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7 U.S. DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 Marcos FRANCISCO GONZALEZ,
10
11 Petitioner-Plaintiff,
12 v.
13 CHRISTOPHER J. LAROSE, et al.
14 Respondents-Defendants.

Case No.: 3:25-cv-03547-JLS-MSB

**PETITIONER'S TRAVERSE
SUPPORTING PETITION FOR WRIT
OF HABEAS CORPUS**

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

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

5 Here, Petitioner does not make *any claim or cause of action arising from any decision*
6 *to commence or adjudicate removal proceedings or execute removal orders*. Petitioner does
7 not dispute the commencement or any aspect of his removal proceedings nor does he have a
8 removal order. In short, Petitioner challenges nothing related to his removal proceedings –
9 he challenges the Respondents’ re-detention and revocation of his conditional parole.

10 Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

11 The government’s contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this Court
12 is similarly unavailing. Petitioner is not seeking “[j]udicial review of all questions of law
13 and fact . . . arising from any action taken or proceeding brought to remove an alien from
14 the U.S.. Again, the Petitioner is not challenging anything with respect to his removal
15 proceedings – he is challenging his unlawful detention. As previously stated, the Petitioner
16 cannot be seeking *judicial review of a final order of removal*, as he does not have a removal
17 order. Petitioner’ removal proceedings are pending in immigration court. See the EOIR
18 Online Case Information System corresponding to Petitioner’s Agency Number, accessible
19 at: <https://acis.eoir.justice.gov/en/caseInformation>.

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

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

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

7 Respondents contend that Petitioner was not released on conditional parole. Yet on
8 April 21, 2016 Petitioner was released on his own recognizance pursuant to § 1226. (See
9 *Exhibit I* attached to the Declaration of Petitioner Marcos Gonzalez, filed concurrently
10 herewith.) Under § 1226 there are only two ways a non-citizen can be released – either on
11 bond (of a minimum of \$1,500) or on conditional parole. 8 U.S.C. § 1226(a)(2). Because the
12 Petitioner was released on his own recognizance in 2016, this constituted release on
13 conditional parole under § 1226. See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16
14 (9th Cir. 2007) (holding that a noncitizen released on an “Order of Release on
15 Recognizance” pursuant to INA § 236 “was conditionally paroled under the authority of §
16 1226(a)”; see also *Lopez Benitez*, 2025 WL 2371588, at *4 (noting that “[r]elease on
17 recognizance . . . is a form of conditional parole from detention, authorized under § 1226”);
18 see also *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (explaining that
19 “Petitioner’s Order of Release does not indicate that she was examined or detained under §
20 1225 but instead explicitly premises her release on § 1226 (“[i]n accordance with § 236 of
21 the Immigration and Nationality Act”)) (quoting 8 U.S.C. § 1226).

22 Respondents’ claim that Petitioner is now suddenly detained under § 1225 is not
23
24

1 supported by the plain language of the statute. Simply put, as a noncitizen having entered
2 without inspection and having resided in the U.S. for over two decades, Petitioner is neither
3 an “applicant for admission” nor “seeking admission” under § 1225(b)(2)(A). In addition to
4 the plain language of the statute, case law also does not support Respondents’ contention that
5 he is now detained under § 1225. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir.
6 2020) (en banc) held that the phrase “application for admission” refers to the specific point
7 in time when a noncitizen submits an application to *physically enter* the United States. It is
8 not a perpetual status. See also *U.S. v. Gambino-Ruiz*, 91 F.4th 981, 989-990 (9th Cir. 2024).
9 As such, the mandatory detention provisions of § 1225(b)(2) do not apply.

10
11 Most importantly, Respondents’ Return does not address why the Order of Release on
12 Own Recognizance with respect to Petitioner’s release in 2016 specifically states that the
13 release is under § 1226, yet Petitioner is now suddenly subject to § 1225’s mandatory
14 detention provisions. Indeed, this Court recently stated, “The government cannot now
15 ‘simply switch tracks’ without explanation or any basis and purport to subject Petitioner to
16 mandatory detention under § 1225(b) after previously releasing him under § 1226(a).” *Shen*
17 *v. LaRose*, No. 3:25-cv-03235-GPC-BLM, *13 (S.D. Cal. Dec. 11, 2025).

