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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

A[redacted] F[redacted] A[redacted] M[redacted],

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office, et al.,

Respondents.

Case No. 3:25-cv-10492-AMO

**REPLY TO RESPONDENTS' OPPOSITION**

## REPLY TO RESPONDENTS' OPPOSITION

### INTRODUCTION

Petitioner, a 37-year-old from Colombia, came to the United States to escape brutal sexual violence he suffered in his home country on account of his sexual orientation. He has no criminal history. Ex. F.[1] He suffers from uncontrolled diabetes and HIV, and he is at severe risk of harm from detention. Ex. A at ¶¶ 3, 14. Petitioner's due process claim is straightforward. In

[1] Exhibits A to D are attached to the Declaration of Counsel in Support of the Motion for TRO/PI. Exhibits E to J refer to exhibits attached to the Declaration of Counsel in Support of the Reply.

September 2024, Respondents released him from immigration detention on parole. Ex. D at 2. He complied with the conditions of his parole, including numerous check-ins (in-person and virtually). Ex. E. On December 3, 2025, Respondents re-detained him without a hearing *while he was attending an ICE check-in*. They did so without any "urgent" "changed circumstances." This Court ordered his immediate release on a temporary restraining order. Doc. 4.

Respondents cannot refute the claim that his due process rights were violated. Instead, they attempt to distinguish this case from a torrent of similar cases. Those efforts are unconvincing. First, Respondents claim that the procedural due process caselaw does not apply to release on humanitarian parole. Numerous decisions show that claim to be incorrect. Second, Respondents allege that Petitioner missed two ISAP check-ins. Petitioner disputes that. And, even if the allegations were true, these violations would not amount to "urgent" "changed circumstances" sufficient to dispense with a "pre-deprivation" hearing. Third, Respondents claim that Petitioner is subject to mandatory detention as part of the expedited removal statutes. But he is *not* in expedited removal, and the subsection Respondents cite—8 U.S.C. § 1225(b)(1)(B)(ii)—has no bearing on him, as numerous courts have acknowledged.

**1. The Due Process Clause Protects Petitioner's Liberty Interests.**

Respondents claim that Petitioner is not entitled to due process.[2] But this claim is amply refuted by caselaw. 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). The case that Respondents rely on, *Dep't of Homeland Sec. v. Thuraissigiam*,

[2] *See, e.g.*, Opp. at 2 ("[H]e is entitled only to the process due to him by statute."); *id.* at 6 ("The Supreme Court has been clear that noncitizens similarly situated to Petitioner do not have a constitution right to procedures beyond those afforded to them by statute."); *id.* at 7 (citing inapt cases discussing *prolonged* detention).

concerned a noncitizen seeking additional procedures under the credible fear interview process; it was not a challenge to physical custody. 591 U.S. 103, 157 (2020). Numerous courts have rejected similar attempt to extend *Thuraissigiam*. *See, e.g., Jaraba Olivero v. Kaiser*, No. 25-cv-07117-BLF, at *7-8 (N.D. Cal. Sept. 18, 2025) (finding that *Thuraissigiam* does not apply); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) ("The Court stands unconvinced that the Supreme Court's decision in *Thuraissigiam* requires dismissal of Plaintiffs' due process claim."); *Jatta v. Clark*, No. 19-cv-2086, 2020 WL 7138006, at *2 (W.D. Wash. Dec. 5, 2020) (finding *Thuraissigiam* "inapposite" to due process challenge to detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021) ("Quite clearly, *Thuraissigiam* does not govern here, as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an Immigration Judge's review of prolonged and indefinite detention."); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844-48 (E.D. Va. 2020) (similar).

