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10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 Nelson Javier Garcia Vergara,

13 Petitioner,

14 v.

15 Pamela Bondi, *et al.*,

16 Respondents.

Case No. 2:25-cv-02495-JAD-DJA

**Reply in Support of Petition**

1 INTRODUCTION

2 Nelson Javier Garcia Vergara (Garcia) came to the United States seeking  
3 asylum with his two young children after he became a target of the Venezuelan  
4 government for political reasons. After presenting himself at the border, Customs  
5 and Border Protection (CBP) paroled Garcia into the United States for his  
6 immigration proceedings. Garcia appeared at his two court hearings in immigration  
7 court before being unexpectedly ordered removed at the second hearing on  
8 September 23, 2025, for not having already filed his asylum application even though  
9 he was still within the one-year period allowed by law to file. Later that same day,  
10 on September 23rd, Las Vegas police arrested Garcia for driving without a license.  
11 After taking him into custody, the police handed Garcia over to ICE. ICE then  
12 detained him to effectuate a final removal order that didn't (and still doesn't) exist.  
13 His unlawful detention left his two young children without a parent because their  
14 mother had passed away in Venezuela. Garcia must be released.

15 STATEMENT OF FACTS AND PROCEDURAL HISTORY<sup>1</sup>

16 Garcia is a citizen of Venezuela. He came to the United States with his two  
17 children to seek asylum after he became a target of the Venezuelan government for  
18 political reasons. The mother of his children had previously passed away in  
19 Venezuela. Garcia and his children initially entered the United States without  
20 inspection and were sent back to Mexico by CBP through expedited removal.<sup>2</sup>  
21 Garcia then used the CBP One app<sup>3</sup> to schedule an appointment for December 30,  
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23 <sup>1</sup> Any factual allegations that do not cite to a specific document are made on  
24 information and belief.

25 <sup>2</sup> ECF No. 12-4 at 2.

26 <sup>3</sup> See Camilo Montoya-Valdez, Migrants in Mexico have used CBP One app 64  
27 million times to request entry into U.S., CBS News, Feb. 12, 2024,  
[https://www.cbsnews.com/news/immigration-cbp-one-app-migrants-mexico-64-  
million/](https://www.cbsnews.com/news/immigration-cbp-one-app-migrants-mexico-64-million/).

1 2024, to present himself and his kids at a port of entry to seek asylum. That day,  
2 Garcia was issued a Notice to Appear (NTA) in immigration court and was paroled<sup>4</sup>  
3 into the United States (along with his kids) for his immigration proceedings.<sup>5</sup>

4 Garcia was designated as an “arriving alien” in his NTA.<sup>6</sup>

5 Garcia and his kids went to Las Vegas. They only had two court hearings in  
6 the immigration court: one in April of 2025, and one on September 23, 2025. At the  
7 September hearing, the immigration judge (IJ) ordered removal.<sup>7</sup> Garcia was not  
8 ordered removed in absentia as indicated by Respondents.<sup>8</sup> The order of the IJ is  
9 not an in absentia decision, and it indicates that Garcia reserved appeal and was  
10 served via personal service, which would not have been possible if he were not  
11 present for the hearing.<sup>9</sup>

12 Garcia was not detained right after he was ordered removed but later that  
13 day. Las Vegas Metropolitan Police (LVMPD) arrested Garcia for driving without a  
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16 <sup>4</sup> Respondents did not submit Garcia’s parole documents nor did they include  
17 an I-94 number. Accordingly, there is no record of the term of parole that was issued  
18 to Garcia, but it was likely for two years because “most people who entered with  
19 parole through CBP One appointments at the U.S. Mexico border were granted two-  
20 year parole periods.” International Refugee Assistance Project, Important  
21 Information for People who Got Parole Using CBP One, “When does my CBP One  
22 Parole Expire?,” Oct. 10, 2025, [https://support.iraplegalinfo.org/hc/en-us/articles/42063206042388-Important-Information-for-People-Who-Got-Parole-Using-CBP-One#:~:text=but%20not%20forever\),.When%20does%20my%20CBP%20One%20parole%20expire?,date%20in%20that%20online%20system.](https://support.iraplegalinfo.org/hc/en-us/articles/42063206042388-Important-Information-for-People-Who-Got-Parole-Using-CBP-One#:~:text=but%20not%20forever),.When%20does%20my%20CBP%20One%20parole%20expire?,date%20in%20that%20online%20system.)

23 <sup>5</sup> ECF Nos. 12-3, 12-4 at 3.

