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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

A.F.A.M., Petitioner, v. SERGIO ALBARRAN, et al., Respondents.	No. 3:25-cv-10492-AMO **RESPONDENTS' RETURN TO HABEAS PETITION**

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I. INTRODUCTION

As a noncitizen subject to expedited removal who was found to have a credible fear of persecution, Petitioner's detention is mandated by 8 U.S.C. § 1225(b)(1)(B)(ii) pending further consideration of his application for asylum. Because Petitioner is physically present in the United States without having been admitted, he is treated for constitutional purposes as if stopped at the border. Therefore, as regards his immigration detention, he is entitled only to the process due to him by statute and regulation. Petitioner's redetention complied with the relevant statutes and regulations. Accordingly, the Court should deny Petitioner's requests for relief.

Should the Court decide that Petitioner is subject to detention under 8 U.S.C. § 1226(a), the appropriate remedy is to order a bond hearing while in detention, not to order immediate release, and for Petitioner to bear the burden to demonstrate flight risk or danger to the community.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Colombia who entered the United States without inspection, admission, or parole at or near Brownsville, Texas on July 20, 2024. *See* Declaration of Deportation Officer Thomas Auer ("Auer Decl.") ¶ 4. On the same date, U.S. Customs and Border Protection ("CBP") Officers apprehended and detained Petitioner. *Id.* On July 21, 2024, CBP processed Petitioner for Expedited Removal under section 235(b)(1) of the Immigration and Nationality Act ("INA" or "Act"). *Id.* ¶ 5; Exh. 1. Petitioner did not claim fear of removal at this time. *Id.* ICE scheduled to remove Petitioner on July 30, 2024, which was subsequently postponed to August 8, 2024. *Id.*

On August 2, 2024, Petitioner expressed a fear of returning to Colombia. *Id.* ¶ 6. DHS referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear review with an Asylum Officer. *Id.* ¶ 6. On August 8, 2024, USCIS conducted a credible fear interview with Petitioner and found that Petitioner did not establish a credible fear of persecution or torture if he were returned to Colombia. *Id.* ¶ 7; Exh. 2. Petitioner requested review of this decision, so USCIS referred it to an Immigration Judge ("IJ") for review. *Id.*; Exh. 2. On August 21, 2024, an IJ reviewed DHS's negative credible fear determination and vacated that decision. *Id.* ¶ 8; Exh. 3.

On September 11, 2024, ICE released Petitioner on Interim Parole under INA § 212(d)(5)(A). *Id.* ¶ 9. ICE placed Petitioner on the Intensive Supervision Appearance Program ("ISAP"), with reporting

requirements, as a condition of his release. *Id.* On April 17, 2025 and August 7, 2025, Petitioner violated his ISAP conditions by failing to complete check-ins. *Id.* ¶¶ 10-11. On December 3, 2025, ICE arrested Petitioner due to his ISAP violations. *Id.* ¶ 12. Petitioner was detained pursuant to INA § 235(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(1)(B)(ii). *Id.*

On December 6, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, and an Ex Parte Motion for Temporary Restraining Order ("TRO"), against Respondents. ECF Nos. 1 & 2. On December 7, 2025, this Court issued a TRO. ECF No. 4. The Court ordered Respondents to immediately release Petitioner from Respondents' custody pending full briefing and hearing on the underlying petition and/or a preliminary injunction regarding re-detention. *Id.* That same day, ICE released Petitioner as ordered by this Court. Auer Decl. ¶ 13. On December 9, 2025, ICE placed Petitioner into removal proceedings, as an alien present without admission or parole, and charged him with removability under INA § 212(a)(6)(A)(i). *Id.* ¶ 14. On December 22, 2025, this Court granted the preliminary injunction that enjoined respondents from "from re-detaining A.F.A.M. without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-detention is warranted based on changed circumstances establishing A.F.A.M. is a flight risk or a danger to the community." ECF No. 19 at 9.

