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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Yang SONG,

Petitioner,

v.

Christopher J. LAROSE, et al.

Respondents.

Case No.: 26-cv-0771-TWR-MSB

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

Petitioner replies to Respondents' Return stating as follows:

A. Counsel for Petitioner Met and Conferred with Counsel for Respondents Prior to Filing this Reply/Traverse

The undersigned provided notice of this motion for a temporary restraining order to the U.S. Attorney's Office, Juliet M. Keene, counsel for the government via email on February 12, 2026 and requested the government's position regarding this Reply/Traverse. On the same date, Ms. Keene responded and stated that Respondents have no objection to filing it,

B. Respondents Provide No Proof In Support of their Contention that Petitioner Failed to Report at a Mandatory Check-In.

In their Return, Respondents state, Petitioner "was apprehended upon arrival in the United States before being released and later, failed to report at a mandatory check-in." Dkt. 5, at 1. Respondents appear to be taking the position that Mr. Song was arrested on September 28, 2025, when he was attending an airshow at the Marine Corps Air Station (MCAS) because he missed his mandatory check-in appointment. In support of their position, reference Ex. 3, I-213 (Dkt. 5-3). The partially redacted Form I-213 states, in pertinent parts, "After confirming the subject had an Immigration Judge Order of removal on May 13, 2024, a pending BIA, and failed to report to the LOS filed office on designated reporting date, subject was remand to ICE custody." The I-213 goes on to state, "On September 28, 2025, SONG was arrested by ICE/ERO in San Diego, California based on a Final Order of removal by an Immigration Judge."

Petitioner respectfully submits that upon his release on June 30, 2023, he was instructed to report to the Los Angeles ICE field office shortly after his release. Petitioner heeded those instructions and checked in with that office shortly after being released. After checking in, he was not provided with any future check-in dates or appointments or any type of documents that indicated so. It was Petitioner's understanding the entire time that he did not have any future

check-in appointments with ICE after his first one. Petitioner only learned of any alleged future mandatory check-ins after he was rearrested.

Other than providing a Form I-213 in which an arresting officer states in passing that Petition "failed to report to the LOS filed office on designated reporting date" in passing without providing any further details, such as the check-in date, or any documentations that support that Petitioner was provided with any type of notice of it, Respondents provide no other proof. Instead, Petitioner herewith submits his declaration in Response of these allegations, declaring that he only had knowledge and notice of one check-in requirement, which he attended. Attached herewith.

C. Petitioner's Habeas Claims Are Not Barred by 8 U.S.C. § 1252(g)

§ 1252(g) does not apply to bar jurisdiction because this action concerns Petitioner's unlawful detention. Respondents contend Petitioner is subject to the mandatory detention provisions of § 1225(b)(2), and that ICE had authority to re-detain the Petitioner.

Here, Petitioner does not make *any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.* Petitioner does not dispute the commencement or any aspect of his removal proceedings nor does he have a final removal order (his case is presently on appeal before the BIA). In short, Petitioner challenges nothing related to his removal proceedings – he challenges the Respondents' re-detention and revocation of his conditional parole. Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

In short, this action concerns unlawful detention and the Supreme Court and Ninth Circuit have rejected Respondents' contention that § 1252(g) covers all claims arising from deportation proceedings or imposes a general jurisdictional limitation. *See Dep't of Homeland*

Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also *Arce v. U.S.*, 899 F.3d 796, 800 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders.")

D. Petitioner is Not Subject to Mandatory Detention

Petitioner is not lawfully detained under § 1225(b)(2) as alleged by Respondents.

Respondents contend that Petitioner was not released on conditional parole. Yet on April 21, 2016 Petitioner was released on his own recognizance pursuant to § 1226. (See ***Exhibit A*** attached to the Declaration of Petitioner Marcos Gonzalez, filed concurrently herewith.) Under § 1226 there are only two ways a non-citizen can be released – either on bond (of a minimum of $1,500) or on conditional parole. 8 U.S.C. § 1226(a)(2). Because the Petitioner was released on his own recognizance in 2016, this constituted release on conditional parole under § 1226. See Ortega-Cervantes v. Gonzales, 501 F.3d 1111, 1115–16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on Recognizance" pursuant to INA § 236 "was conditionally paroled under the authority of § 1226(a)"); see also Lopez Benitez, 2025 WL 2371588, at *4 (noting that "[r]elease on recognizance . . . is a form of conditional parole from detention, authorized under § 1226"); see also Martinez v. Hyde, 792 F. Supp. 3d 211, 215 (D. Mass. 2025) (explaining that "Petitioner's Order of Release does not indicate that she was examined or detained under § 1225 but instead explicitly premises her release on § 1226 ('[i]n accordance with § 236 of the Immigration and Nationality Act'")) (quoting 8 U.S.C. § 1226).