24 <sup>6</sup> ECF No. 12-3 at 1.

25 <sup>7</sup> The IJ did not give Garcia a full year to file his application for asylum,  
26 which is the amount of time statutorily allowed to file such an application. See 8  
27 U.S.C. § 1158(a)(2)(B).

<sup>8</sup> ECF No. 12 at 3.

<sup>9</sup> ECF No. 12-1.

1 license.<sup>10</sup> Then they turned him over to ICE the next day.<sup>11</sup> The I-213 says that ICE  
2 Enforcement and Removal Operations (ERO) arrested Garcia “in order to affect the  
3 final order of removal issued against him.”<sup>12</sup> But the order was not final; it had just  
4 been issued that day, and Garcia had reserved appeal. 8 C.F.R. 1241.1(a), (c).  
5 Garcia filed an appeal to the Board of Immigration Appeals.<sup>13</sup> After it was  
6 dismissed, he filed a petition for review in the Ninth Circuit and a motion to stay  
7 removal.<sup>14</sup> That case is pending, and Garcia’s removal has been stayed pending a  
8 decision.<sup>15</sup>

9 **ARGUMENT**

10 **I. Garcia’s detention in ICE custody is unlawful.**

11 **A. Respondents violated Garcia’s Fifth Amendment substantive**  
12 **due process rights when they arrested him pursuant to a final**  
13 **order of removal that doesn’t exist.**

14 Respondents did not submit the ICE warrant for arrest that ICE relied on  
15 when taking Garcia into custody.<sup>16</sup> However, the I-213 indicates that on “September  
16 24, 2025, ERO Salt Lake City/Las Vegas arrested Garcia-Vergara in order to affect  
17 the final order of removal issued against him.”<sup>17</sup> This suggests that ICE sought to

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19 <sup>10</sup> ECF No. 12-4 at 3. The I-213 says the case is pending but it is not; the  
20 District Attorney’s Office declined to prosecute. *See* Ex. 1.

21 <sup>11</sup> ECF No. 12-4 at 2.

22 <sup>12</sup> ECF No. 12-4 at 3.

23 <sup>13</sup> ECF No. 12-2.

24 <sup>14</sup> *See* Case No. 25-7698 at dkt. nos. 1, 2.

25 <sup>15</sup> Case No. 25-7698 at dkt no. 6.

26 <sup>16</sup> This violates this Court’s order that Respondents “file any documents  
27 referenced or relied upon in the responsive pleading.” ECF No. 3 at 3. Even if  
Respondents didn’t specifically reference the warrant, it is an essential document to  
support the factual allegations in their response concerning detention.

<sup>17</sup> ECF No. 12-4 at 3.

1 detain Garcia pursuant to 8 U.S.C. § 1231, which provides detention authority to  
2 detain an individual with a final order of removal during the removal period. The  
3 problem is that there was no final order of removal at the time Garcia was detained,  
4 and there is still not a final order.

5 Eight C.F.R. § 1241(a)(1)(B) explains when an order of removal becomes final.  
6 Under 8 U.S.C. § 1241(a)(1)(c), the removal order issued by an IJ does not become  
7 final until the expiration of the time allotted for an appeal if the noncitizen reserves  
8 appeal. Garcia clearly fell under that subsection when he was detained by ICE on  
9 September 24, 2025, because he had just been ordered removed by the IJ the day  
10 before and he reserved appeal.<sup>18</sup> The removal period has still not started because  
11 Garcia's removal order is being challenged in the Ninth Circuit and that court has  
12 stayed Garcia's removal. 8 U.S.C. § 1231(a)(1)(B); *see also Prieto-Romero v. Clark*,  
13 534 F.3d 1053, 1059 (9th Cir. 2008) ("the removal period begins only after the court  
14 denies the petition and withdraws the stay of removal."). Accordingly, a final  
15 removal order cannot form the basis for Garcia's arrest by ICE. Garcia's detention  
16 by ICE was based on untrue or inaccurate information and therefore his detention  
17 violates his due process rights, and he must be released. "The Fifth Amendment  
18 entitles aliens to due process of law in deportation proceedings." *See Hussain v.*  
19 *Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). The Due Process Clause extends to all  
20 persons regardless of status. *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025).

21 Detaining Garcia for a false or nonexistent reason also violates the  
22 Administrative Procedures Act (APA). Under the APA, a court must hold unlawful  
23 and set aside agency action found to be "arbitrary, capricious, an abuse of  
24 discretion, or otherwise not in accordance with law" or "without observance of  
25 procedure required by law." 5 U.S.C. § 706(2). An agency action is "arbitrary and  
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27 <sup>18</sup> ECF No. 12-1 at 2.