III. LEGAL BACKGROUND

Section 1225 applies to an "applicant for admission," defined as an "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1).[1] "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1), known as "expedited removal," applies to "arriving aliens" and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). An alien is subject to expedited removal if, as relevant here, the alien (1) is inadmissible because he or she lacks a valid entry document; (2) has not "been physically present in the United States continuously for the 2-year period immediately prior to the

[1] This section uses the term "alien" for the sake of clarity because that is the term of art used by Congress in the relevant statute.

date of the determination of inadmissibility"; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 109 (2020). When Petitioner entered the country, those whom the Secretary of Homeland Security had designated for expedited removal were, among others, aliens "encountered within 14 days of entry without inspection and within 100 air miles of any U. S. international land border."[2] 69 Fed. Reg. 48879 (2004). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A).

If an alien placed in expedited removal "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). "If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . the alien *shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is "found not to have such a fear," they "shall be detained . . . until removed" from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV). In the meantime, "Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

In *Jennings*, 583 U.S. at 296-303, the Supreme Court interpreted 8 U.S.C. § 1225(b). The Supreme Court stated that, "[r]ead most naturally, §§ 1225(b)(1) and (b)(2)…mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. Neither § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Court added that the sole means of release for noncitizens detained pursuant to § 1225(b) is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released."). "In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable

[2] Though the Secretary of Homeland Security has since expanded the designation of those subject to expedited removal, this was the designation in effect at the time Petitioner entered the United States and was placed in expedited removal.

IV. ARGUMENT

A. Petitioner Is Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(1)(B)(ii).

Petitioner claims, inter alia, that his arrest and detention violate the due process clause of the Fifth Amendment. ECF No. 1 at 16. Petitioner argues that he has an interest in remaining out of custody, and that the Due Process Clause entitles him to a bond hearing before an IJ prior to any arrest or detention. *Id.* Petitioner is mistaken.

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) while his application for asylum is under consideration. Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." As explained above, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) – the provision relevant here – applies because Petitioner is present in the United States without having been admitted and is covered by the Secretary of Homeland Security's 2004 designation of those noncitizens as subject to expedited removal. *See* Auer Decl. ¶ 4; 69 Fed. Reg. 48879 (2004). The expedited removal statute mandates detention when an immigration officer determines that the alien has a credible fear of persecution.[3] *See* 8 U.S.C. § 1225(b)(1)(B)(ii) ("If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . the alien shall be detained for further consideration of the application for asylum.") (emphasis added); *see also Matter of M-S-*, 27 I. & N. Dec. 509, 519 (AG 2019) ("all aliens transferred from expedited to full [removal] proceedings after establishing a credible fear are ineligible for bond").

Here, DHS initially found that Petitioner lacked a credible fear. *See* Auer Decl. ¶ 7; Exh. 2. But following review, the IJ vacated the negative credible fear finding and placed Petitioner in removal proceedings for further consideration of his application for asylum. *See id.* ¶ 8; Exh. 3. This squarely places Petitioner under 8 U.S.C. § 1225(b)(1)(B)(ii), which requires that he "shall be detained for further consideration of the application for asylum."

Petitioner argues in his habeas petition that he is not subject to detention under 8 U.S.C.

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[3] The statute also requires detention when an alien does *not* have a credible fear of persecution. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

§ 1225(b)(2)(A). But Respondents never claimed that § 1225(b)(2)(A) applied to Petitioner. Only for the first in his Reply Brief, Petitioner acknowledges that he had been subject to the mandatory detention provisions of § 1225(b)(1), but he argues that § 1225(b)(1) no longer applies once the Immigration Judge vacated the asylum officer's negative credible fear finding and the detention authority shifts to 8 U.S.C. § 1226. *See* ECF No. 15 at 8-10.

Petitioner's literal interpretation of § 1225(b)(1) must be rejected because it leads to an absurd result. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) ("It is well established that 'when the statute's language is plain, the sole function of the courts—*at least where the disposition required by the text is not absurd*—is to enforce it according to its terms.'") (citations omitted and emphasis added). Petitioner claims that § 1225(b)(1)(B)(ii) does not apply to him because it was the Immigration Judge and not the asylum officer who found that Petitioner had a credible fear. Common sense indicates that, when the reviewing Immigration Judge issues his credible fear determination on review of the asylum officer's finding, the Immigration Judge is acting through the asylum officer to insert a substitute finding of credible fear under § 1225(b)(1)(B)(ii). *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(III). If not, then the Immigration Judge is merely vacating the asylum officer's negative credible fear finding without the authority to issue his own credible fear determination. *See* Auer Decl., Exh. 3 ("The DHS credible fear determination is VACATED."). If the Immigration Judge cannot act through the asylum officer to find a credible fear pursuant to § 1225(b)(1)(B)(ii), then no final determination of credible fear of persecution has been made by an asylum officer and Petitioner is thus subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV): "Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." If *that* interpretation of § 1225(b)(1) seems absurd, then with more reason the Court must conclude that the Immigration Judge acts in the stead of the asylum officer when finding a positive credible fear on review pursuant to § 1225(b)(1)(B)(iii)(III), which thereby renders Petitioner subject to detention under § 1225(b)(1)(B)(ii). Literal reading or not, Petitioner falls under § 1225(b)(1)'s mandatory detention authority.

