UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NATHANIEL STERLING, *Petitioner,*	)	No.: 3:25cv2122 (KAD)
v.	)	
PAMELA J. BONDI. et al. *Respondents.*	)	January 20, 2026

REPLY MEMORANDUM OF LAW IN SUPPORT OF THE PETITION

For over seven years, Petitioner Nathaniel Sterling has lived at home, started a family, and worked to support his children while on bond set by the Immigration Court. ICE now claims it had unfettered authority to re-detain Mr. Sterling based on a bond revocation of which it never notified Mr. Sterling or his counsel, and which Mr. Sterling could not challenge in a post-deprivation bond hearing. But as numerous other courts have held, re-detention of a noncitizen on bond—like re-detention of a parolee—requires notice and a ***pre***-deprivation hearing. Notice to a third-party obligor is constitutionally insufficient. Nor can the harm be cured by a post-deprivation hearing where the Immigration Court lacked jurisdiction to consider the revocation.

ICE's arrest of Mr. Sterling at the Connecticut Superior Court also violated the INA and interfered with Connecticut's administration of justice in violation of the Tenth Amendment. Because the scope of the state's common law privilege against courthouse arrests is central to resolution of Mr. Sterling's claims, this Court should certify to the Connecticut Supreme Court the question of whether the privilege applies to misdemeanor criminal defendants such as Mr. Sterling.

A. Due Process Required Notice and a Pre-deprivation Hearing.

Respondents erroneously argue that the INA grants discretion for bond revocation and re-arrest without a pre-deprivation hearing "at any time." ECF 15 at 12 (citing 8 U.S.C. § 1226(b) and 8 C.F.R. § 1236.1(c)(9)). But "that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar,* 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019). Here, Mr. Sterling has a substantial liberty interest, one that grew stronger over the seven years that he has been on bond. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), protection of that substantial interest requires notice and a pre-deprivation hearing.

1. Petitioner's Liberty Interest is Substantial.

Freedom from imprisonment "is the most significant liberty interest there is." *Velasco Lopez v. Decker*, 978 F. 3d 842, 851 (2d Cir. 2020). Respondents concede that the first factor in the *Mathews* three-factor test weighs in Mr. Sterling's favor. ECF 15 at 16. *See also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That liberty interest has grown significantly during the seven years that Mr. Sterling has been released on bond. In that time, Mr. Sterling has become the father to two U.S. citizen children, for whom he is the primary breadwinner and caretaker. He has sole custody of his daughter and is the primary care provider for his son who has an autism diagnosis and shows signs of Von Willebrand's disease.[1] Having graduated from high school and earned a postgraduate diploma, Mr. Sterling has maintained employment to support the household he shares with his two children, mother, and three younger brothers, all of whom are U.S. citizens. A tragic and unprovoked shooting in 2024 left Mr. Sterling with acute medical needs which have been exacerbated during his detention. *See* ECF 18-3 at 8, 29.

2. <u>The Risk of Erroneous Deprivation Was High.</u>

The facts of this case demonstrate the high risk of erroneous deprivation in the absence of notice and a pre-deprivation hearing. Here, Mr. Sterling did not receive notice of the requirement to attend an ICE appointment in August 2022 or the subsequent notice of bond breach in October 2022; the bond obligor to whom ICE claims notice was sent is defunct and failed to notify Mr. Sterling of any notices received; and the government's dangerousness determination upon re-arrest was based in large part on charges that were dismissed the same day as the arrest.

The government does not dispute that it never provided Mr. Sterling notice of a requirement to attend an ICE appointment or of breach of bond, arguing instead that such notice was not required by the terms of the bond. ECF 15 at 10 n.1. Due process requires that notice be "reasonably calculated, under all the circumstances to apprise interested parties, of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover*

[1] Mr. Sterling's young son has shown signs but not yet received a formal diagnosis for this severe bleeding disorder.

Bank & Tr. Co., 339 U.S. 306, 314 (1950). Notice sent exclusively to a bond obligor was neither reasonably calculated nor sufficient to inform Mr. Sterling—the interested party requiring notice—of the alleged breach. The Fifth Amendment protects Mr. Sterling's substantial liberty interests separate and apart from the contractual interests of a third-party obligor.