1 capricious if the agency has relied on factors which Congress has not intended it to  
2 consider, entirely failed to consider an important aspect of the problem, offered an  
3 explanation for its decision that runs counter to the evidence before the agency, or is  
4 so implausible that it could not be ascribed to a difference in view or the product of  
5 agency expertise.” *Motor Vehicles Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*

6 *Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “defer to an agency’s determinations  
7 so long as the agency ‘gives adequate reasons for its decisions, in the form of a  
8 satisfactory explanation for its action including a rational connection between the  
9 facts found and the choice made.” *Nat. Res. Def. Council, Inc. v. United States Env’t*  
10 *Prot. Agency*, 961 F.3d 160, 170 (2d Cir. 2020) (cleaned up). Here, ICE’s decision to  
11 detain Garcia was unlawful and should be set aside because there is no rational  
12 connection between the facts and the choice to detain Garcia, and they have offered  
13 no rational explanation for the action.

14 **B. Respondents violated Garcia’s established Fifth Amendment**  
15 **right to procedural due process when they detained him**  
16 **without a pre-deprivation bond hearing.**

17 **1. Detention pursuant to 8 U.S.C. § 1226(a).**

18 A preliminary question this Court must answer in evaluating the procedural  
19 due process protections to which an individual is entitled is which statute provides  
20 the detention authority. Here, as explained above, ICE evidently sought to detain  
21 Garcia under 8 U.S.C. § 1231, but that detention is unlawful because there was no  
22 final order of removal, and he should be released. However, even if this Court  
23 agrees with the government<sup>19</sup> that Garcia is detained pursuant to the discretionary  
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26 <sup>19</sup> See ECF No. 12 at 3–4 (“Detention and Removal Under 1226(a)”), 9–10  
27 (arguing at length that *Rodriguez Diaz* precludes relief, which is a case concerning  
detention under §1226(a)).

1 detention authority of 8 U.S.C. § 1226(a)), he should still be released<sup>20</sup> because he  
2 was present in the U.S. at the time of his detention and was not seeking admission.  
3 Respondents acknowledge as much in their response to the petition.<sup>21</sup>

4 Respondents argue at length that *Rodriguez Diaz v. Garland*, 53 F. 4th 1189  
5 (9th Cir. 2022), precludes relief on this claim, and that case concerns detention  
6 under § 1226(a).<sup>22</sup> Garcia will only briefly address the *Rodriguez Diaz* arguments  
7 because Respondents' argument does not seem to cogently support their position in  
8 any ascertainable way. *Rodriguez Diaz* concerned the question of whether  
9 procedural due process mandated additional bond hearings for individuals detained  
10 subject to 8 U.S.C. § 1226(a) who had already had a bond hearing. Here, Garcia has  
11 never had a bond hearing even though he is entitled to one, and he should have  
12 received a pre-deprivation bond hearing. *See infra* Section 2. Respondents'  
13 argument that Garcia's claim is "foreclosed" by *Rodriguez Diaz* because he  
14 "receiv[ed] a final removal order, appeal[ed] such order to the BIA and now [is]  
15 appealing the BIA's decision to the Ninth Circuit Court of Appeals" simply doesn't  
16 make sense.<sup>23</sup> The fact that Garcia has taken advantage of appeals and direct  
17 review of his removal order is a matter separate and apart from judicial review of a  
18 bond determination or the number of bond hearings to which an individual detained  
19 under § 1226(a) is entitled. Moreover, those issues are irrelevant here because  
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21 \_\_\_\_\_  
22 <sup>20</sup> As stated *supra* Garcia believes he was unlawfully taken into detention  
23 through a misapplication of 8 U.S.C. §1231. However, he agrees that the only  
24 detention authority that could apply to him is the discretionary detention authority  
25 of 8 U.S.C. § 1226(a) because he was present in the United States without  
admission or inspection when he was detained and therefore not subject to  
detention under 8 U.S.C. § 1225. Garcia does not brief that issue because  
Respondents don't raise it.

26 <sup>21</sup> ECF No. 12 at 3–4 ("Detention and Removal Under 1226(a)").

27 <sup>22</sup> ECF No. 12 at 9–10.

<sup>23</sup> ECF No. 12 at 9.

1 Garcia has not had even a single bond hearing. He is not challenging a bond  
2 determination by an IJ but rather his initial detention which was unlawful because  
3 no individualized custody assessment was done by ICE.