**2. No "Changed Circumstances," Much Less "Urgent" Ones, Exist That Could Justify Deprivation of Petitioner's Liberty Without a Hearing.**

Respondents do not identify any "changed circumstances," much less "urgent" ones, that could justify a deprivation of liberty without a pre-deprivation hearing. When Respondents release a person on parole, as they did with Petitioner, that decision "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). The governing regulation states that humanitarian parole is permitted only for noncitizens who "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b). Once that release determination is made, Respondents cannot override it later unless they hold 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 [the DHS] absent a change of circumstance."); *Saravia*, 280 F. Supp. 3d at 1197 ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal."); *see Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("[A]bsent changed circumstances … ICE cannot redetain Panosyan.").

If Respondents seek to re-detain a person without a hearing, they are required to demonstrate not only "changed circumstances" but also "evidence of *urgent* concerns." *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) (emphasis added).[3] But Respondents provide nothing that satisfies this standard. Instead, they merely allege that Petitioner "violated the ISAP conditions" on April 17 and August 7. Doc. 14-1 at ¶¶ 10-11. As an initial matter, Respondents' allegations are too vague and unsupported to warrant re-detention without a pre-deprivation bond hearing. *See Guillermo M. R.*, 2025 WL 1983677, at *9.[4] In addition, Respondents' claims are disputed by Petitioner—a dispute that could have been

[3] Numerous decisions have reached 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.*, 2025 U.S. Dist. LEXIS 217645, at *3; *Vilela*, 2025 U.S. Dist. LEXIS 219172, at *3; *J.A.E.M.*, 2025 U.S. Dist. LEXIS 211728, at *2. *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).

[4] The Court should give no weight to the government's unsupported allegations. *See C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at *7 (E.D. Cal., Nov. 1, 2025) (finding Respondents' "key factual assertions" were not supported because the deportation officer did not state the "basis for personal knowledge for the facts claimed" in his declaration).

addressed if he had received a hearing before his deprivation. On the date of the first alleged violation, April 17, 2025, Petitioner received a confusing message on his phone in Spanish: "complete auto informe en casa, el fallo esta semana." Ex. G. Petitioner "understood this message to mean that the ISAP phone app was malfunctioning." Ex. E at ¶ 8. The ISAP phone application is notorious for its technical glitches. Ex. J at 3, 4, 5, 15, 20, 22. Petitioner says he "never received any further instructions on how to report for that April date." Ex. E at ¶ 8. And, at his next scheduled check-in, no one mentioned the problem from April. *Id.*

Regarding the August 7 check-in, Petitioner explains:

> the ISAP phone app again did not work. I received a text message instructing me to report in person on August 8 at the ISAP office on Tehama Street. I also received a phone call from a female ICE officer confirming that I needed to report in person to the ISAP office on August 8. I did report in person on August 8 as instructed.

Ex. E at ¶ 9. It is notable that no one from ISAP or ICE alerted him to any failure to comply—a fact that Respondents do not dispute. Petitioner, thus, believed that he was in compliance with all requirements. Ex. E at ¶¶ 5, 6.

Even if Petitioner failed to complete one or both of these check-ins, these failures would not count as "changed circumstances" "that urgently require arrest." *See id. Guillermo M. R.*, 791 F. Supp. 3d at 1036 (citing *Zinermon v. Burch*, 494 U.S. 113, 127 (1990)). The alleged incidents of non-compliance occurred months before Petitioner's re-detention on December 3, meaning there was nothing so "urgent" as to dispense with the need for a hearing. Moreover, courts have repeatedly rejected the argument that ICE can re-detain a noncitizen for purely technical violations "without regard to whether that technical violation means that one is a flight risk or danger." *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *12 (E.D. Cal., Oct. 17, 2025); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *12 (E.D. Cal., Nov. 6, 2025) ("While respondents assert that ICE arrested

petitioner for those technical violations…they do not argue that a missed check-in or failure to seek advance approval to move means that petitioner is a flight risk or danger to the community."); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *12 (E.D. Cal., Oct. 27, 2025) ("Respondents do not argue that petitioner's two late check-ins mean that he is a flight risk or danger to the community…[r]ather, respondents assert that ICE arrested petitioner for those technical violations."); *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *11 (W.D. Wash. Aug. 19, 2025) ("Ultimately, even if Petitioner's arrest was not pretextual and was solely motivated by ICE's realization of his ATD violations, it would not necessarily follow that Petitioner can be detained for those violations without a hearing.").

Here, there is no credible argument that Petitioner, who has no criminal history, who complied with his ICE and ISAP check-ins, and who was detained while appearing for his ICE check-in, is a flight risk or danger. *See J.C.L.A.*, No. 1:25-cv-01310-KES-EPG at *12. A pre-deprivation bond hearing is thus especially important in cases like this because the risk of erroneous deprivation is high. *See Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 U.S. Dist. LEXIS 228110, at *13 (N.D. Cal., Nov. 19, 2025). Petitioner asks this Court to find ICE's re-arrest at a check-in unconstitutional. *See Vilela*, 2025 U.S. Dist. LEXIS 219172, at *20; *J.A.E.M.*, 2025 U.S. Dist. LEXIS 211728, at *21; *J.C.L.A.*, 2025 U.S. Dist. LEXIS 205300, at *20-21; *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *E.A.T.-B.*, 2025 WL 2402130, at *17.

**3. The Procedural Due Process Analysis Applies to Humanitarian Parole.**

Respondents argue that the procedural due process caselaw, above, does not apply to those released on humanitarian parole, claiming that: "Respondents' exercise of discretion to

release Petitioner under 8 U.S.C. § 1182(d)(5)(A) does not give rise to a liberty interest." Opp. at 8. But they provide no caselaw supporting this claim. In fact, they seem to ignore the ample caselaw finding that procedural due process is violated where a person's humanitarian parole is revoked without a hearing. For example, *Ramazan M. v. Andrews* dealt with humanitarian parole, and the court found a due process violation where it was revoked without a hearing:

> By regulation, immigration officials may parole a noncitizen pursuant to 8 U.S.C. § 1182(d)(5)(A) "for 'urgent humanitarian reasons' or 'significant public benefit,' provided the [noncitizen] present[s] neither a security risk nor risk of absconding." 8 C.F.R. § 212.5(b) (quoting 8 U.S.C. § 1182(d)(5)(A)). "Release [therefore] 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).

No. 1:25-cv-01356-KES-SKO (HC), 2025 U.S. Dist. LEXIS 221796, at *3-4 (E.D. Cal. Nov. 10, 2025); *see also Omer G.G. v. Kaiser*, No. 1:25-cv-01471-KES-SAB (HC), 2025 U.S. Dist. LEXIS 230551, at *1-6 (E.D. Cal. Nov. 22, 2025) (same). *Fernandez López v. Wofford* also dealt with humanitarian parole and rejected the very same arguments Respondents press in Petitioner's case: "[R]espondents' argument that § 1225(b) divests petitioner of any liberty interest for purposes of the Due Process Clause is unpersuasive." No. 1:25-cv-01226-KES-SKO (HC), 2025 U.S. Dist. LEXIS 205596, at *7 (E.D. Cal. Oct. 17, 2025). Likewise, in *Salazar v. Casey*, a Southern District of California court concluded that procedural due process was violated by revocation of parole without a hearing. No. 25-CV-2784 JLS (VET), 2025 U.S. Dist. LEXIS 216353, at *11 (S.D. Cal. Nov. 3, 2025). The list could go on and on with cases applying the procedural due process analysis to humanitarian parole. [5] Yet Respondents do not