Petitioner's contrary reading of the statute leads the credible fear process to a procedural dead end. His interpretation would frustrate "the design of the statute as a whole." *K Mart Corp. v. Cartier,*

Inc., 486 U.S. 281, 291 (1988) (citations omitted). As the Supreme Court stated in *Jennings*, § 1225(b)(1) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings v. Rodriguez*, 583 U.S. at 302. *Jennings'* thorough analysis of § 1225(b)(1) acknowledges no exception to mandatory detention in the event that an Immigration Judge finds credible fear when reviewing the asylum officer's initial determination. Section 1225(b)(1) is specifically structured and designed to ensure mandatory detention until the review of a noncitizen's application for asylum is complete. Petitioner has not yet reached the completion of applicable proceedings, so he remains subject to mandatory detention.

Petitioner's argument that he is not subject to detention because "there is currently no application for asylum under consideration" is contrary to the regulations. ECF No. 15 at 9 (internal quotations removed). Under 8 C.F.R § 1240.17(e), "the written record of the positive credible fear determination…satisfies the respondent's filing requirement for the application for asylum, withholding of removal under the Act, and withholding or deferral of removal under the Convention Against Torture." Because the Immigration Judge made a positive credible fear determination, Petitioner is considered to currently have an application for asylum under consideration.

B. DHS' Redetention Of Petitioner Complied With The Relevant Statutes And Regulations.

As described above, the Supreme Court has stated that the sole means for release of a noncitizen subject to expedited removal is through temporary or interim parole under 8 U.S.C. § 1182(d)(5)(A). Thus, when Respondents released Petitioner from detention on September 11, 2024, it was pursuant to an exercise of DHS' discretion under 8 U.S.C. § 1182(d)(5)(A) while DHS was detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii).

Petitioner's prior release was based on a determination that "urgent humanitarian reasons or significant public benefit" existed to support Petitioner's release. 8 U.S.C. § 1182(d)(5)(A). And Petitioner's subsequent redetention complied with procedures established by this statute. *See id.* ("[W]hen the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served *the alien shall forthwith return or be returned to the custody from which he was paroled.*") (emphasis added). Petitioner had been placed on ISAP with reporting requirements, but he violated the

ISAP conditions. Auer Decl. ¶ 9-12. The applicable statutes and regulations do not require a pre-deprivation hearing nor do they require that any redetention be contingent upon a finding of flight risk or danger to the community. *See* 8 C.F.R. § 212.5(d); 8 C.F.R. § 212.5(e)(2)(i). When DHS redetained Petitioner, he was returned to the custody from which he was paroled, i.e. mandatory detention under § 1225(b)(1). For this reason, *Aviles-Mena v. Kaiser*, No. 25-CV-06783-RFL, 2025 WL 2578215 (N.D. Cal. Sept. 5, 2025) *appeal docketed*, No. 25-6999 (9th Cir. Nov. 5, 2025), is mistaken. The termination of parole does, in fact, require treating noncitizens as if they had never been paroled in the first place. This is what § 1182(d)(5)(A) commands. Once parole is terminated, noncitizens can be returned to expedited removal.

C. Petitioner Is Not Entitled To Additional Process Regarding His Detention Beyond What Is Provided By Statute And Regulation.

Respondents do not dispute that Petitioner has a right to due process of law. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022) ("'The Fifth Amendment entitles aliens to due process of law in deportation proceedings.'") (quoting *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). However, Respondents dispute Petitioner's characterization of the extent of his due process rights regarding immigration detention. Petitioner is not owed immediate release or a pre-deprivation hearing before a neutral decisionmaker at which the government must establish by clear and convincing evidence that detention is appropriate to prevent his flight or to protect the public. ECF No. 1 at 4, 14, 16.

