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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 VIKAS KUMAR,

12 Petitioner-Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, et al.

15 Respondents-Defendants.

Case No.: 3:25-cv-03796-JLS-DDL

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

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, as well as unreasonably prolonged detention), 2) Violation of the
5 Administrative Procedure Act, 5 U.S.C. § 706(2) Unlawful Denial of Bond (as well as
6 unlawful re-detention without first being provided a due process hearing to determine
7 whether his incarceration is justified), and 3) Statutory Violation – that Petitioner’s
8 Detention is in Violation of 8 U.S.C. § 1226(a)-(b).
9

10 Although Respondents concede in their return that the Petitioner is in fact detained
11 under Section 1226, yet they erroneously state that the Petitioner is a *Maldonado Bautista*
12 class member. See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, ---
13 F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Dec. 18, 2025).¹ As stated in the Petition –
14 and not contested by Respondents in their return – the Petitioner was arrested and
15 released on conditional parole shortly after crossing into the United States almost two
16 years ago. As such, he is not as *Maldonado Bautista* class member.
17

18 Respondents further incorrectly suggest that the remedy Petitioner is entitled to is a
19 post-deprivation bond hearing. Rather, the remedy for the Petitioner being re-detained
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21 ¹ Bond Eligible Class: All noncitizens in the United States without lawful status who (1)
22 have entered or will enter the United States without inspection; **(2) were not or will not**
23 **be apprehended upon arrival;** and (3) are not or will not be subject to detention under 8
24 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 without a pre-deprivation hearing violates the Petitioner’s well-established due process
2 rights – something the Respondent also do not address in their return. As such, and as
3 further discussed below, the remedy owed Petitioner is immediate release.

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

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

9
10 As discussed in the Petition, numerous courts have determined ICE’s authority to
11 revoke conditional parole is constrained by the due process clause – including the
12 Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 480-82 (1972) (a parolee's liberty
13 involves significant values within the protection of the Due Process Clause of the
14 Fourteenth Amendment) and the Ninth Circuit in *Hernandez v. Sessions*, 872 F.3d 976,
15 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always
16 constrained by the requirements of due process”). The guidance provided by *Matter of*
17 *Sugay*, 17 I&N Dec. 647 (BIA 1981)—that ICE should not re-arrest a noncitizen absent
18 changed circumstances—is insufficient to protect Petitioner’s weighty interest in his
19 freedom from detention.
20

21 In accordance with the Supreme Court and Ninth Circuit, district courts have also
22 repeatedly recognized that the demands of due process and the limitations on DHS’s
23 authority to revoke a noncitizen’s release set out in DHS’s stated practice and *Matter of*
24

1 *Sugay* both require a pre-deprivation hearing for a noncitizen on conditional parole, like
2 Petitioner, *before* ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963
3 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3
4 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
5 783561, at *2 (N.D. Cal. Mar. 1, 2021).

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

18
19
20 Petitioner’s re-arrest and the revocation of his release on conditional parole without
21 a pre-deprivation hearing violate the Due Process Clause. The Due Process Clause
22 prohibits deprivations of life, liberty, and property without due process of law. U.S.
23 Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United
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1 States, including [noncitizens], whether their presence here is lawful, unlawful,
2 temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts analyze
3 procedural due process claims such as this one in two steps: the first asks whether there
4 exists a protected liberty interest under the Due Process Clause, and the second examines
5 the procedures necessary to ensure any deprivation of that protected liberty interest
6 accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S.
7 454, 460 (1989).

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

17
18 All three factors support a finding that Respondents’ revocation of Petitioner’s
19 conditional parole release without an opportunity to be heard deprived Petitioner of his
20 due process rights. First, Petitioner has a significant liberty interest in remaining out of
21 custody pursuant to his conditional parole. For almost two years preceding his re-
22 detention on December 24, 2025, Petitioner exercised that freedom under an immigration
23 officer’s decision to grant him conditional parole after a determination that he presented
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1 neither a flight risk nor a danger to the community. In the nearly two years following his
2 release, Petitioner has timely filed his asylum application, has applied for and has been
3 granted work authorization with which he has been working hard and supporting himself
4 and his family, hired counsel to represent him in his political asylum case, and has
5 established extensive community ties in the United States.

6
7 Although Petitioner was released on conditional parole (and thus under
8 government custody), he retained a weighty liberty interest under the Due Process Clause
9 of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143,
10 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*,
11 408 U.S. 471, 482-483 (1972). “Even individuals who face significant constraints on their
12 liberty or over whose liberty the government wields significant discretion retain a
13 protected interest in their liberty.” *Pinchi*, 792 F. Supp. 3d at 1032. Although the initial
14 decision to detain or release an individual may be within the government’s discretion,
15 “the government’s decision to release an individual from custody creates ‘an implicit
16 promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if
17 [they] fail[] to live up to the . . . conditions of release.’” *Id.* (quoting *Morrissey v. Brewer*,
18 408 U.S. 471, 482 (1972)); see also *Zadvydas*, 533 U.S. at 690 (“Freedom from
19 imprisonment— from government custody, detention, or other forms of physical
20 restraint—lies at the heart of the liberty [the Due Process Clause] protects.”); *Morrissey*,
21 408 U.S. at 482 (“Subject to the conditions of his parole, he can be gainfully employed
22 and is free to be with family and friends and to form the other enduring attachments of
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1 normal life.”); *Oliveros v. Kaiser*, No. 25-CV-07117-BLF, 2025 WL 2677125, at *7
2 (N.D. Cal. Sept. 18, 2025).