Having been released on bond in a civil proceeding, Mr. Sterling has at least as strong a liberty interest in his continued liberty as a parolee. *See Morrissey v. Brewer,* 408 US. 471, 481 (1972) (recognizing due process rights where prisoner demonstrates "grievous loss" of liberty). Because prison inmates on temporary release programs are entitled to a pre-deprivation hearing, Mr. Sterling must be as well. *See Tracy v. Salamack,* 572 F.2d 393 (2d Cir. 1978) (requiring pre-revocation hearing for prison inmate on temporary release); *Anderson v. Recore,* 317 F.3d 194 (2d Cir. 2003) (holding *Tracy* rule was clearly established for purposes of qualified immunity);[2] *accord Rodriguez Diaz v. Kaiser,* 2025 WL 3011852, at *9 (N.D. Cal. Sept. 16, 2025).

Contrary to the government's argument, a post-deprivation bond hearing was inadequate to address the risk of erroneous deprivation caused by the bond revocation. This is because the January 8, 2026 Immigration Court hearing did not allow Mr. Sterling to challenge the bond revocation—the basis for his re-arrest. As Judge Trina Thompson recently explained:

> [A] pre-deprivation hearing is the only process that could hold Respondents accountable to their burden to legally justify re-detention. After an arrest and revocation of bond, [Petitioner] may seek review only *of the custody determination* pursuant to 8 U.S.C. § 1226(a) by bearing the burden to demonstrate eligibility for release . . . [Petitioner] cannot seek review of the revocation of his bond in the first instance.... [A] post-deprivation hearing where the

[2] Judge Williams has reached the same conclusion in a similar context. *See Freeman v. Pullen,* 658 F. Supp. 3d 53 (D. Conn. 2023) (requiring pre-revocation hearing before termination of CARES Act home confinement); *Tompkins v. Pullin,* 2022 WL 3212368 (D. Conn. Aug. 9, 2022) (same). While Judge Nagala has reached a contrary conclusion, *Cardoza v. Pullen,* 2022 WL 3212408 (D. Conn. Aug. 9, 2022), finding that there was not an "implicit promise" that the petitioner would remain on home confinement absent a violation of conditions, in the present case, such a promise exists. As the Board of Immigration Appeals has held, "where a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance." *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

> deprivation itself is unreviewable is no substitute for what [Petitioner] seeks. *See Zadvydas*, 533 U.S. at 692.

Rodriguez Diaz, 2025 WL 3011852, at *11. Not only could Mr. Sterling not challenge his bond revocation in immigration court, he could not challenge it in any hearing at all; the only procedure for challenging revocation was provided to the bond obligor, not the petitioner. 8 C.F.R § 103.6(f).

Nor does the January 8 hearing cure the constitutional violation or undermine the justiciability of Mr. Sterling's claim. ECF 16. Process afforded *after* deprivation of a protected interest must be *meaningful* to cure a due process violation. *Nnebe v. Daus*, 931 F.3d 66, 86 (2d Cir. 2019). But neither the January 8 proceeding nor any other avenue allows Mr. Sterling to challenge the bond revocation. And no amount of post-deprivation process can undo the harm of the initial arrest itself. *See Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025) ("[A] post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.").[3]

Notably, the government did not follow its own procedures in either making the bond breach determination or in rearresting Mr. Sterling.[4] The I-323 bond determination is invalid because it was signed by a Supervisory Detention and Deportation Officer ("SDDO"), not the ICE District Director as required by 8 C.F.R. § 103.6(e).[5] *See* Ex. A, I-323 Bond Determination.

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[3] Respondents attempt to distinguish this and other cases cited in the First Amended Petition from the present case. ECF 15 at 13-14. Even without being perfectly analogous, however, these cases illuminate the principles bearing on the constitutionality of Mr. Sterling's re-detention without pre-deprivation process. *See, e.g., Lesic v. LaRose*, No. 25CV2746-LL-BJW, 2025 WL 3158675, at *3 (S.D. Cal. Nov. 12, 2025) (noting lack of opportunity to "respond to the reasons for the revocation" of bond was one of a few defects that "necessitate[d] issuing a writ").

[4] Contrary to Respondents' insinuations, ICE did not arrest Petitioner "under the original warrant" from 2018. ECF 15 at 10, 12, 14. ICE arrested him under a new 2025 warrant. *See* Ex. A., I-200 Warrant For Arrest of Alien.

[5] In arguing the delegation was proper, Respondents cite a delegation from the Assistant Secretary of ICE to various subordinate officers. ECF 15 at 10 n.1 (citing ECF 15-7 at Section 2(A)(2)(b)). But ICE's own regulations limit bond breach determinations to "the district director having custody of the file containing the immigration bond." 8 C.F.R. 103.6(e). There is no suggestion that the Assistant Secretary had authority to delegate this power.

