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8 U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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Case No.: 3:25-cv-03649-RBM-MSB

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

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents-Defendants.

1 The Petition makes three (3) claims for relief, namely, 1) Due Process Violation  
2 under the Fifth Amendment of the United States Constitution (unlawful re-detention  
3 without first being provided a due process hearing to determine whether his incarceration  
4 is justified), 2) Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)  
5 Unlawful Denial of Bond (as well as unlawful re-detention without first being provided a  
6 due process hearing to determine whether his incarceration is justified), and 3) Statutory  
7 Violation – that Petitioner’s Detention is in Violation of 8 U.S.C. § 1226(a)-(b).  
8

9 Although Respondents concede in their return that the Petitioner is in fact detained  
10 under Section 1226, yet erroneously state that the Petitioner is a *Maldonado Bautista*  
11 class member. See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, ---  
12 F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Dec. 18, 2025).<sup>1</sup> As stated in the Petition –  
13 and not contested by Respondents in their return – the Petitioner was arrested and  
14 released on conditional parole shortly after crossing into the United States over two years  
15 ago. As such, he is not as *Maldonado Bautista* class member.  
16

17 Respondents further incorrectly suggest that the remedy Petitioner is entitled to is a  
18 post-deprivation bond hearing. Rather, the remedy for the Petitioner being re-detained  
19 without a pre-deprivation hearing violates the Petitioner’s well-established due process  
20

21 \_\_\_\_\_  
22 <sup>1</sup> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or  
23 will enter the United States without inspection; **(2) were not or will not be apprehended upon**  
24 **arrival;** and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or §  
1231 at the time the Department of Homeland Security makes an initial custody determination.  
[emphasis added]. *Id.*, Dkt. No. 93 (Amended Order Consolidating the Court’s Order on Motion for  
Partial Summary Judgment, Class Certification, and Clarification)

1 rights – something the Respondent also do not address in their return. As such, and as  
2 further discussed below, the remedy owed Petitioner is immediate release.

3 **A. Petitioner’s Parole Revocation and Re-Detention Violates Due Process**

4 Respondents’ Return fails to address the substantial body of law regarding  
5 Petitioner’s significant due process rights as someone who was previously released and  
6 has lived in the United States for over two years. Indeed, “due process” is not mentioned  
7 at all in Respondents’ Return.  
8

9 As discussed in the Petition, numerous courts have determined ICE’s authority to  
10 revoke conditional parole is constrained by the due process clause – including the  
11 Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972) (a parolee’s liberty  
12 involves significant values within the protection of the Due Process Clause of the  
13 Fourteenth Amendment) and the Ninth Circuit in *Hernandez v. Sessions*, 872 F.3d 976,  
14 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always  
15 constrained by the requirements of due process”). The guidance provided by *Matter of*  
16 *Sugay*, 17 I&N Dec. 647 (BIA 1981)—that ICE should not re-arrest a noncitizen absent  
17 changed circumstances—is insufficient to protect Petitioner’s weighty interest in his  
18 freedom from detention.  
19

20 In accordance with the Supreme Court and Ninth Circuit, district courts have also  
21 repeatedly recognized that the demands of due process and the limitations on DHS’s  
22 authority to revoke a noncitizen’s release set out in DHS’s stated practice and *Matter of*  
23 *Sugay* both require a pre-deprivation hearing for a noncitizen on conditional parole, like  
24

1 Petitioner, before ICE re-detains him. See, e.g., *Ortega v. Bonnar*, 415 F. Supp. 3d 963  
2 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3  
3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL  
4 783561, at \*2 (N.D. Cal. Mar. 1, 2021).

5 But “even when ICE has the initial discretion to detain or release a noncitizen  
6 pending removal proceedings, after that individual is released from custody she has a  
7 protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d  
8 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022  
9 WL 1443250, at \*2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts . . . facing  
10 facts similar to the present case and finds Petitioner raised serious questions going to the  
11 merits of his claim that due process requires a hearing before an IJ prior to re-  
12 detention.”)); see *Padilla v. U.S. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)  
13 (“The Supreme Court has consistently held that non-punitive detention violates the  
14 Constitution unless it is strictly limited, and, typically, accompanied by a prompt  
15 individualized hearing before a neutral decisionmaker to ensure that the imprisonment  
16 serves the government’s legitimate goals.”)