4 **2. Garcia was entitled to a pre-deprivation bond hearing.**

5 Detention under 8 U.S.C. § 1226(a) is discretionary, not mandatory. 8 U.S.C.  
6 § 1226(a) (“[o]n a warrant issued by the Attorney General, an alien may be arrested  
7 and detained pending a decision on whether the alien is to be removed from the  
8 United States.”) “[T]he discretionary authority in § 1226(a) requires an  
9 individualized bond determination before a noncitizen may be taken into custody.”  
10 *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at \*8 (E.D.N.Y. Oct.  
11 6, 2025) (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“the  
12 government does not dispute that 8 U.S.C. § 1226(a) and its implementing  
13 regulations require ICE officials to make an individualized custody determination”)  
14 (internal quotations omitted.)) Under the implementing regulations, the factors that  
15 be considered under § 1226(a) *prior to detention* are whether the noncitizen poses a  
16 “danger to property or persons” and whether he is “likely to appear for any future  
17 proceeding.” 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8). Here, Garcia did not  
18 receive any such process, so his detention violates his procedural due process rights.

19 **3. This Court should order Garcia’s immediate release**  
20 **under *Mathews*.**

21 To determine whether a civil detention violates a detainee’s procedural due  
22 process rights, courts in this district have frequently applied the three-part  
23 balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See De Leon v.*  
24 *Mayorkas*, No. 2:23-cv-02073-GMN-VCF, 2024 WL 343437 (D. Nev. Jan. 29, 2024);  
25 *Ortiz-Castillo v. United States*, No. 2:23-cv-01485-RFB-MDC, 2024 WL 756075 (D.  
26 Nev. Feb. 23, 2024); *Arechiga v. Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023  
27 WL 5207589 (D. Nev. Aug. 11, 2023). In doing so, a court must weigh (1) the private

1 interest that will be affected by the official action; (2) the risk of an erroneous  
2 deprivation of such interest through the procedures used and the probable value of  
3 additional procedural safeguards; and (3) the United States' interest, including the  
4 function involved and fiscal and administrative burdens the additional procedural  
5 safeguards would entail. *Mathews*, 424 U.S. at 335. This Court should apply the  
6 *Mathews* test and find that Garcia warrants immediate release.

7 **a. The Private Interest**

8 The private interest at stake here for Garcia is to be free from detention and  
9 to be able to be with and care for his children, for whom he is the only living parent.  
10 "One of the 'most elemental of liberty interests' is to be free from detention." *Meza v.*  
11 *Lewis, et. al.*, No. 4:25-CV-171-RGJ, 2026 WL 92102, at \*11 (W.D. Ky. Jan. 13,  
12 2026), quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from  
13 imprisonment—from government custody, detention, or other forms of physical  
14 restraint—lies at the heart of the very liberty that [the Due Process Clause]  
15 protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because of Garcia's  
16 detention, he has been separated from his two young children (aged 8 and 10 at the  
17 time of detention)<sup>24</sup> for nearly four months. Garcia is their only living parent and  
18 their main source of financial and emotional support. His detention has left them  
19 without a parent and is imposing a significant hardship to Garcia and his young  
20 sons. Accordingly, the first *Mathews* factor strongly favors Garcia.

21 **b. The Risk of Error**

22 The second factor also weighs in Garcia's favor because there is a significant  
23 risk that he has been erroneously deprived of his liberty because he was detained  
24 without any individualized assessment as is required." 8 C.F.R. § 1236.1(c)(8); 8  
25 C.F.R. § 236.1(c)(8). "A re-detention, without any individualized assessment, leads  
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<sup>24</sup> ECF No. 12-4 at 3.

1 to a high risk of erroneous deprivation of an individual's liberty interest.” *Meza*,  
2 2026 WL 92102, at \*11, citing *Munoz Materano v. Arteta*, 2025 WL 2630826, at \*15  
3 (S.D.N.Y. Sep. 12, 2025) (holding that “re-detention without any individualized  
4 assessment” establishes a “high risk of erroneous deprivation” of a protected liberty  
5 interest). In Garcia’s case in particular the risk of erroneous deprivation of liberty is  
6 extremely high because Respondents have not provided any evidence that would  
7 establish that Garcia presents a danger or a flight risk such that he would warrant  
8 detention had a proper review been done. Garcia has no criminal record. His only  
9 criminal arrest was for driving without a license the day that LVMPD took him into  
10 custody and handed him to ICE. The District Attorney declined to prosecute that  
11 case so there is no conviction but more importantly, driving without a license is not  
12 a crime that evinces dangerousness.<sup>25</sup> Garcia is also not a flight risk. He appeared  
13 for his court hearings and has an active appeal (as noted above, he was not ordered  
14 removed in absentia) and he is the only parent and provider for his two minor  
15 children, which makes him unlikely to flee. Thus, the second *Mathews* factor also  
16 heavily favors Garcia.