3. The Government Interest in Re-detention Without Notice or a Hearing is Minimal.

The government's interest in re-detaining Mr. Sterling without notice or a pre-deprivation hearing is minimal: no urgency justified denying Mr. Sterling the opportunity to contest the alleged bond breach.[6] The government alleges Mr. Sterling breached his bond on October 5, 2022. *See* ECF 15-4. The government points to nothing preventing it from providing notice and a hearing in the three years between that date and December 19, 2025, when eight ICE agents, some masked, forced Mr. Sterling to the ground in a Connecticut courthouse parking lot. *See* First Amended Petition (FAP), ECF 12, ¶ 42. To the contrary, Mr. Sterling has updated his address with ICE and the Hartford Immigration Court and regularly receives mail at his home address. *See* FAP, ECF 12, ¶¶ 26, 35. The government does not allege he has ever failed to appear when actually notified. *Cf. Ortega*, 415 F. Supp. 3d at 970 (finding "low" government interest in re-detention without pre-deprivation hearing where "allegedly material change of circumstances" occurred one and half years prior and petitioner complied with requirements of release in the interim); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 415 n.4 (S.D.N.Y. 2025) (noting government's interests "would not be undercut by additional procedural safeguards" prior to revocation of order of supervision).

The government's lengthy window of opportunity to conduct a pre-deprivation hearing distinguishes this case from *Nnebe v. Daus*. 644 F.3d 147 (2d Cir. 2011) (cited in ECF 15 at 15). *Nnebe* concerned automatic suspension of the licenses of criminally charged taxi drivers without pre-suspension hearings. 931 F.3d at 151, 159. In upholding the state's procedures, the *Nnebe* court relied heavily on the government's interest in immediate suspension pending review of a driver's criminal matters. *Id.* at 159. Here, ICE had *three years* to provide Mr. Sterling with notice and a pre-deprivation hearing. These circumstances underscore the weakness of the government's

[6] Respondents misstate that Mr. Sterling was charged with criminal possession of a firearm and possession of narcotics in 2021. ECF 15-1 at 3. Those charges were against Petitioner's co-arrestee, not Mr. Sterling.

interest in re-detention without notice or a hearing. *Cf. Ortega*, 415 F. Supp. at 966 (enjoining ICE from re-arresting noncitizen at liberty on bond "unless and until a hearing, with adequate notice, is held in Immigration Court to determine whether his bond should be revoked or altered").[7]

B. This Court Should Certify the Question of Whether Connecticut's Common Law Privilege, As Incorporated in the INA, Extends to Criminal Defendants.

State courts should be afforded the first opportunity to decide significant issues of state law. *See, e.g.*, *Great Northern Ins. Co. v. Mt. Vernon Fire Ins. Co.*, 143 F.3d 659, 662 (2d Cir. 1998). "Where a question of [state common law] interpretation implicates the weighing of policy concerns, principles of comity and federalism strongly support certification." *See Freedman v. American Online, Inc.*, 412 F. Supp. 2d 174, 191 (D. Conn. 2005). This Court should certify the following question to the Connecticut Supreme Court: **Does the state common law privilege against civil arrests at courthouses extend to misdemeanor criminal defendants?**

A federal court may certify questions of state law directly to the Connecticut Supreme Court "if the answer may be determinative of an issue in pending litigation in the certifying court and if there is no controlling appellate decision, constitutional provision or statute of this state." Conn. Gen. Stat. § 51-199b(d). *See also* Conn. App. Proc. §§ 82-1, 82-3. Respondents rely on a 1925 Connecticut Supreme Court decision to argue that the longstanding Connecticut common law privilege against civil arrest excludes criminal defendants. ECF 15 at 19-20 (citing *Ryan v. Ebecke*, 102 Conn. 12 (1925)); *see also* ECF 6 (same). The question of the scope of the common law privilege is appropriate for certification because: (1) *Ryan* provides insufficient guidance on the controlling question; (2) the question implicates important public policy concerns; and (3) it

[7] Respondents seek to distinguish this case by minimizing the importance of a "stale" removal order. ECF 15 at 14. But that "stale" order was entered a year and half before the court enjoined the government from re-arresting Mr. Ortega. *Ortega*, 415 F. Supp. 3d at 970. In the present case, Respondents re-detained Mr. Sterling based on a bond revocation notice issued three years earlier. *See* ECF 15 at 4 (discussing 2022 bond revocation).

involves issues that are likely to recur in subsequent state and federal litigation.[8]

