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15 UNITED STATES DISTRICT COURT
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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18 HECTOR TELLO TELLO
19 Plaintiff and Petitioner,
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26-cv-0525-JES-AHG

21
22 vs.

PETITIONER’S TRAVERSE

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24 CHRISTOPHER LAROSE, Warden of
25 the Otay Mesa Detention Center; et al.
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28 Defendants-Respondents

In their Answer, ECF #4, Respondents did not dispute or controvert any of the factual allegations contained in the Petition for Habeas Corpus, nor did they present any evidence or records pertaining to the claims asserted in the Petition as required. All factual allegations in the Petition must thus be considered admitted.

Instead, Respondents argue that Petitioner is a Member of the *Maldonado Bautista* class and “acknowledge that Petitioner is detained under 8 U.S.C. § 1226(a) and is entitled to an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a)”, yet request a variance from the *Maldonado*

1 *Bautista* final judgment in the form of 14 days bond setting period. *Id.* The issues
2 raised, thus, are purely legal.
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5 Petitioner hereby files his Traverse responding to Respondents' arguments as
6 follows:
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11 **First**, Respondents' own Return confirms Petitioner's entitlement to relief as
12 a class member under the declaratory judgment in *Maldonado Bautista v.*
13 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403
14 (C.D. Cal. Nov. 25, 2025). (ECF # 4 at 2).
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17 Yet as of today Respondents have not afforded Petitioner a bond hearing
18 before the immigration judge although more than 7 days have passed since the
19 Petition was filed. Respondents also gloss over the fact that they have denied this
20 Petitioner the benefits of the *Maldonado Bautista v. Santacruz* class membership
21 **twice already**. (ECF # 1 at page ID 28-31) The Court should, thus, grant Mr. Tello
22 Tello's request for a writ of habeas corpus ordering that Respondents release him
23 immediately. This is particularly appropriately since Petitioner did not seek as a
24 relief in his petition the scheduling of a bond or release on bond. (ECF # 1 [Prayer
25 for Relief]).
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Second, "[p]rocedural due process imposes constraints on governmental
decisions which deprive individuals of liberty". *Mathews v. Eldridge*, 424 U.S.
319, 332 (1976) (citation modified). "The fundamental requirement of [procedural]
due process is the opportunity to be heard at a meaningful time and in a meaningful
manner." *Id.* at 333 (citation modified). As to the first *Mathews* factor, Petitioner

1 has a significant private interest in remaining free from detention. “Freedom from
2 imprisonment—from government custody, detention, or other forms of physical
3 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
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5 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Second, “the risk of an erroneous
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7 deprivation [of liberty] is high” when, as here, “[the petitioner] has not received
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9 any bond or custody redetermination hearing.” *A.E. v. Andrews*, No. 1:25-cv-
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11 00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). No claim is
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13 made by Respondents that Petitioner was a danger or flight risk. “That the
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15 Government may believe it has a valid reason to detain petitioner does not
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17 eliminate its obligation to effectuate the detention in a manner that comports with
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19 due process.” *Id.* Here, as there were no procedural safeguards to determine if
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21 Petitioner’s re-detention was justified, “the probable value of additional procedural
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23 safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5.4
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27 **Third**, although the government has a strong interest in enforcing the
28 immigration laws, the government’s interest in detaining Petitioner without a
hearing is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019);
Doe v. Becerra, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal.
March 3, 2025); *see also Morrissey*, 408 U.S. at 483 (noting that “the State has an
overwhelming interest in being able to return the individual to imprisonment
without the burden of a new adversary criminal trial[,] . . . [y]et, the State has no
interest in revoking parole without some informal procedural guarantees.”).
Because the *Mathews* factors favor Petitioner he is entitled to a hearing before a
neutral adjudicator where he can challenge his detention. At such a hearing, the