Respondents' claim that Petitioner is now suddenly detained under § 1225 is not supported by the plain language of the statute. Simply put, as a noncitizen having entered without inspection and having resided in the U.S. for over two years, Petitioner is neither an

"applicant for admission" nor "seeking admission" under § 1225(b)(2)(A). In addition to the plain language of the statute, case law also does not support Respondents' contention that he is now detained under § 1225. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) (en banc) held that the phrase "application for admission" refers to the specific point in time when a noncitizen submits an application to *physically enter* the United States. It is not a perpetual status. See also *U.S. v. Gambino-Ruiz*, 91 F.4th 981, 989-990 (9th Cir. 2024). As such, the mandatory detention provisions of § 1225(b)(2) do not apply.

Most importantly, Respondents' Return does not address why the Order of Release on Own Recognizance with respect to Petitioner's release in 2016 specifically states that the release is under § 1226, yet Petitioner is now suddenly subject to § 1225's mandatory detention provisions. Indeed, this Court recently stated, "The government cannot now 'simply switch tracks' without explanation or any basis and purport to subject Petitioner to mandatory detention under § 1225(b) after previously releasing him under § 1226(a)." *Shen v. LaRose*, No. 3:25-cv-03235-GPC-BLM, *13 (S.D. Cal. Dec. 11, 2025).

Respondents' position that even though Petitioner was previously released under § 1226 but is now somehow subject to § 1225(b)(2) defies both the plain language of the statute, decades of practice by Respondents and Ninth Circuit and Supreme Court precedent.

E. <u>Petitioner's Parole Revocation and Re-Detention Violates Due Process</u>

Respondents' Return fails to address the substantial body of law regarding Petitioner's significant due process rights as someone who has lived in the United States for over two years. Indeed, "due process" is not mentioned at all in Respondents' Return.

Numerous courts have determined ICE's authority to revoke conditional parole is constrained by the due process clause – including the Supreme Court in *Morrissey v. Brewer*,

408 U.S. 471, 480-82 (1972) (a parolee's liberty involves significant values within the protection of the Due Process Clause of the Fourteenth Amendment) and the Ninth Circuit in *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). The guidance provided by *Matter of Sugay*, 17 I&N Dec. 647 (BIA 1981)—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Petitioner's weighty interest in his freedom from detention.

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

But "even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, Case No. 22-cv-02508-TSH, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts . . . facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention.")); *see Padilla v. U.S. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a

prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.")

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

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

All three factors support a finding that Respondents' revocation of Petitioner's conditional parole release without an opportunity to be heard deprived Petitioner of his due process rights. First, Petitioner has a significant liberty interest in remaining out of custody pursuant to his conditional parole. For nearly ten years preceding his re-detention on September

28, 2025, Petitioner exercised that freedom under an immigration officer's decision to granting him conditional parole after a determination that he presented neither a flight risk nor a danger to the community. In the over two years following his release, Petitioner has worked to support himself and his family, hired counsel to represent him in his removal proceedings as well as in this petition, and has established extensive community ties in the United States.

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

"Second, the risk of an erroneous deprivation of such interest is high as Petitioner's

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

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

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

Due Process Clause, [his] detention is unlawful." *Gonzalez Salazar*, at *5; see also, *Doe v. Becerra*, 2:25-cv-00647, (E.D. Cal. 2025); *Rodriguez-Flores v. F. Semaia et al., No. CV 25-6900 JGB (JCX), 2025 WL 2684181* (C.D. Cal. Aug. 14, 2025).

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

F. The Appropriate Remedy for Respondents' Violation is Immediate Release

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

This is not a case of someone who entered without inspection but was never previously detained. As affirmed recently by the Central District of California, the remedy for that class of non-citizens is a bond hearing. *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. November 20, 2025). This case concerns the class of non-citizens who entered without inspection, were detained shortly after entry, were then released, but then later re-detained. In other words, this is a re-detention case involving the due process violation of the

Petitioner not being provided with a hearing prior to being re-detained. As such, the appropriate remedy for such a violation is immediate release.

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

Finally, in addition to the due process violation, Petitioner also seeks relief under the Administrative Procedures Act. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). Because the arrest of the Petitioner on September 28, 2025 was arbitrary and capricious, as well as in violation of § 1226 and the due process clause of the Constitution, it must be set aside and Petitioner should be immediately released.

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

Dated: February 10, 2026,

By: */s/ Bashir Ghazialam*
Bashir Ghazialam
Attorney for Petitioner
Email: bg@lobg.net

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 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: February 12, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam