

1 Bashir Ghazialam (CA Bar No. 212724)
2 LAW OFFICES OF BASHIR GHAZIALAM
3 P.O. Box 928167
4 San Diego, California 92192
5 Tel: (619) 795-3370
6 Fax: (866) 685-4543
7 bg@lobg.net

8 Attorneys for Petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 NITIN VATS,

12 Petitioner-Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, et al.

15 Respondents-Defendants.

Case No.: 25-cv-3684-JLS-KSC

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

1 Petitioner replies to Respondents' Return as follows:

2 The Petition makes three (3) claims for relief, namely, 1) Due Process Violation
3 under the Fifth Amendment of the United States Constitution (unlawful re-detention
4 without first being provided a due process hearing to determine whether his incarceration
5 is justified), 2) Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)
6 Unlawful Denial of Bond (as well as unlawful re-detention without first being provided a
7 due process hearing to determine whether his incarceration is justified), and 3) Statutory
8 Violation – that Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)-(b).
9

10 However, in their Return, Respondent only address Petitioner's second and third
11 claims relating to Respondents' prior position that Petitioner is not detained under 8
12 U.S.C. § 1226(a) and is instead mandatorily detained under 8 U.S.C. § 1225(b). The
13 Return merely addresses the *Maldonado Bautista v. Santacruz* (No. 5:25-CV-01873-SSS-
14 BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025)) Court, which had
15 previously declared the DHS notice titled "Interim Guidance Regarding Detention
16 Authority for Applicants for Admission" requiring, in general, that anyone arrested in the
17 United States and charged with being inadmissible to be considered an "applicant for
18 admission" under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory detention under 8
19 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C. § 1226(a), unlawful
20 under the Administrative Procedures Act. Respondents now take the position that since
21 the *Maldonado Bautista* Court has now issued a final judgment, and accordingly,
22 "Respondents acknowledge that Petitioner is detained under 8 U.S.C. § 1226(a) and is
23

1 entitled to an order from this Court directing a bond hearing be held pursuant to 8 U.S.C.
2 § 1226(a).”

3 However, what Respondents fail to realize is that, as Mr. Vats, as he claims in his
4 Petition, was apprehended near the border on the same date that he had entered the U.S.
5 without inspection (October 12, 2023) and therefore is not a *Maldonado Bautista* “bond
6 eligible class member.”¹ Dkt. No. 1, at 4

7 The Return further fails to address Mr. Vats’s first claim relating to his unlawful
8 re-detention on November 9, 2025, without first being provided a due process hearing to
9 determine whether his incarceration is justified after being released on about October 13,
10 2023 on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a
11 determination that he was neither a flight risk nor a danger to the community that he
12 could not be released on his own recognizance. The Court therefore should deem any
13 defense to this claim waived and accordingly, and for the following reasons, order
14 Petitioner’s immediate release.
15

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

17 Respondents’ Return fails to address the substantial body of law regarding
18 Petitioner’s significant due process rights as someone who has lived in the United States
19 for over two years.
20

21 _____
22 ¹ 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 This and other Courts throughout the country have followed Supreme Court
2 precedence and have determined that ICE’s authority to revoke conditional parole is
3 constrained by the due process clause. The precedence includes the Supreme Court’s
4 *Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972) case (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
8 the requirements of due process”). The guidance provided by *Matter of Sugay*, 17 I&N
9 Dec. 647 (BIA 1981)—that ICE should not re-arrest a noncitizen absent changed
10 circumstances—is insufficient to protect Petitioner’s weighty interest in his freedom from
11 detention.
12

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

22 But “even when ICE has the initial discretion to detain or release a noncitizen
23 pending removal proceedings, after that individual is released from custody she has a
24

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

12 Petitioner’s re-arrest and the revocation of his release on conditional parole without
13 a pre-deprivation hearing violate the Due Process Clause. The Due Process Clause
14 prohibits deprivations of life, liberty, and property without due process of law. U.S.
15 Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United
16 States, including [noncitizens], whether their presence here is lawful, unlawful,
17 temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts analyze
18 procedural due process claims such as this one in two steps: the first asks whether there
19 exists a protected liberty interest under the Due Process Clause, and the second examines
20 the procedures necessary to ensure any deprivation of that protected liberty interest
21 accords with the Constitution. See *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S.
22 454, 460 (1989).