18 Respondents’ position that even though Petitioner was previously released under §
19 1226 but is now somehow subject to § 1225(b)(2) defies both the plain language of the
20 statute, decades of practice by Respondents and Ninth Circuit and Supreme Court precedent.

21 **C. Petitioner’s Parole Revocation and Re-Detention Violates Due Process**

22 Respondents’ Return fails to address the substantial body of law regarding Petitioner’s
23 significant due process rights as someone who has lived in the United States for over two
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1 decades. Indeed, “due process” is not mentioned at all in Respondents’ Return.

2 As discussed in the Petition, numerous courts have determined ICE’s authority to
3 revoke conditional parole is constrained by the due process clause – including the Supreme
4 Court in *Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972) (a parolee's liberty involves
5 significant values within the protection of the Due Process Clause of the Fourteenth
6 Amendment) and the Ninth Circuit in *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir.
7 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
8 requirements of due process”). The guidance provided by *Matter of Sugay*, 17 I&N Dec. 647
9 (BIA 1981)—that ICE should not re-arrest a noncitizen absent changed circumstances—is
10 insufficient to protect Petitioner’s weighty interest in his freedom from detention.

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

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

8
9 Petitioner’s re-arrest and the revocation of his release on conditional parole without a
10 pre-deprivation hearing violate the Due Process Clause. The Due Process Clause prohibits
11 deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V.
12 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including
13 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
14 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts analyze procedural due process claims
15 such as this one in two steps: the first asks whether there exists a protected liberty interest
16 under the Due Process Clause, and the second examines the procedures necessary to ensure
17 any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky*
18 *Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

19 To determine which procedures are constitutionally sufficient to satisfy the Due
20 Process Clause, Courts apply the three-part test established in *Mathews v. Eldridge*, 424 U.S.
21 319 (1976). The Court must consider: (1) “the private interest that will be affected by the
22 official action;” (2) the “risk of an erroneous deprivation of such interest through the
23 procedures used, and the probable value, if any, of additional or substitute procedural
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1 safeguards;” and (3) “the Government’s interest including the function involved and the
2 fiscal and administrative burdens that the additional or substitute procedural requirement
3 would entail.” *Id.* at 335.

4 All three factors support a finding that Respondents’ revocation of Petitioner’s
5 conditional parole release without an opportunity to be heard deprived Petitioner of his due
6 process rights. First, Petitioner has a significant liberty interest in remaining out of custody
7 pursuant to his conditional parole. For nearly ten years preceding his re-detention on
8 December 2, 2025, Petitioner exercised that freedom under an immigration officer’s decision
9 to granting him conditional parole after a determination that he presented neither a flight risk
10 nor a danger to the community. In the nearly 10 years following his release, Petitioner has
11 worked to support himself and his family, hired counsel to ultimately dismiss his prior
12 removal proceedings in 2024, pursued consular processing to become a Lawful Permanent
13 Resident (the Form I-130 Petition filed by his wife was approved on December 2, 2025), and
14 has established extensive community ties in the United States. The Declaration submitted in
15 support of Respondents’ return erroneously states the Petitioner was arrested for a DUI in
16 2016 when this is not the case – the DUI arrest was instead in 2006. (See Declaration of
17 Petitioner Marcos Francisco Gonzalez submitted concurrently herewith.) Yet even if
18 Respondents’ contentions were true, the Petitioner was released by ICE on his own
19 recognizance *after* the DUI arrest. In short, even if the declaration of ICE officer Rosendo
20 Martinez Jr. is to be given full weight, Respondents are unable to point to any material
21 change in circumstance since his release on April 21, 2016 justifying his re-detention.
22

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

18 “Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s
19 parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez Salazar*
20 *v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3,
21 2025); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679,
22 at *7 (E.D. Cal. July 11, 2025) (finding where Petitioner “has not received any bond or
23 custody redetermination hearing,” the “risk of an erroneous deprivation of liberty is high”).
24

1 “Civil immigration detention is permissible only to prevent flight or protect against danger to
2 the community.” *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690).