The Supreme Court has been clear that noncitizens similarly situated to Petitioner do not have a constitutional right to procedures beyond those afforded to them by statute. In *Thuraissigiam*, the Supreme Court addressed the procedural due process rights of noncitizens like Petitioner, i.e. those detained shortly after entering the United States without admission that are then placed in expedited removal. 591 U.S. at 138-40. The Supreme Court stated that these noncitizens have "no entitlement to procedural rights other than those afforded by statute." *Id.* at 107. The Supreme Court noted that this principle was not unique to its decision in *Thuraissigiam* but instead was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy,* 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*,

345 U.S. 206, 212 (1953); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

There is no constitutional rule requiring a finding of flight risk or danger to the community to detain, pending removal proceedings, a noncitizen who was not previously admitted. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court upheld mandatory detention pending removal proceedings under 8 U.S.C. § 1226(c) and rejected the noncitizen's requested relief of an individualized bond hearing to determine whether he posed either a flight risk or a danger to the community. There, the Court held that "Detention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531. The Court cited several cases where it upheld the constitutionality of detention pending deportation proceedings without requiring a finding of flight risk or danger to the community. *See, e.g., Wong Wing v. United States*, 163 U. S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid"); *Carlson v. Landon*, 342 U. S. 524, 538-549 (1952) (denying noncitizens release from detention despite no finding as to flight risk or dangerousness); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings."); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022) ("the Supreme Court has also previously upheld immigration detention schemes that offered no opportunity for a bond hearing, much less one in which the government bore the burden of proof.").

Petitioner's reliance on *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), for a claimed due process right to a pre-detention hearing on flight risk or danger to the community is mistaken. See ECF No. 1 at 6-7. The Supreme Court's introduction in the *Zadvydas* opinion cautions: "We deal here with aliens who were admitted to the United States but subsequently ordered removed. Aliens who have not yet gained initial admission to this country would present a very different question." 533 U.S. at 682 (emphasis added). Accordingly, *Zadvydas* is largely inapposite because Petitioner's case is distinct from *Zadvydas* in three legally significant ways. First, unlike Zadvydas who was admitted then ordered removed, Petitioner has not gained admission to this country. As a result, Petitioner, unlike Zadvydas, is treated for due process purposes as if stopped at the border. See *Thuraissigiam*, 591 U.S. at 107, 140. Second, unlike Zadvydas, Petitioner is not subject to a final order of removal. In *Zadvydas*, the Court decided whether noncitizens subject to a final order of removal could be detained indefinitely. Petitioner's

detention under § 1225(b)(1), however, is clearly not indefinite; instead, it has a finite end point – the conclusion of removal proceedings. *See Demore*, 538 U. S. at 529 ("'post-removal-period detention, unlike detention pending a determination of removability…has no obvious termination point.'") (quoting *Zadvydas*, 533 U.S. at 697) (emphasis added). Petitioner's finite detention under § 1225(b)(1) does not raise the same due process concerns as the potentially indefinite detention at issue in *Zadvydas*. *See, e.g., Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) (denying habeas petition for release pending removal proceedings where petitioner "is not stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were."). Third, Petitioner's brief detention does not come close to raising the same concerns of prolonged detention that motivated the Court's decision in *Zadvydas*. Petitioner filed his habeas petition three days after he was detained. The Court in *Zadvydas*, however, held that six months of detention is presumptively constitutional for noncitizens such as Zadvydas. In other words, even the due process protections regarding post-removal detention afforded to noncitizens such as Zadvydas who are admitted to the United States then subsequently ordered removed – protections which are meatier than those afforded noncitizens who have not yet gained admission such as Petitioner – do not kick in until detention reaches the six-month mark.

In short, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), which provides, absent discretionary parole, that when an alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." As the statutory authority Petitioner is detained under does not afford him a right to immediate release or a bond hearing before an IJ, the Court should reject his claim that his detention violates the Fifth Amendment's Due Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 107, 140.

