UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Efrain MEJIA-MEJIA Petitioner, v. 1. KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; 2. Pamela BONDI, in her official capacity as U.S. Attorney General Executive Office for Immigration Review; 3. Robert CERNA, in his official capacity as Field Office Director of Enforcement and Removal Operations, ICE Dallas Field Office, Immigration and Customs Enforcement; 4. Scarlet GRANT, in her official capacity as Warden of Cimarron Correctional Facility. Respondents.	Case No. _____ Immigration File No. [redacted] **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Efrain Mejia-Mejia ("Petitioner") by and through his undersigned counsel, hereby petitions this Court for a writ of habeas corpus to review the lawfulness of his detention. Petitioner is currently being held in detention by Immigration and Customs Enforcement ("ICE"), a part of the Department of Homeland Security ("DHS"). Petitioner challenges his indefinite and unlawful detention. Petitioner effectuated an entry into the

United States on April 23, 2019. After he crossed the border, he was arrested and detained by United States Customs and Border Protection ("CBP") officers; CBP is a component of DHS. CBP released Petitioner on his own recognizance pending his immigration proceedings pursuant to 8 U.S.C. § 1226.

2. Following his release, Petitioner applied for asylum, and his removal proceedings, in which his defensive asylum application will be adjudicated, are ongoing.

3. Nonetheless, on November 2, 2025, Petitioner was re-detained by ICE. Petitioner remains in ICE custody.

4. Petitioner does not have any active warrants or negative criminal history that would change the circumstances from his initial custody determination made in April 2019, when he was released. Petitioner does not have a final order of removal, and has a removal hearing on his asylum case scheduled for March 26, 2029. As such, Petitioner's re-detention without a pre-deprivation hearing is a violation of his due process rights as guaranteed by the Fifth Amendment.

JURISDICTION

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Cimmaron Correctional Facility in Cushing, Oklahoma.

6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act,

28 U.S.C. § 1651, the APA, 5 U.S.C. §§ 702, 706, Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

8. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court held that habeas corpus may be used to bring a constitutional challenge to pre-removal order detention.

VENUE

9. Venue lies in the United States District Court for the Western District of Oklahoma, the judicial district in which Petitioner currently is detained. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973)

10. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the United States District Court for the Western District of Oklahoma.

REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or

justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

13. Petitioner, Efrain Mejia-Mejia, is alleged to be a noncitizen of the United States who has been in immigration detention since on or about November 2, 2025. After detaining Petitioner, ICE did not set bond, and Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

14. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security. Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, who is responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

15. Respondent, Pamela Bondi, is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee EOIR, which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

16. Respondent, Robert Cerna, is sued in his official capacity as the Acting Director of the Dallas Field Office and Oklahoma City Sub-Office of U.S. Immigration and Customs Enforcement. Respondent Cerna is a legal custodian of Petitioner and has authority to release him.

17. Respondent, Scarlet Grant, is the Warden of Cimarron Correctional Facility and has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement. Respondent Grant is a legal custodian of Petitioner and sued in her official capacity.

STATEMENT OF FACTS

18. Petitioner effectuated an entry into the United States on or about April 23, 2019.

19. After entering the United States, Petitioner was encountered by CBP agents. CBP determined that Petitioner could be released on his own recognizance pursuant to 8 U.S.C. § 1226.

20. Petitioner was re-detained on or about November 2, 2025. On January 9, 2026 Petitioner attempted to seek a custody redetermination, but the Immigration Judge denied stating he did not have jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). He dalso stated that Petitioner is considered a flight risk without explaining his finding.[1]

21. Petitioner remains in custody and is presently detained at the Cimarron Correctional Facility in Cushing, Oklahoma.

22. Petitioner is currently in removal proceedings before the Miami, Florida Immigration Court with a hearing set for March 26, 2029.

[1] *See* Exhibit 1, Bond Denial

23. Petitioner is being charged as a noncitizen of the United States and has been in removal proceedings for several years, but ICE has only recently decided to detain him.

24. Without intervention from this Court, Petitioner faces the prospect of indefinite detention lasting months or even years, separated from his family and community.

LEGAL FRAMEWORK

INA Detention Schemes

25. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard nonexpedited removal proceedings before an IJ. 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention. 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, under § 1226, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. 8 U.S.C. § 1226(c).

27. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

28. Third, the INA provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings. 8 U.S.C. § 1231(a)–(b).

29. Due to a recent change in legal position, ICE has been asserting, and many EOIR Immigration Judges have been finding, that detention of individuals similarly situated to Petitioner is governed by § 1225(b)(2). ICE's new position is that the mandatory detention provision of § 1225(b)(2)(A) applies to people who enter without inspection because that subparagraph of the statute references "applicant[s] for admission." According to ICE, the paragraph therefore applies to all individuals who are subject to the grounds of inadmissibility at § 1182, including § 1182(a)(6)(A) and (a)(7). Those two provisions make inadmissible people who entered the United States without inspection or who do not have adequate documentation to allow them to enter or remain in the United States. So, according to ICE, all individuals who entered without inspection are subject to mandatory detention under § 1225(b)(2)(A) because they are applicants for admission. In other words, according to ICE's argument, only individuals who have been admitted to the United States, and therefore are charged with removability under 8 U.S.C. § 1227 and not charged with inadmissibility under § 1182, are eligible for bond under § 1226(a). As explained below, this argument defies the INA and is patently incorrect. Petitioner's detention is governed by § 1226(a), and he is legally entitled to a bond redetermination hearing.

30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

31. Before Congress passed IIRIRA, the law that governed bond hearings was 8 U.S.C. § 1252(a). That section allowed the government to detain noncitizens during deportation proceedings and also gave the authority to release them on bond. See 8 U.S.C. § 1252(a) (1994).

32. When Congress passed IIRIRA, it kept this same basic detention authority in a new section—8 U.S.C. § 1226(a). In fact, Congress made clear that § 1226(a) simply "restates the current provisions in section [1252](a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); see also H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

33. Separately, through IIRIRA, Congress created new detention rules specifically for people who were arriving at the border or had just entered the U.S., including an expedited removal process. See 8 U.S.C. § 1225(b)(1)–(2). When implementing this new part of the law, the former Immigration and Naturalization Service clarified that people who entered the U.S. without inspection—but were not placed in expedited removal—would still be detained under the same rule they always had been: 8 U.S.C. § 1226(a) (previously § 1252(a)). *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Specifically, the document states: "*Despite being applicants for admission*, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." *Id.* (emphasis added).

34. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

35. Eight U.S.C. §§ 1225 and 1226 are distinct provisions covering distinct groups of people and situations. The phrase "an alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) should be understood to mean only those noncitizens who are detained while seeking admission from outside the United States. Noncitizens who are already living in the United States and charged with being inadmissible are covered by the detention rules in 8 U.S.C. § 1226. Were courts to hold that § 1225 applies to all noncitizens who have not been formally admitted—regardless of the nature of their apprehension or procedural posture—§ 1226 would be functionally nullified. Thus, the existence of § 1226 confirms Congress's intent to allow discretionary detention and bond eligibility for individuals already in the United States, rather than treating all applicants for admission under § 1225. *See, e.g., Ramon Rodriguez Vazquez, v. Drew Bostock, et al.*, No. 3:25-CV-05240 (W.D. Wash. Sept. 30, 2025).

36. While it does not directly answer the question, the Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), reinforces the conclusion that § 1225 governs those seeking admission from outside the United States and § 1226 governs those

already in the United States. *Id.* at 838 (emphasis added) ("In sum, U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)."); *id.* at 846 (emphasis added) ("As noted, § 1226 applies to aliens *already present* in the United States."); *id.* at 874 (Breyer, J., dissenting) (emphasis added) ("The statutory provision that governs the third category of noncitizens *seeking admission at the border* is § 1225(b)(2)(A).")

37. Congress created both §§ 1225 and 1226 to serve distinct roles in the statutory immigration framework. Applying § 1225(b) to individuals already in the United States would collapse this distinction, rendering § 1226 and the phrase "seeking admission" in § 1225 superfluous in violation of established canons of statutory construction. *Hibbs v. Winn*, 542 U.S. 88, 89 (2004) ("the rule against superfluities instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous."); *United States v. Nation*, 564 U.S. 162, 185 (2011) (quoting *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 837, 108 S.Ct. 2182, 100 L.Ed.2d 836 (1988)) ("As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.").

38. Further, finding that § 1225 applies regardless of whether the person is in the United States or seeking admission at the border would render the Laken Riley Act (LRA) meaningless. Congress passed the LRA in January 2025, amending several provisions of the INA, including § 1226. *See* LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025).