17  
18  
19 Petitioner’s re-arrest and the revocation of his release on conditional parole without  
20 a pre-deprivation hearing violate the Due Process Clause. The Due Process Clause  
21 prohibits deprivations of life, liberty, and property without due process of law. U.S.  
22 Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United  
23 States, including [noncitizens], whether their presence here is lawful, unlawful,  
24

1 temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts analyze  
2 procedural due process claims such as this one in two steps: the first asks whether there  
3 exists a protected liberty interest under the Due Process Clause, and the second examines  
4 the procedures necessary to ensure any deprivation of that protected liberty interest  
5 accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S.  
6 454, 460 (1989).

7  
8 To determine which procedures are constitutionally sufficient to satisfy the Due  
9 Process Clause, Courts apply the three-part test established in *Mathews v. Eldridge*, 424  
10 U.S. 319 (1976). The Court must consider: (1) “the private interest that will be affected  
11 by the official action;” (2) the “risk of an erroneous deprivation of such interest through  
12 the procedures used, and the probable value, if any, of additional or substitute procedural  
13 safeguards;” and (3) “the Government’s interest including the function involved and the  
14 fiscal and administrative burdens that the additional or substitute procedural requirement  
15 would entail.” *Id.* at 335.

16 All three factors support a finding that Respondents’ revocation of Petitioner’s  
17 conditional parole release without an opportunity to be heard deprived Petitioner of his  
18 due process rights. First, Petitioner has a significant liberty interest in remaining out of  
19 custody pursuant to his conditional parole. For two years preceding his re-detention on  
20 August 2, 2025, Petitioner exercised that freedom under an immigration officer’s  
21 decision to granting him conditional parole after a determination that he presented neither  
22 a flight risk nor a danger to the community. In the 2 years following his release,  
23  
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1 Petitioner has timely filed his asylum application, requested and received his work  
2 permit, worked to support himself and his family, hired counsel to represent him in his  
3 political asylum case, and has established extensive community ties in the United States.

4 Although Petitioner was released on conditional parole (and thus under  
5 government custody), he retained a weighty liberty interest under the Due Process Clause  
6 of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143,  
7 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*,  
8 408 U.S. 471, 482-483 (1972). “Even individuals who face significant constraints on their  
9 liberty or over whose liberty the government wields significant discretion retain a  
10 protected interest in their liberty.” *Pinchi*, 792 F. Supp. 3d at 1032. Although the initial  
11 decision to detain or release an individual may be within the government’s discretion,  
12 “the government’s decision to release an individual from custody creates ‘an implicit  
13 promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if  
14 [they] fail[] to live up to the . . . conditions of release.’” *Id.* (quoting *Morrissey v. Brewer*,  
15 408 U.S. 471, 482 (1972)); see also *Zadvydas*, 533 U.S. at 690 (“Freedom from  
16 imprisonment—from government custody, detention, or other forms of physical  
17 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”); *Morrissey*,  
18 408 U.S. at 482 (“Subject to the conditions of his parole, he can be gainfully employed  
19 and is free to be with family and friends and to form the other enduring attachments of  
20 normal life.”); *Oliveros v. Kaiser*, No. 25-CV-07117-BLF, 2025 WL 2677125, at \*7  
21 (N.D. Cal. Sept. 18, 2025).  
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1 “Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s  
2 parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez*  
3 *Salazar v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at \*4 (S.D. Cal.  
4 Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL  
5 1918679, at \*7 (E.D. Cal. July 11, 2025) (finding where Petitioner “has not received any  
6 bond or custody redetermination hearing,” the “risk of an erroneous deprivation of liberty  
7 is high”). “Civil immigration detention is permissible only to prevent flight or protect  
8 against danger to the community.” *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533  
9 U.S. at 690).

10  
11 Here, there is no evidence that Petitioner’s detention would serve either purpose.  
12 “Since DHS’s initial determination that Petitioner should be [conditionally] paroled  
13 because [he] posed no danger to the community and was not a flight risk, there is no  
14 evidence that these findings have changed.” *Gonzales Salazar*, 2025 WL 3063629, at \*3  
15 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (“Release  
16 reflects a determination by the government that the noncitizen is not a danger to the  
17 community or a flight risk.”); *see also Ledesma Gonzalez v. Bostock*, 2025 WL 2841574.

18  
19 Third, Respondents’ interest in detaining Petitioner without a hearing is low. *See*  
20 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“If the government wishes  
21 to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so;  
22 but its interest in doing so without a hearing is low.”); *Pinchi*, 792 F. Supp. 3d at 1036  
23 (“Detention for its own sake, to meet an administrative quota, or because the government  
24

1 has not yet established constitutionally required pre-detention procedures is not a  
2 legitimate government interest.”). “Therefore, because Respondents detained Petitioner  
3 by revoking [his] parole in violation of the Due Process Clause, [his] detention is  
4 unlawful.” *Gonzalez Salazar*, at \*5; see also, *Doe v. Becerra*, 2:25-cv-00647, (E.D. Cal.  
5 2025); *Rodriguez-Flores v. F. Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL  
6 2684181 (C.D. Cal. Aug. 14, 2025).