3 “Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s
4 parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez*
5 *Salazar v. Casey*, Case No.: 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D. Cal.
6 Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL
7 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where Petitioner “has not received any
8 bond or custody redetermination hearing,” the “risk of an erroneous deprivation of liberty
9 is high”). “Civil immigration detention is permissible only to prevent flight or protect
10 against danger to the community.” *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydus*, 533
11 U.S. at 690).

12 Here, there is no evidence that Petitioner’s detention would serve either purpose.
13 “Since DHS’s initial determination that Petitioner should be [conditionally] paroled
14 because [he] posed no danger to the community and was not a flight risk, there is no
15 evidence that these findings have changed.” *Gonzales Salazar*, 2025 WL 3063629, at *3
16 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (“Release
17 reflects a determination by the government that the noncitizen is not a danger to the
18 community or a flight risk.”); *see also Ledesma Gonzalez v. Bostock*, 2025 WL 2841574.
19

20 Third, Respondents’ interest in detaining Petitioner without a hearing is low. *See*
21 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“If the government wishes
22 to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so;
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1 but its interest in doing so without a hearing is low.”); *Pinchi*, 792 F. Supp. 3d at 1036
2 (“Detention for its own sake, to meet an administrative quota, or because the government
3 has not yet established constitutionally required pre-detention procedures is not a
4 legitimate government interest.”). “Therefore, because Respondents detained Petitioner
5 by revoking [his] parole in violation of the Due Process Clause, [his] detention is
6 unlawful.” *Gonzalez Salazar*, at *5; see also, *Doe v. Becerra*, 2:25-cv-00647, (E.D. Cal.
7 2025); *Rodriguez-Flores v. F. Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL
8 2684181 (C.D. Cal. Aug. 14, 2025).

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

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

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

3 This is not a case of someone who entered without inspection but was never
4 previously detained. As affirmed recently by the Central District of California, the
5 remedy for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No.
6 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). This case concerns the class of non-
7 citizens who entered without inspection, were detained shortly after entry, were then
8 released, but then later re-detained. In other words, this is a re-detention case involving
9 the due process violation of the Petitioner not being provided with a hearing prior to
10 being re-detained. As such, the appropriate remedy for such a violation is immediate
11 release.
12

13 This Court has joined the growing chorus of district courts that have recognized
14 that noncitizens have a significant liberty interest in both “continued freedom after
15 release on own recognizance,” and have ordered immediate release. *Bonifaz v. LaRose*,
16 No. 3:25-cv-03226-JLS-AHG (S.D. Cal. Dec. 2, 2025); *Shen v. LaRose*, No. 3:25-cv-
17 03235-GPC-BLM (S.D. Cal. Dec. 11, 2025); *Sanchez Avalos v. Noem*, No. 3:25-cv-
18 02906-CAB-VET (S.D. Cal. Nov. 24, 2025); *Alegria Palma v. Larose*, No. 25-cv-1942-
19 BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025); *Sanchez v. LaRose*, No. 25-CV-
20 2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025); *see also Prieto-*
21 *Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025);
22 *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17,
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1 2025); *Sayed Naser Noor v. Christopher LaRose*, et al., No. 25-CV- 1824-GPC-MSB,
2 2025 WL 2800149, at *14 (S.D. Cal. Oct. 1, 2025); *N.A. v. LaRose et. al.*, No.: 25-cv-
3 2384-RSH-BLM (S.D. Cal. Oct. 7, 2025); *Francisco Gonzalez v. LaRose et. al.*, No.
4 3:25-cv-03547-JLS-MSB (S.D. Cal. Dec. 23, 2025); *Buitrago Sanchez v. LaRose et. al.*,
5 No. 3:25-cv-03024-BJC-BLM (S.D. Cal. Dec. 23, 2025).

6
7 Finally, in addition to the due process violation, Petitioner also seeks relief under
8 the Administrative Procedures Act. Under the APA, a court must “hold unlawful and set
9 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not
10 in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is
11 “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5
12 U.S.C. § 706(2)(A)-(C). Because the arrest of the Petitioner on December 24, 2025 was
13 arbitrary and capricious, as well as in violation of § 1226 and the due process clause of
14 the Constitution, the agency action must be set aside and Petitioner should be
15 immediately released.

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

19 Dated: January 2, 2026,

20 By: /s/ Bashir Ghazialam
21 Bashir Ghazialam
22 Attorney for Petitioner
23 Email: bg@lobg.net
24

CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2026, 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: January 2, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam

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