D. Petitioner's Previous Release on Interim Parole Does Not Create A Liberty Interest

DHS' exercise of discretion to previously release Petitioner under 8 U.S.C. § 1182(d)(5)(A) does not give rise to a liberty interest.[4] The interim parole statute and regulation reflect a "legal fiction,"

[4] Petitioner cites inapposite authority. *See* ECF No. 1 at 12. In *C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at *27 (E.D. Cal., Nov. 1, 2025), the court found that a previous release *under 8 U.S.C. 1226(a)* created a liberty interest. And in *Lopez Benitez v. Francis,* 795 F. Supp. 3d 475 (S.D.N.Y. 2025), the liberty interest recognized by the court similarly arose following a release under 8 U.S.C. 1226(a).

upheld repeatedly by the Supreme Court, that noncitizens who are "paroled elsewhere in the country for years pending removal [] are 'treated' for due process purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 140 (quoting *Mezei*, 345 U.S. at 215); *see also Leng May Ma v. Barber*, 357 U.S. 185, 188-91 (1958); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (terminated parole had lasted more than 8 years). "The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status, and to hold that petitioner's parole placed her legally within the United States is inconsistent with the congressional mandate, the administrative concept of parole, and the decisions of this Court." *Leng May Ma*, 357 U.S. at 190 (cleaned up). So just as a noncitizen at the border lacks a protected liberty interest, so too does Petitioner despite his previous interim parole.

Petitioner mistakenly analogizes his claimed liberty interest in remaining out of immigration custody following his release on interim parole to the recognized liberty interest of U.S. citizens facing redetention. *See* ECF No. 1 at 7, 14 (citing to *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972)); *id.* at 7 (citing to *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)). The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522 (citing to *Reno v. Flores*, 507 U. S. at 305-306; *Fiallo v. Bell,* 430 U.S. 787, 792 (1977); *Mathew v. Diaz,* 426 U.S. 67, 79-80 (1976); *United States v. Verdugo–Urquidez,* 494 U.S. 259, 273 (1990)). The Ninth Circuit has also acknowledged that it has "not previously held that cases involving heightened burdens of proof for the deprivation of liberty interests of U.S. citizens apply coextensively to alien detainees who have been subject to § 1226(a) and its procedures throughout the period of their detention." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211 (9th Cir. 2022); *see also Miranda v. Garland,* 34 F.4th 338, 359 & n.9 (9th Cir. 2022) (agreeing that the Supreme Court's civil commitment cases are inapposite because they "involved detention of United States citizens whereas § 1226(a) involves detention of aliens awaiting removal hearings"). Thus, the applicable line of authority is the Supreme Court's immigration cases holding that the process due

noncitizens like Petitioner is limited to the process afforded under the statute.[5]

Because Petitioner's prior release on interim does not give rise to a constitutionally cognizable liberty interest, the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) does not apply.

E. To the Extent the Court Considers Petitioner Detained Under § 1226(a), It Should Order a Bond Hearing to be Held by an Immigration Judge Rather Than Immediate Release.

Should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226(a), as Petitioner contends, the appropriate remedy is to order a bond hearing before an IJ during which the IJ can properly determine in the first instance whether Petitioner is a flight risk or danger to the community. This bond hearing is appropriately held post-detention. "Section 1226(b) provides that the Government 'at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.'" *See Qiwei Weng v. Kenneth Genalo, et al.,* No. 25 CIV. 09595 (JHR), 2026 WL 194248 (S.D.N.Y. Jan. 25, 2026) (finding that, even if § 1226 applies, redetention of noncitizen did not violate due process). Under Section 1226(a), individuals are not guaranteed pre-detention review and may instead only seek review of their detention by an ICE official once they are in custody—a process that the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022). Moreover, at any bond hearing under Section 1226(a), Petitioner must bear the burden of demonstrating that he is not a flight risk or danger to the community. *See id.* at 1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)).

This approach to a motion for preliminary injunctive relief—granting release *unless* an individualized bond hearing is held before an IJ within a specified amount of time—has been followed by courts in other districts when addressing similar arguments by petitioners. *See, e.g.*, *Garcia v. Noem*, No. 25-cv-02771, 2025 WL 2986672, at *6 (C.D. Cal. Oct. 22, 2025) ("Respondents are enjoined from continuing to detain Petitioner unless they provide him with an individualized bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within ten (10) days of the date of this Order."); *Javier*

[5] To the extent Petitioner relies on *Singh v. Holder,* 638 F.3d 1196, 1204 (9th Cir. 2011), for the claim that due process requires that the government justify re-detention of Petitioner by clear and convincing evidence that he poses a flight risk or danger, ECF No. 1 at 14, the Ninth Circuit has cast doubt on whether *Singh* remains good law. *See Rodriguez-Diaz*, 53 F.4th at 1202 n.4.

