his Petition for Writ of Habeas;
- 12 2. Declare that Petitioner’s arrest and detention violates the Due Process Clause of the Fifth
13 Amendment;
- 14 3. Declare that Petitioner is statutorily ineligible for placement into expedited removal
15 proceedings;
- 16 4. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a
17 custody hearing before a neutral arbiter in which the government bears the burden of
18 proving, by clear and convincing evidence, that he is a flight risk or danger to the
19 community;
- 20 5. Enjoin Respondents from placing Petitioner on electronic monitoring, absent a previously
21 noticed hearing before a neutral decision-maker in which the government would need to
22 show, by clear and convincing evidence, that increased monitoring is justified;
- 23 6. Order Respondents to return to Petitioner, within ten days, all of his documents that were
24 confiscated subject to his arrest of December 3, 2025 – including his Florida driver’s
25 license, his California driver’s license, his employment authorization document, his Social
26 Security card, and his passport;
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7. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412;

8. Grant such further relief as the Court deems just and proper.

Date: January 28, 2026

Respectfully Submitted,

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