Respondents point to only one century-old case holding that criminal defendants under bail are not afforded the common law privilege. But *Ryan* provides insufficient guidance. *Ryan* reasons that since criminal defendants must appear, they need no encouragement to voluntarily attend. But this reverses the court's approach in other cases, where parties who invoked the judicial power were expected to accept the risk of process while those compelled to appear had no such obligation. *Bishop v. Vose*, 27 Conn. 1 (1858); *Wilson Sewing Machine Co. v. Wilson*, 51 Conn. 595, 597-98 (1884); *Golodner v. Women's Center of Southeastern Connecticut, Inc.,* 81 Conn. 819, 821, 825 (2007) (civil defendant who was involuntarily present "was immune from process."). This doctrinal tension calls *Ryan* into question and merits certification. Certification would also allow the Connecticut Supreme Court to consider the privilege's applicability to modern immigration arrests, which differ from service of civil process in that they create risks—detention and possibly deportation—that may more likely outweigh the compulsive power of bail.

Second, *Ryan* seemingly did not consider the protection of judicial administration, a central principle of the common law privilege. *Orchard's Case* (1828), 38 Eng. Rep. 987 (civil arrest "would give occasion to perpetual tumults, and was altogether inconsistent with the decorum which ought to prevail in a high tribunal."); *Stewart v. Ramsay*, 242 U.S. 128, 130-31 (1916) (similar). Indeed, immigration arrests at Connecticut courthouses have proven highly disruptive.[9]

Certification is also apt because of the weighty public policy considerations implicated in the rights of noncitizens to access courthouses, the orderly administration of justice, and state

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[8] *See Parrot v. Guardian Life Ins. Co. of Am.*, 338 F.3d 140, 144 (2d Cir. 2003) (three-part test for deciding to certify a question to state supreme courts); *McCarter & Eng., LLP v. Jarrow Formulas, Inc.*, No. 19-CV-01124 (MPS), 2024 WL 754415 (D. Conn. Feb. 23, 2024) (certifying question).

[9] *See, e.g.*, Jim Haddadin, *Immigration enforcement officers arrest two men inside Stamford courthouse*, Connecticut Public Radio (Aug. 13, 2025, 1:13 PM), available at https://tinyurl.com/mvay4233.

sovereign authority over the state judiciary—each of which is threatened by escalating federal immigration enforcement at courthouses. ECF 18-3 at ¶¶ 11-13. Given this tactic, the question of the privilege's scope is also likely to recur in state and federal litigation, especially in light of the state judicial branch's and state legislature's recent codification of the common law privilege.[10]

Furthermore, Respondents mistakenly claim that the INA "displaced" the privilege, when in fact it incorporated it. The government's argument primarily relies on immaterial cases from after the INA's enactment and one First Circuit ruling. ECF 15 at 20-24 (citing *Ryan v. U.S. Immigration and Customs Enforcement*, 974 F.3d. 9 (1st Cir. 2020)). But the non-derogation inquiry concerns the time of enactment, so the relevant timeframe for the INA is pre-1952. *Pasquantino v. United States*, 544 U.S. 349, 359-60 (2005). And the government ignores many cases—including three from within the Second Circuit—locating courthouse ICE arrests on the historical continuum of the common law privilege and endorsing INA incorporation.[11] Importantly, the common law privilege attaches not just to an individual, but also to the court, a fact the First Circuit overlooked in *Ryan*. *See United States v. New York*, 2025 WL 3205011, at *9. The government also presses the unavailing argument that the mention of courthouse arrests in a 2006 INA amendment belies the notion that the 1952 Congress recognized the privilege—but "[w]hen a later statute is offered as 'an expression of how … Congress interpreted a statute passed by another Congress … a half century before,' 'such interpretation has very little, if any, significance.'" *United States v. New York*, 2025 WL 3205011, at *12 (internal quotes omitted).[12]

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[10] *See* ECF 18-3 at ¶¶ 11-12. Federal courts have recently opined on the state common law privilege. *See, e.g., United States v. New York,* No. 25-cv-744, 2025 WL 3205011 (N.D.N.Y Nov. 17, 2025); *Doe v. U.S. Immigration and Customs Enforcement*, 490 F.Supp.3d 672 (S.D.N.Y. 2025).

[11] *See United States v. New York*, 2025 WL 3205011, at *10-11; *New York v. U.S. Immigration and Customs Enforcement*, 466 F.Supp.3d 439, 447 (S.D.N.Y. 2020), *vacated as moot*, 2023 WL 2333979 (2d Cir. 2023); *Doe v. U.S. Immigration and Customs Enforcement*, 490 F.Supp.3d 672, 692 (S.D.N.Y. 2020); *Velazquez-Hernandez v. U.S. Immigration & Customs Enforcement*, 500 F. Supp. 3d 1132, 1134 (S.D. Cal. 2020); *Washington v. U.S. Dep't of Homeland Sec.*, 614 F.Supp.3d 863, 879 n.21 (W.D. Wash. 2020).