17 **c. The United States’ Interest**

18 The third and final *Mathews* factor weighs in Garcia’s favor. While the  
19 government “has a strong interest in preventing aliens from ‘remain[ing] in the  
20 United States in violation of our law’” and “has an obvious interest in ‘protecting the  
21 public from dangerous criminal aliens,’” those interests are not the ones implicated  
22 by this petition. See *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore v. Kim*, 538  
23 U.S. 510, 518, 515 (2003)). “It is important to stress that the government interest at  
24 stake here is not the continued detention of Petitioner, but the government’s ability  
25 to detain him without a bond hearing. *Singh v. Garland*, No. 1:23-CV-01043-EPG-

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<sup>25</sup> Ex. 1.

1 HC, 2023 WL 5836048, at \*6 (E.D. Cal. Sept. 8, 2023) (internal quotations omitted);  
2 *see also* *Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at \*5  
3 (N.D. Cal. June 14, 2022) (“Although the Government has a strong interest in  
4 enforcing the immigration laws and in ensuring that lawfully issued removal orders  
5 are promptly executed, the Government’s interest in detaining Petitioner without  
6 providing an individualized bond hearing is low”). The same reasoning applies to  
7 the scenario of an individualized pre-detention custody determination. This is a  
8 procedure that is already in place, and already owed to Garcia. Any burden to the  
9 government is negligible. Therefore, the third *Mathews* factor favors Garcia.

10 **d. Release is Appropriate**

11 “Numerous courts across the country have ordered the release of individuals  
12 stemming from ICE’s illegal detention.” *Meza*, 2026 WL 92102, at \*12 (collecting  
13 cases). In this case, release is the appropriate remedy because even if Respondents  
14 have discretionary authority to detain Garcia under §1226(a), they did not employ  
15 proper procedures (i.e. an individualized custody determination considering flight  
16 risk and danger) in undertaking Garcia’s detention. Instead, his re-detention was  
17 based on false claims about a final removal order that didn’t exist. Other district  
18 courts have ordered release in similar situations. *See e.g. Meza*, 2026 WL 92102, at  
19 \*12 (the Court is ordering his release because of the United States’ illegal actions it  
20 undertook in Meza’s detention); *Hyppolite*, 2025 WL 2829511 \*16 (granting  
21 immediate release and ordering that respondents could not re-detain petitioner  
22 without providing him with “notice and an opportunity to be heard at a pre-  
23 deprivation bond hearing...at which the government will bear the burden of  
24 showing that his detention is authorized under 8 U.S.C. §1226(a)”; *Rodriguez-*  
25 *Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at \*31 (E.D.N.Y.  
26 Nov. 28, 2025) (ordering release instead of a bond hearing because “a bond  
27 determination by a DHS officer or an immigration judge would not remedy the core

1 constitutional violation at issue here. [Petitioner’s] detention was unlawful from its  
2 inception because ICE detained her under the wrong statute and without any notice  
3 or opportunity to be heard, much less the procedures required under Section  
4 1226(a)”; *Rodriguez v. Woosley*, No. 4:25-CV-168-RGJ, 2026 WL 36345, at \*12  
5 (W.D. Ky. Jan. 6, 2026) (ordering release for petitioner detained under § 1226(a)  
6 because the respondents took illegal actions in detaining petitioner, and ordering  
7 that petitioner must be provided with a pre-detention hearing before any re-  
8 detention could occur). This Court should order Garcia’s immediate release and that  
9 he may not be re-detained without a pre-deprivation hearing that complies with the  
10 requirements of § 1226(a).

11 **CONCLUSION**

12 This Court should determine that Mr. Garcia-Vergara’s detention violates  
13 both his substantive and procedural due process rights and order his immediate  
14 release or grant any other relief this Court finds appropriate. The Court should  
15 further order that Respondents may not re-detain Mr. Garcia-Vergara without  
16 complying with the requirements of 8 U.S.C. § 1226(a).

17 Dated January 15, 2026.

18 Respectfully submitted,

19 Rene L. Valladares  
20 Federal Public Defender

21 */s/ Laura Barrera*

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Laura Barrera  
23 Assistant Federal Public Defender  
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