[5] *Barrera v. Andrews*, No. 1:25-cv-01006 JLT SAB, 2025 U.S. Dist. LEXIS 162825, at *21-23 n.15 (E.D. Cal. Aug. 21, 2025) (applying procedural due process analysis to person released on Section 1182(d)(5)(A) and explained that "a court reviewing revocation of that kind of arrest should not ignore that the parole occurred."); *Salazar v. Kaiser*, No. 1:25-CV-01017-JLT-SAB, 2025 U.S. Dist. LEXIS 165942, at *23 (E.D. Cal. Aug. 25, 2025) (same); *Castillo v. Wofford*, No. 1:25-cv-01586-JLT-HBK, 2025 U.S. Dist. LEXIS 235113, at *17-18 (E.D. Cal. Dec. 2, 2025) (finding due process and APA violation in revocation of interim parole without process); *see also Perez v. Larose*, No. 3:25-cv-02620-RBM-JLB, 2025 U.S. Dist. LEXIS 223769, at *16-18 (S.D. Cal. Nov. 13, 2025) (collecting cases finding

address any of these cases. The Court should reject Respondents' claim that "the test from *Mathews v. Eldridge* . . . . does not apply," Opp. at 8, and it should rule that Petitioner's liberty interest cannot be taken away without a pre-deprivation hearing.

**4. Respondents' Reading of Section 1225(b)(1)(B)(ii) Should Be Rejected.**

Petitioner is not in expedited removal. But Respondents devote an entire section of their Opposition to the claim that "Petitioner Is Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(1)(B)(ii)," a provision of the expedited removal statute. Opp. at 5-7. Respondents' argument must be rejected. Section 1225(b)(1)(B)(ii) has a very specific trigger in the procedural posture of an expedited removal case: It goes into effect when a person in expedited removal gets a positive credible fear determination from an asylum officer. That is *not* Petitioner's procedural posture. Nor was it ever.

The text of that subsection makes this clear:

> If the *officer* determines at the time of the interview that an alien *has a credible fear of persecution* (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). This subsection states that the noncitizen should not be released during the period of time in which asylum officers are giving "further consideration" to the claim that a person does not belong in expedited removal on account of a "credible fear of persecution"—a determination that can involve a "challenge by any other immigration officer," 8 U.S.C. § 1225(b)(4). This provision simply expresses Congress's desire not to release a person until after the determination is made whether that person belongs in expedited removal.

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that Administrative Procedure Act is violated by revocation of humanitarian parole without "individualized determination); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 U.S. Dist. LEXIS 233224, at *4 (E.D.N.Y. Nov. 28, 2025).

But Respondents attempt to stretch this subsection to place Petitioner within it. Their argument is foreclosed, however, by the text of the statute, as well as by numerous judicial opinions. The first problem for Respondents is that Section 1225(b)(1)(B)(ii) is triggered only "[i]f the officer determines at the time of the interview that an alien has a credible fear of persecution." In Petitioner's case, the asylum officer found that he did *not* have a credible fear of persecution. Doc. 14-2 at 5. So, this provision never came into play. A second and related problem is that the credible fear determination was made by an "immigration judge," not an "officer." The immigration judge found a credible fear, even though the "asylum officer" did not. Doc. 14-2 at 11. Again, the text shows that this statute cannot apply to Petitioner. Indeed, this was the reasoning the district court used in *Jimenez v. FCI Berlin* in rejecting similar efforts by Respondents,

> Here, the asylum officer did not find that Jimenez had a credible fear of persecution. To the contrary, the asylum officer found that Jimenez lacked a credible fear of persecution, and Jimenez appealed that determination to an IJ. Because § 1225(b)(1)(B)(ii) requires a determination from the asylum officer "at the time of the [credible fear] interview" that the noncitizen has a credible fear, it cannot justify Jimenez's mandatory detention.

No. 25-cv-326-LM-AJ, 2025 U.S. Dist. LEXIS 176165, at *17 (D.N.H. Sep. 8, 2025). Still another problem for Respondents is their claim that "Petitioner is subject to mandatory detention *while his application for asylum is under consideration*." Opp. at 5 (emphasis added). As the record makes clear, Petitioner has not yet filed an "application for asylum." As of December 3, he was placed in removal proceedings, and as of December 5, he obtained the assistance of pro bono counsel. Ex. B at ¶¶ 9-10. Thus, even by Respondents' own reading of the statute, he would not be subject to detention because there is currently no "application for asylum . . . under consideration." Opp. at 5.