[12] *See also United States v. Price*, 361 U.S. 304, 313 (1960).

C. ICE's Courthouse Arrest of Mr. Sterling Violated the Tenth Amendment.

The Supreme Court has explained that "federalism secures the freedom of the individual" and therefore individuals harmed by federal overreach may invoke the Tenth Amendment's protections. *Bond v. United States*, 564 U.S. 211, 221 (2011); *id.* at 225. Mr. Sterling's detention is a result of federal officers' conduct that displaced state policy and transgressed the constitutional line between federal and state authority. Mr. Sterling has suffered a concrete injury—his ongoing detention—and he looks to the Tenth Amendment's guarantee. *See id.* at 221, 225.

Respondents' Tenth Amendment violations are all the clearer in light of their disregard for state sovereignty. The Supreme Court's anti-commandeering cases establish that Congress may not conscript state institutions or dictate how States administer their own governmental functions. *Printz v. United States* 521 U.S. 898, 935 (1997); *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 455 (2018). Courthouse security, access, and the orderly administration of judicial proceedings are paradigmatic state functions. In furtherance of those interests, Connecticut's newly adopted law and judicial policy limit arrests in public courthouse areas to those supported by judicial warrant or order. ECF 18-3 at ¶¶ 11-12. These measures reflect the State's judgment that warrantless courthouse arrests threaten the orderly administration of justice and chill access to the courts. ICE's seizure of Mr. Sterling unconstitutionally interfered with core state functions.

Within this circuit, Judge D'Agostino has recognized that courthouse arrests of this kind constitute unconstitutional commandeering. *See United States v. New York*, 2025 WL 3205011. The court explained that the federal government's preference for effectuating civil arrests in "safe and controlled" state facilities and based on scheduled appearances in state court proceedings depends on the State's screening and security measures and court calendars. *Id.* at *19 (internal citation omitted). Permitting the federal government to "reap the benefits of the work of state employees" in this manner, the court held, is "no different than permitting the federal government to commandeer state officials directly in furtherance of federal objectives." *Id.* That reasoning applies here. ICE's arrest of Mr. Sterling disrupted ongoing proceedings and instrumentalized the courthouse as a site for federal enforcement, effectively pressing state resources into service of a federal regulatory program. The Tenth Amendment forbids that result.

D. Mr. Sterling's Claims are Justiciable and Release Is the Appropriate Remedy.

A Section 2241 petition "authorizes a district court to grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution or law or treaties of the United States.'" *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)). The "typical remedy" for "unlawful executive detention [...] is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Mr. Sterling's arrest was unlawful under the Fifth Amendment, INA, and Tenth Amendment. A bond determination by an immigration judge does "not remedy the core constitutional violation at issue" where the detention was "unlawful from its inception." *Rodriguez-Acurio*, 2025 WL 3314420, at *31. A "post-deprivation bond hearing before. . . even an immigration judge would provide no genuine opportunity [for] relief because the detention without adequate pre-deprivation procedures has already been carried out." *Id.* This is particularly apt because Mr. Sterling's post-deprivation bond determination was itself constitutionally infirm, as detailed in the Proposed Second Amended Petition. ECF 18-3. Mr. Sterling's initial arrest was unlawful and his bond hearing was constitutionally deficient. His claims are justiciable, and this Court can afford a meaningful remedy: release.

E. Conclusion

For the foregoing reasons, the Court should declare Respondents' actions unlawful under the Fifth and Tenth Amendments and the INA, order Petitioner's immediate release, and in the alternative certify a question to the Connecticut Supreme Court as set forth above.

Respectfully submitted,

/s/ Muneer I. Ahmad
Henry Garcia, Law Student Intern*
Jonah Hirsch, Law Student Intern*
Marisa Houlahan, Law Student Intern*
Kosar Kosar, Law Student Intern*
Claudia McHardy, Law Student Intern*
Mira Ortegon, Law Student Intern*
Muneer I. Ahmad, Esq., ct28109
Madelyn Finucane, Esq. ct31861
Michael J. Wishnie, Esq. ct27221

Jerome N. Frank Legal Services Organization
P.O. Box 209090
New Haven, CT 06520
Phone: (203) 432-4800
muneer.ahmad@ylsclinics.org
madelyn.finucane@ylsclinics.org
michael.wishnie@ylsclinics.org
Counsel for Petitioner

*Motion for law student appearance forthcoming