7  
8 Based on the *Mathews* factors, due process requires Petitioner to be released from  
9 custody and receive a bond hearing before an IJ before being re-detained.

10 **B. The Appropriate Remedy for Respondents’ Violation is Immediate Release**

11 Respondents suggest that the proper remedy would be directing a bond hearing  
12 under § 1226(a). But this argument “misapprehend[s] the purpose of a pre-detention  
13 hearing: if Petitioner is detained, he will already have suffered the injury he is now  
14 seeking to avoid.” *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021);  
15 see also *E.A.T.B. v. Wamsley*, --- F. Supp. 3d ---, 2025 WL 2402130, at \*6 (W.D. Wash.  
16 2025) (“Although the Government notes that Petitioner may request a bond hearing while  
17 detained, such a post-deprivation hearing cannot serve as an adequate procedural  
18 safeguard because it is after the fact and cannot prevent an erroneous deprivation of  
19 liberty.”); *Domingo v. Kaiser*, Case No. 25-cv-05893, 2025 WL 1940179, at \*3 (N.D.  
20 Cal. July 14, 2025) (“Even if Petitioner[] received a prompt post-detention bond hearing  
21 under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the  
22 harm that is the subject of his motion; that is, his potentially erroneous detention.”).  
23  
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1 This is not a case of someone who entered without inspection but was never  
2 previously detained. As affirmed recently by the Central District of California, the  
3 remedy for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No.  
4 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). This case concerns the class of non-  
5 citizens who entered without inspection, were detained shortly after entry, were then  
6 released, but then later re-detained. In other words, this is a re-detention case involving  
7 the due process violation of the Petitioner not being provided with a hearing prior to  
8 being re-detained. As such, the appropriate remedy for such a violation is immediate  
9 release.  
10

11 This district has joined the growing chorus of district courts that have recognized  
12 that noncitizens have a significant liberty interest in both “continued freedom after  
13 release on own recognizance,” and have ordered immediate release. *Bonifaz v. LaRose*,  
14 No. 3:25-cv-03226-JLS-AHG (S.D. Cal. Dec. 2, 2025); *Shen v. LaRose*, No. 3:25-cv-  
15 03235-GPC-BLM (S.D. Cal. Dec. 11, 2025); *Sanchez Avalos v. Noem*, No. 3:25-cv-  
16 02906-CAB-VET (S.D. Cal. Nov. 24, 2025); *Alegria Palma v. Larose*, No. 25-cv-1942-  
17 BJC-MMP, ECF No. 14, at \*6 (S.D. Cal. Aug. 11, 2025); *Sanchez v. LaRose*, No. 25-CV-  
18 2396-JES-MMP, 2025 WL 2770629, at \*3 (S.D. Cal. Sept. 26, 2025); *see also Prieto-*  
19 *Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025);  
20 *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17,  
21 2025); *Sayed Naser Noor v. Christopher LaRose*, et al., No. 25-CV- 1824-GPC-MSB,  
22 2025 WL 2800149, at \*14 (S.D. Cal. Oct. 1, 2025); *N.A. v. LaRose et. al.*, No.: 25-cv-  
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1 2384-RSH-BLM (S.D. Cal. Oct. 7, 2025); *Francisco Gonzalez v. LaRose et. al.*, No.  
2 3:25-cv-03547-JLS-MSB (S.D. Cal. Dec. 23, 2025); *Buitrago Sanchez v. LaRose et. al.*,  
3 No. 3:25-cv-03024-BJC-BLM (S.D. Cal. Dec. 23, 2025).

4 Finally, in addition to the due process violation, Petitioner also seeks relief under  
5 the Administrative Procedures Act. Under the APA, a court must “hold unlawful and set  
6 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not  
7 in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is  
8 “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5  
9 U.S.C. § 706(2)(A)-(C). Because the arrest of the Petitioner on August 2, 2025 was  
10 arbitrary and capricious, as well as in violation of § 1226 and the due process clause of  
11 the Constitution, the agency action must be set aside and Petitioner should be  
12 immediately released.  
13

14 As such, immediate release (and not a bond hearing) is the appropriate remedy  
15 here.  
16

17 Dated: December 29, 2025,

18 By: /s/ Kirsten Zittlau  
19 Kirsten Zittlau  
20 Attorney for Petitioner  
21 Email: zittlaulaw@gmail.com  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 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 29, 2025

/s/ Kirsten Zittlau  
Kirsten Zittlau

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