3 Here, there is no evidence that Petitioner’s detention would serve either purpose.

4 “Since DHS’s initial determination that Petitioner should be [conditionally] paroled because
5 [he] posed no danger to the community and was not a flight risk, there is no evidence that
6 these findings have changed.” *Gonzales Salazar*, 2025 WL 3063629, at *3 (citing *Saravia v.*
7 *Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (“Release reflects a determination by
8 the government that the noncitizen is not a danger to the community or a flight risk.”); see
9 also *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574.

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

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

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1 **D. The Appropriate Remedy for Respondents' Violation is Immediate Release**

2 Respondents contend that the proper remedy would be directing a bond hearing under
3 § 1226(a). But this argument “misapprehend[s] the purpose of a pre-detention hearing: if
4 Petitioner is detained, he will already have suffered the injury he is now seeking to avoid.”
5 *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021); *see also E.A.T.B. v.*
6 *Wamsley*, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. 2025) (“Although the
7 Government notes that Petitioner may request a bond hearing while detained, such a post-
8 deprivation hearing cannot serve as an adequate procedural safeguard because it is after the
9 fact and cannot prevent an erroneous deprivation of liberty.”); *Domingo v. Kaiser*, Case No.
10 25-cv-05893, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) (“Even if Petitioner[]
11 received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at
12 that point, he will have already suffered the harm that is the subject of his motion; that is, his
13 potentially erroneous detention.”).

14
15 This is not a case of someone who entered without inspection but was never
16 previously detained. As affirmed recently by the Central District of California, the remedy
17 for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No. 5:25-cv-
18 01873-SSS-BFM (C.D. Cal. Nov. 20, 2025). This case concerns the class of non-citizens
19 who entered without inspection, were detained shortly after entry, were then released, but
20 then later re-detained. In other words, this is a re-detention case involving the due process
21 violation of the Petitioner not being provided with a hearing prior to being re-detained. As
22 such, the appropriate remedy for such a violation is immediate release.

1 This district has joined the growing chorus of district courts that have recognized that
2 noncitizens have a significant liberty interest in both “continued freedom after release on
3 own recognizance,” and have ordered immediate release. *Bonifaz v. LaRose*, No. 3:25-cv-
4 03226-JLS-AHG (S.D. Cal. Dec. 2, 2025); *Shen v. LaRose*, No. 3:25-cv-03235-GPC-BLM
5 (S.D. Cal. Dec. 11, 2025); *Sanchez Avalos v. Noem*, No. 3:25-cv-02906-CAB-VET (S.D.
6 Cal. Nov. 24, 2025); *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at
7 *6 (S.D. Cal. Aug. 11, 2025); *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL
8 2770629, at *3 (S.D. Cal. Sept. 26, 2025); *see also Prieto-Cordova*, No. 25-cv-2824-CAB-
9 DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-
10 RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Sayed Naser Noor v. Christopher*
11 *LaRose*, et al., No. 25-CV- 1824-GPC-MSB, 2025 WL 2800149, at *14 (S.D. Cal. Oct. 1,
12 2025); *N.A. v. LaRose et. al.* Case No.: 25-cv-2384-RSH-BLM (S.D. Cal. Oct. 7, 2025).

14 Finally, in addition to the due process violation, Petitioner also seeks relief under the
15 Administrative Procedures Act. Under the APA, a court must “hold unlawful and set aside
16 agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
17 accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in
18 excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C.
19 § 706(2)(A)-(C). Because the arrest of the Petitioner on December 2, 2025 at his USCIS
20 interview was arbitrary and capricious, as well as in violation of § 1226 and the due process
21 clause of the Constitution, it must be set aside and Petitioner should be immediately released.

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1 As such, immediate release (and not a bond hearing) is also the appropriate remedy
2 here.

3 Dated: December 22, 2025,

4 By: /s/ Kirsten Zittlau
5 Kirsten Zittlau
6 Attorney for Petitioner
7 Email: zittlulaw@gmail.com
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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the U.S. District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: December 22, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau

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