1 government must prove that Petitioner is a flight risk or danger to the community
2 by clear and convincing evidence. *See Pablo Sequen v. Albarran*, No. 25-CV-
3 06487-PCP, 2025 WL 2935630, at *13–14 (N.D. Cal. Oct. 15, 2025); *Duong v.*
4 *Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at *8 (N.D. Cal. Sept. 19,
5 2025); *see also Addington v. Texas*, 441 U.S. 418, 425– 33 (1979) (holding that
6 clear and convincing evidence standard was appropriate standard of proof for civil
7 commitment proceedings for the mentally ill). And that hearing should have
8 occurred before petitioner was re-detained. “[T]he root requirement’ of the Due
9 Process Clause” is “that an individual be given an opportunity for a hearing before
10 he is deprived of any significant protected interest.” *Cleveland Bd. of Educ. v.*
11 *Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S.
12 371, 379 (1971)); *see Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (“Applying
13 [the Mathews] test, the Court usually has held that the Constitution requires some
14 kind of a hearing before the State deprives a person of liberty”); *Young v.*
15 *Harper*, 520 U.S. at 152 (re-detention after pre-parole conditional supervision);
16 *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context);
17 *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context). Respondents
18 failed to present any facts or records suggesting that they exercised the discretion
19 vested in them at or after Petitioner’s detention; Petitioner’s resulting detention
20 violates due process. *See Lopez*, 2018 WL 2932726, at * 12 (“Petitioner’s re-
21 detention, without prior notice, a showing of changed circumstances, or a
22 meaningful opportunity to respond, does not satisfy the procedural requirements of
23 the Fifth Amendment.”); *accord Chipantiza-Sisalema v. Francis*, No. 25 CIV.
24 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (citing 8 C.F.R. §
25 236.2(d)).
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2 Moreover, courts typically require evidence of urgent concerns or an
3 especially strong government interest to justify a post-deprivation hearing. *See*
4 *Guillermo M. R.*, 2025 WL 1983677, at *9; *United States v. James Daniel Good*
5 *Real Prop.*, 510 U.S. 43, 53, 59–61 (1993) (“We tolerate some exceptions to the
6 general rule requiring predeprivation notice and hearing, but only in extraordinary
7 situations where some valid governmental interest is at stake that justifies
8 postponing the hearing until after the event[,]” such as “executive urgency.”
9 (internal quotations omitted)). Here Respondents offer none.

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11 Because Respondents have presented no evidence that they made the
12 required initial discretionary decision under section 1226(a) to detain Petitioner nor
13 provided evidence or arguments that Petitioner poses a risk of flight or a danger to
14 the community, Petitioner's detention in this case is indiscriminate and without
15 good cause. Petitioner is therefore entitled to immediate release. *See Yao v.*
16 *Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at * 11 (S.D.N.Y. Dec. 17,
17 2025) (“Although [Petitioner]'s release today cannot cure his loss of liberty . . . ,
18 this remedy, relative to the procedural one of ordering a bond hearing, is the one
19 that comes closest to doing so.”); *Rodriguez Cabrera v. Mattos*, 2025 WL
20 3072687, *11 (D. Nev. 2025) (finding that petitioner's “liberty interest is
21 particularly strong given his initial release from detention in 2022, and the fact that
22 Respondents did not seek his return to custody upon the expiration of his parole in
23 December 2022, or in the three years since.”); *Ramirez Tesara v. Wamsley*, 800 F.
24 Supp. 3d 1130 (W.D. Wash. 2025) (granting TRO and ordering that petitioner,
25 who was re-detained months after the expiration of his parole, “should be released
26 and only re-detained after a hearing in front of an immigration judge”); *Rodriguez*
27 *Cabrera v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at *15 (D.
28 Nev. Nov. 3, 2025) (granting habeas petition where petitioner was re-detained

1 three years after the expiration of his parole, and enjoining the government “from
2 re-detaining Petitioner in connection with his current removal proceedings without
3 an individualized bond hearing”); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025
4 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (“In the context of revocation of
5 civil release, an individual whose release is sought to be revoked is entitled to due
6 process such as notice of the alleged grounds for revocation, a hearing, and the
7 right to testify at such a hearing.”) (internal quotation marks omitted).
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Petitioner request that the Court order his immediate release or in the
alternative order a bond hearing before an immigration judge at which
Respondents must bear the burden of proof to show danger and/or flight risk.

Date: 2/3/2026

Respectfully submitted by

s/ Nicolette Glazer Esq.
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