Furthermore, courts in this district and around the country have rejected similar efforts to extend Section 1225(b)(1)(B)(ii) to those, like Petitioner, who have been released from

expedited removal on humanitarian parole. These courts point to the text of the expedited removal statute, which provides that expedited removal cannot apply to anyone who has "been admitted *or paroled* into the United States," 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (emphasis added), thus demonstrating why Petitioner cannot fit within the sweep of Respondents' reading. *See Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 U.S. Dist. LEXIS 173976, at *10 (N.D. Cal. Sep. 5, 2025) ("The Court concurs with other courts that have found that section 1225(b)(1) does not authorize designation for expedited removal of any noncitizen who has, at any point in time, been paroled into the United States.") (internal quotations omitted).[6] In the end, Respondents cannot overcome the text and caselaw that rejects their reading of the statute.

**5. Petitioner's Detention Cannot Be Justified Under 1226(a).**

Last month, a court in this district analyzed Respondents' arguments for the re-detention of a 60-year-old grandmother of seven who was accused of "minor, technical violations" of her release on own recognizance. *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025). The court found that petitioner was not subject to Section 1225(b)(2) and went on to find that she could not be detained under Section 1226(a), either. "[D]etention is permitted under section 1226(a) only if [petitioner] is dangerous or a flight risk," the court explained, and Respondents had alleged only "minor, technical violations" of her release conditions, rather than suggesting that she was a danger or flight risk. *Id.* The court granted relief, concluding that "Respondents have not come close to showing that [petitioner is a danger or flight risk], and in fact, have hardly even tried." *Id.*

[6] *Moran v. Joyce*, 2025 U.S. Dist. LEXIS 259163, at *8 (S.D.N.Y. Dec. 15, 2025) ("The Government's argument for applying § 1225(b)(1)(B)(ii) instead is unpersuasive."); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 U.S. Dist. LEXIS 233224, at *3 (E.D.N.Y. Nov. 28, 2025) ("A textual analysis of Section 1225(b) compels the conclusion that *none* of the provisions of that statute authorizing the mandatory detention of noncitizens apply to Rodriguez-Acurio."); *N.A. v. Larose*, 2025 U.S. Dist. LEXIS 198688, at *15 (S.D. Cal. Oct. 7, 2025).

If this Court is not inclined to grant Petitioner's request for preliminary injunction on due process grounds, it could do so on the statutory grounds, as outlined in *Bernal*, given that Respondents have not alleged, much less shown, any grounds to believe that Petitioner is a danger or a flight risk.

**6. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner's Favor.**

Respondents do not rebut Petitioner's showing that the remaining factors weigh in his favor. He faces irreparable injury to his constitutional rights and to his physical health if the preliminary injunction is not granted. *See Pinchi*, 792 F. Supp. 3d at 1037-38 (collecting cases). As the record makes clear, Petitioner has very serious medical problems that put him at extreme risk from detention away from his medical care. In fact, his re-detention earlier this month led to five nights in the hospital, and he fears further harm if detained away from his medical care. Ex. A at ¶¶ 2, 14. Further, the public interest likewise weighs strongly in Petitioner's favor. *Id.*

**CONCLUSION**

For the foregoing reasons, this Court should grant the preliminary injunction.

Date: December 17, 2025

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

**CERTIFICATE OF SERVICE**

I hereby certify that, this 17th day of December, 2025, I filed a copy of the foregoing Reply to Respondents' Opposition and Exhibits through the CM/ECF system, which gave service to all counsel of record.

By: /s/ Jonathan Abel
Jonathan Abel
Attorney for Petitioner