39. As relevant here, the LRA added a new category of noncitizens to § 1226(c)'s mandatory detention rules. *Id.* This new group includes noncitizens who are inadmissible—such as those "present in the United States without being admitted or paroled"—and who have been arrested, charged, or convicted of certain crimes. See 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1182(a)(6)(A)(i). As explained above, DHS's position is that § 1226 does not even apply to inadmissible individuals (i.e., individuals charged under § 1182). But by creating these "specific exceptions" for criminally accused inadmissible noncitizens, Congress made clear that inadmissible noncitizens who are not arrested, charged, or convicted of those crimes remain subject to the default rules of § 1226(a). Finding that § 1226 does not apply at all to inadmissible noncitizens would render the LRA completely meaningless. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.").

40. Further, Congress passed the LRA in light of a long-standing agency practice of using INA § 236(a) to detain inadmissible noncitizens already living in the United States. "When Congress adopts a new law against the backdrop of a 'longstanding administrative construction,'" courts "generally presume the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297–298 (1981)).

41. The best reading—supported by the Supreme Court's dicta in *Jennings*, the legislative history, and decades of agency practice—is that § 1225 applies to those seeking

admission to enter the United States at the border, while § 1226 applies to noncitizens already in the United States.

42. Of particular note here, courts have reached this conclusion in habeas cases involving noncitizens who, like Petitioner, were apprehended and released under § 1226(a) years ago but have recently been re-detained without a bond hearing. *See*, e.g., Romero v. Hyde, - F.Supp.3d -, 2025 WL 2403827, at *9-*13 (D. Mass. Aug. 19, 2025); Jimenez v. FCI Berlin, Warden, Civ. No. 25-326, 2025 WL 2639390, at *7-*10 (D.N.H. Sept. 8, 2025); Lopez Benitez, 2025 WL 2371588, at *5-*9; Rosado v. Figueroa, Civ. No. 25-2157, 2025 WL 2337099, at *8-*11 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. Rocha Rosado v. Figueroa, Civ. No. 25-2157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

43. Here, the Notice of Custody Determination, issued by DHS on April 24, 2019 states: "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations . . ." INA § 236 is 8 U.S.C. § 1226. The document goes on to indicate that pursuant to this authority, Petitioner would be released on his own recognizance.[2]

44. Logically, Petitioner had to have been detained and released under § 1226(a) rather than § 1225(b)(2)(A), because § 1226(a) allows for a noncitizen to be released on his own recognizance, i.e., on "conditional parole," pending removal proceedings, while § 1225(b)(2)(A) provides that an alien seeking admission "shall" be detained unless an

[2] See Exhibit 2, Release document

examining immigration officer determines that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §§ 1225(b)(2)(A), 1226(a). Here, because Petitioner was placed in removal proceedings, it cannot reasonably be disputed that no examining immigration officer found Petitioner clearly and beyond a doubt entitled to be admitted prior to his release. It follows that § 1226(a) is also the statutory provision that should be applied to Petitioner's redetention in November 2025. Further, because Petitioner was initially released pursuant to § 1226(a), he necessarily demonstrated to the arresting immigration officer's satisfaction that he was not a flight risk or a danger to persons or property. 8 C.F.R. § 236.1(c)(8).

Protected Liberty Interest

45. Due process requires that if DHS seeks to re-detain a person like Petitioner—who was released and given upcoming court dates, has lived in the United States without incident after his initial release in 2019, and has otherwise complied with the terms of his release—the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified because the person is a flight risk or danger to the community.

46. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

47. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indeterminate, [it] includes many of the core values of unqualified liberty," such as the ability to be gainfully employed and live with family, "and its termination inflicts a 'grievous loss' on the [released individual] and often on others." *Id.*

48. In *Morrissey*, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 208 U.S. at 482. Although the government may restrict the individual "to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, his "condition is very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.* (quotations omitted). Therefore, the parolee possesses a protected interest in his continued liberty. *Id.* at 481-84.

49. Petitioner's release is similar. DHS released Petitioner in 2019 after determining that he did not pose a flight risk or danger to the community. Petitioner was able to apply for asylum, support his wife, have children, and work. His situation in the United States since April 2019 has been "very different from that of confinement in a prison." *Morrissey*, 408 U.S. at 482.

50. Thus, Petitioner has a protected liberty interest. *See, e.g., Cuya-Priale v. Castro,* No. 2:25-cv-01166-KG-DLM at 4 (D.N.M. Jan 09, 2026); *Danierov v. Noem,* No. 25-CV-01215-KG-KRS at 4 (D.N.M. Jan 07, 2026).

51. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

52. The Department of Homeland Security ("DHS") "at any time may revoke a bond or parole" issued pending a removal decision and then "rearrest the alien under the original warrant." 8 U.S.C. § 1226(b); *see also* 8 C.F.R. 236.1(c)(9). But it has long been recognized by the Board of Immigration Appeals that the discretion to revoke release is limited to situations in which there has been a "change [of] circumstance" since the noncitizen was initially released. *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). More specifically, a material change in circumstances as to whether the noncitizen poses a danger to the community or an unreasonable risk of flight. *Cuya-Priale,* No. 2:25-cv-01166-KG-DLM at 4; *see also, e.g., Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

53. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (internal quotations and citation omitted) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . at a meaningful time in a meaningful manner."); *see also, e.g., Morrissey*,

408 U.S. at 485 (internal quotations and citation omitted) (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case"). The Supreme Court has repeatedly held that "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 126 (1990)) (collecting cases). While there may be situations in which a predeprivation hearing is impracticable, those cases must be justified via the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test. *Id.* at 128 (noting that there are special cases where a pre-deprivation hearing is impracticable).

54. Several courts, including sister courts sitting in the Tenth Circuit, have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has arbitrarily begun taking back into custody, often after such persons have been released for months and years. For example, in *Cuya-Priale*, No. 2:25-cv-01166-KG-DLM, the District of New Mexico applied the *Mathews*, framework to hold that in a case where the individual was detained upon entry, placed in removal proceedings, released, and applied for asylum, the person's re-detention could not occur absent a hearing where the government bore the burden of justifying retention by clear and convincing evidence. The District of New Mexico did the same in *Danierov,* No. 25-CV-01215-KG-KRS.

55. In applying the three *Mathews* factors, the *Cuya-Priale* court held that the petitioner's "private interest in remaining free from detention is substantial." *Id.* at 4. The

court further explained that the risk of erroneous deprivation was significant, and the government is required to prove a material change in circumstances justifying re-detention due to dangerousness or flight risk before revoking release, and no such hearing had occurred. *Id.* at 4-5. Finally, the court explained that the government's interest in re-detaining the petitioner without a hearing was limited, as he had complied with the conditions of release and the burden of a bond hearing was minimal. *Id.* at 5. As a result, the court ordered a bond hearing at which the government bore the burden of proving dangerousness or flight risk by clear and convincing evidence. *Id.*

56. The District of New Mexico's decisions in *Cuya-Priale* and *Danierov* are consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD) (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (ordering immediate release where an individual was re-detained after previous release and no pre-deprivation hearing occurred); *Rosado v. Figueroa*, No. 25-CV-2157 at 8-11 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. 25-CV-2157 (D. Ariz. Aug. 13, 2025) (ordering immediate release where individual was re-detained after previous release); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB (E.D. Cal. Aug. 21, 2025) (ordering immediate release where an individual was re-detained after previous release and no pre-deprivation hearing occurred); *Y.M.M. v. Wamsley*, No. 2:25-CV-2075 (W.D. Wash. Nov. 6, 2025) (ordering immediate release where an individual was re-detained after previous release and no pre-deprivation hearing occurred).

Application of the *Mathews* Factors

57. The *Mathews* test looks to (1) the petitioner's interest, (2) the value of additional procedural protections, and (3) any burden on the government in providing additional protections. *Mathews*, 424 U.S. at 335.

58. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*, 533 U.S. at 696 (a non-citizen has a liberty interest "strong enough" to challenge "indefinite and potentially permanent" immigration detention). When Petitioner was released from initial detention, he acquired liberty interests entitled to the protections of the Due Process Clause, "including to live at home, work, and 'be with family and friends and to form the other enduring attachments of normal life.'" *Cuya-Priale*, No. 2:25-CV-01166-KG-DLM at 4 (quoting *Morrissey,* 408 U.S. at 482). In reasonable reliance on these interests, Petitioner enrolled his child in school, applied for a work permit, and applied for asylum. Accordingly, the first *Mathews* factor weighs strongly in Petitioner's favor.

59. Second, a hearing ensures that the purposes of detention—prevention of danger and flight risk—are properly served. Re-detaining Petitioner at this point without first reconsidering the danger and flight risk factors poses a significant risk of an erroneous deprivation of Petitioner's liberty interests in continued release. *Cuya-Priale*, No. 2:25-CV-01166-KG-DLM at 5 ("No assessment was made as to whether any material facts had changed, creating a substantial risk of erroneous deprivation of his liberty interest."). Accordingly, the second *Mathews* factor weighs strongly in Petitioners' favor.