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

9
10 All three factors support a finding that Respondents’ revocation of Petitioner’s
11 conditional parole release without an opportunity to be heard deprived Petitioner of his
12 due process rights. First, Petitioner has a significant liberty interest in remaining out of
13 custody pursuant to his conditional parole. For over two years preceding his re-detention
14 on November 9, 2025, Petitioner exercised that freedom under an immigration officer’s
15 decision to granting him conditional parole after a determination that he presented neither
16 a flight risk nor a danger to the community. In the more than two years following his
17 release, Petitioner has worked to support himself and his family, hired counsel to pursue
18 his asylum relief in immigration court, and has established extensive community ties in
19 the United States.

20
21 Although Petitioner was released on conditional parole (and thus under
22 government custody), he retained a weighty liberty interest under the Due Process Clause
23 of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143,
24

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

16
17 “Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s
18 parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez*
19 *Salazar v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal.
20 Nov. 3, 2025); see also *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL
21 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where Petitioner “has not received any
22 bond or custody redetermination hearing,” the “risk of an erroneous deprivation of liberty
23
24

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

4 Here, there is no evidence that Petitioner’s detention would serve either purpose.
5 “Since DHS’s initial determination that Petitioner should be [conditionally] paroled
6 because [he] posed no danger to the community and was not a flight risk, there is no
7 evidence that these findings have changed.” *Gonzales Salazar*, 2025 WL 3063629, at *3
8 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (“Release
9 reflects a determination by the government that the noncitizen is not a danger to the
10 community or a flight risk.”). See *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at
11 *1, 8 (granting habeas petition and ordering bond hearing where ICE re-detained the
12 petitioner the day after an immigration judge denied the petitioner’s application for
13 asylum).

15 Third, Respondents’ interest in detaining Petitioner without a hearing is low. See
16 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“If the government wishes
17 to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so;
18 but its interest in doing so without a hearing is low.”); *Pinchi*, 792 F. Supp. 3d at 1036
19 (“Detention for its own sake, to meet an administrative quota, or because the government
20 has not yet established constitutionally required pre-detention procedures is not a
21 legitimate government interest.”). “Therefore, because Respondents detained Petitioner
22 by revoking [his] parole in violation of the Due Process Clause, [his] detention is
23

1 unlawful.” *Gonzalez Salazar*, at *5; see also, *Doe v. Becerra*, 2:25-cv-00647, (E.D. Cal.
2 2025); *Rodriguez-Flores v. F. Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL
3 2684181 (C.D. Cal. Aug. 14, 2025).

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

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

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

20
21 This is not a case of someone who entered without inspection but was never
22 previously detained. As affirmed recently by the Central District of California, the
23 remedy for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No.

1 5:25-cv-01873-SSS-BFM (C.D. Cal. November 20, 2025). This case concerns the class
2 of non-citizens who entered without inspection, were detained shortly after entry, were
3 then released, but then later re-detained. In other words, this is a re-detention case
4 involving the due process violation of the Petitioner not being provided with a hearing
5 prior to being re-detained. As such, the appropriate remedy for such a violation is
6 immediate release.

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

21
22 Finally, in addition to the due process violation, Petitioner also seeks relief under
23 the Administrative Procedures Act. Under the APA, a court must “hold unlawful and set
24

1 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not
2 in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is
3 “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5
4 U.S.C. § 706(2)(A)-(C). Because the arrest of the Petitioner on November 9, 2025 was
5 arbitrary and capricious, as well as in violation of § 1226 and the due process clause of
6 the Constitution, it must be set aside and Petitioner should be immediately released.
7

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

10 Dated: December 28, 2025,

11 By: /s/ Bashir Ghazialam
12 Bashir Ghazialam
13 Attorney for Petitioner
14 Email: bg@lobg.net
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States 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 28, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24