Ceja Gonzalez v. Noem, No. 25-cv-02054, 2025 WL 2633187, at *6 (C.D. Cal. Aug. 13, 2025) (ordering the government to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order"); *Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025) ("Respondents must provide Petitioners with individualized bond hearings under § 1226(a) within fourteen days of this Order. Respondents shall not deny Petitioners' bond on the basis that § 1225(b)(2) requires mandatory detention."); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025) ("the appropriate remedy is to order the Immigration Court to conduct a new hearing at which it considers Gomes' eligibility for bond under Section 1226(a)"). Respondents thus request that this Court adopt this approach if the Court determines that Section 1226(a) applies.

F. The Court Should Not Enjoin Respondents From Transferring Petitioner Outside This District

Petitioner asks the Court to order that he remain within the Northern District of California, *see* ECF No. 1 at 16. He claims that such an order is necessary to preserve this Court's jurisdiction. *Id.* at 4. But it is well-established that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). Petitioner also claims that "he will soon be transferred to an immigration detention facility in the Central Valley, where he will not have access to the critical medical care that he needs." *Id.* at 3. But this is mere speculation, particularly when Petitioner is no longer in custody. Thus, there is no basis for Petitioner's request.

G. The Court Lacks Jurisdiction To Enjoin Respondents From Removing Petitioner Pending These Proceedings

Petitioner requests an order prohibiting his removal. *See* ECF No. 1 at 16. However, Petitioner's immigration proceedings will continue even after the Court rules on this habeas petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, his detention becomes mandatory under the statute. *See* 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no circumstance during

the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both the mandatory 90-day detention period during the removal period and the presumptively reasonable six-month discretionary detention period following the removal period, both without the requirements of any bond hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of removal, his detention will be both constitutionally permissible and statutorily required. Any ruling by this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See Aguilar Garcia v. Kaiser,* No. 3:25-CV-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025) (denying motion for preliminary injunction in petition seeking pre-detention hearing after petitioner's detention authority shifted to § 1231(a)(2)).

Moreover, the Court lacks jurisdiction to enjoin respondents from removing Petitioner from the United States. Under 8 U.S.C. 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This jurisdictional bar applies to section 2241 of title 28 and any other habeas provision. *Id.* Thus, as the Ninth Circuit has itself affirmed, if the Court grants a preliminary injunction, it should not include a prohibition on the removal of Petitioner. *See Rauda v. Jennings*, 55 F.4th 773, 776-79 (9th Cir. 2022) (holding that the district court lacked jurisdiction in habeas to issue TRO enjoining noncitizen's removal).

Additionally, the Court lacks jurisdiction to enjoin removal under 8 U.S.C. § 1252(b)(9). *See Khalil v. President, United States,* No. 25-2162, 2026 WL 111933, at *8 (3d Cir. Jan. 15, 2026); *see also Paulo v. Holder,* 669 F.3d 911, 918 (9th Cir. 2011) (holding that habeas finding that alien was not removable precluded relitigating that issue in removal proceedings). That subsection provides: "Judicial review of all questions of law and fact... arising from any action taken or proceeding brought to remove an alien from the United States ... shall be available only in judicial review of a final order [of removal]." *Id.* Section 1252(b)(9) requires Petitioner to wait to raise any claims regarding his removal until he files a petition for review of a final order of removal. *Id.* The Ninth Circuit has held that "By its

terms, [§ 1252(b)(9)] does not apply to federal habeas corpus petitions that do not involve final orders of removal." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006). However, that decision predates *Jennings*, which held that § 1252(b)(9) strips jurisdiction to "challeng[es] [to] the decision to detain [noncitizens] in the first place or to seek removal," challenges to "any part of the process by which... removability will be determined," and requests to "review... an order of removal." 583 U.S. at 294. Moreover, *Nadarajah v. Gonzales* itself did not enjoin removal.

V. CONCLUSION

In light of the foregoing, Respondents request that the Court deny the requested relief and dismiss Petitioner's habeas petition.

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Respectfully submitted,

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