60. Third, while providing Petitioner a hearing before re-detaining his would require expending resources (money and time), those costs are outweighed by the risk of erroneous deprivation of the liberty interest at stake. *Cuya-Priale*, No. 2:25-CV-01166-KG-DLM at 5 ("the administrative burden of providing a bond hearing is minimal."). Accordingly, the third *Mathews* factor weighs in Petitioners' favor.

Constitutional Protections in the Deprivation Hearing

61. Because Petitioner's right to a deprivation hearing is constitutional, certain protections should attach.

62. Due process also requires certain minimal procedures at Petitioner's bond hearing. Petitioner should be provided a bond hearing in which the government bears the burden of justifying his continued detention and the IJ considers his ability to pay and alternatives to detention when setting any bond amount. *See, e.g., Cuya-Priale v. Castro,* No. 2:25-cv-01166-KG-DLM at 4 (D.N.M. Jan 09, 2026) (on similar facts, requiring the government to bear the burden of proving dangerousness or flight risk by clear and convincing evidence); *Danierov v. Noem,* No. 25-CV-01215-KG-KRS at 4 (D.N.M. Jan 07, 2026) (same); *see also, e.g., Black v. Decker*, 103 F.4th 133, 142 (2nd Cir. 2024) (in the prolonged detention context, ordering a bond hearing in which the government bears the burden of proof by clear and convincing evidence and the IJ considers ability to pay and alternatives to detention); *Mansaray v. Perry*, No. 21-CV-1044 (D. Md. June 6, 2021) (same); *Rosado Valerio v. Barr*, No. 19-CV-519, (W.D.N.Y. July 10, 2019) (in the prolonged detention context, ordering a bond hearing in which the government bears the burden of proof by clear and convincing evidence and the IJ considers alternatives to

detention); *Hernandez v. Decker*, No. 18-CV-5026 (S.D.N.Y. July 25, 2018) (in the prolonged detention context, ordering a bond hearing in which the government bears the burden of proof by clear and convincing evidence and the IJ considers ability to pay); *Viruel Arias v. Choate*, No. 1:22-CV-2238 (D. Col. Sep. 26, 2022) (in the prolonged detention context, ordering a bond hearing in which the government bears the burden of proof by clear and convincing evidence); *Hylton v. Decker*, 502 F. Supp. 3d 848 (S.D.N.Y. 2020) (same); Deng v. Crawford, No. 2:20-CV-199 (E.D. Va. Oct. 30, 2020) (same); *Portillo v. Hott*, 322 F.Supp.3d 698 (E.D. Va. 2018) (same); *Sajous v. Decker*, No. 18-CV-2447 (S.D.N.Y. May 23, 2018) (same).

63. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the *Mathews* test.

64. First, detention deprives noncitizens of a profound liberty interest—one that always requires some form of procedural protections. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

65. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding," including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover,

Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

66. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

67. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has previously achieved compliance rates over 90 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether detention is warranted.

68. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent detention based on poverty. *Id.*

CAUSE OF ACTION

28 U.S.C. § 2241

Violation of Fifth Amendment Right to Due Process

69. Petitioner incorporates by reference the allegations set forth in paragraphs 1–68.

70. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

71. Petitioner was re-detained after his release on his own recognizance in April of 2019 without any pre-deprivation hearing as required by law.

72. For these reasons, Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

A. Assume jurisdiction over this matter;

B. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

C. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

D. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately and to hold a pre-deprivation bond hearing for Petitioner should Respondents opt to take Petitioner into custody, at which hearing

Respondents must demonstrate by clear and convincing evidence the changed circumstances warranting Petitioner's re-detention and that no alternative to detention can mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, the IJ must order Petitioner's release on appropriate conditions of supervision, taking into account his ability to pay a bond;

E. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

F. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

s/Kelli J. Stump
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Dated: February 6, 2026

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF

PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner's family the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day of February, 2026, in Oklahoma City, Oklahoma.

Respectfully submitted,

s/Kelli J. Stump
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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Robert J. Troester, U.S. Attorney
Western District of Oklahoma
210 W. Park Avenue, Suite 400
Oklahoma City, OK 73102

s/Kelli J. Stump
Kelli J. Stump, OBA No. 21374