UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 26-cv-20864

SERGIO MONTELIER CHAVIANO,
MARIO RODRIGUEZ IZQUIERDO,

Petitioners,

v.

MIAMI ICE FIELD OFFICE DIRECTOR,

Respondent.
_____/

PETITIONER'S TRAVERSE

Petitioners hereby submit this traverse to the return [ECF No. 5] filed by the Respondent. Petitioners were both arrested at the Miami Immigration Court where they dutifully appeared for their scheduled hearings. Neither has any extant criminal record. Respondent has not articulated any factual basis related to dangerousness or flight risk that would justify Petitioners' continued detention. What is more, Respondent has placed Petitioners all over the statutory map with regard to the government's purported detention authority. The government has purported to subject them to discretionary detention (when they were released on their own recognizance years ago), mandatory detention under Section 1225(b)(2) (during bond hearings or upon review by the Board of Immigration Appeals) and now they are purported to be subject to mandatory detention under section 1225(b)(1) after passing credible fear interviews when the government belatedly attempted to initiate expedited removal proceedings years after their arrival. [ECF No. 5]. Respondent's invocation of mandatory detention here is not textually based, but is, rather, pretextual. At this juncture, Petitioners respectfully request that constitutional due process enter the stage. Respondent arbitrarily and unconstitutionally has kept Petitioners in prolonged detention for nearly

nine (9) months without providing them any meaningful opportunity to challenge their detention. The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. CONST. amend. V. Petitioner Montelier Chaviano has been detained since May 22, 2025. Petitioner Rodriguez Izquierdo has been in immigration custody since June 5, 2025. The Petitioners' ongoing detention, which have not been deemed necessary for community safety or to prevent flight by any judicial authority, violate their rights to substantive and procedural due process. The Supreme Court has clarified that "the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Notwithstanding any mandatory detention statute, Petitioners are entitled to release on their own recognizance or an individualized bond hearing as a matter of constitutional due process. *See Cumbe Lema v. Mary de Anda-Ybarra*, 26-cv-249-KC (W.D.TX February 9, 2026).

Petitioners are not subject to 8 U.S.C. §1225(b)(1) at this juncture because they were previously released on their own recognizance and attempts to initiate expedited removal afterwards were time-barred. *See Lopez Martinez v. Hardin*, 25-cv-1229 (M.D.Fla 2026) at *4. ("The government could have continued Lopez Martinez's expedited removal in 2022, when he entered the country. Instead, they released him and allowed him to stay for more than three years before arresting him. As a result, he is not eligible for "expedited" removal, and Respondents' authority to detain Lopez Martinez stems from section 1226(a)."); *see also Hernandez Giron v. Noem*, Case 2:25-cv-01201-SPC-NPM, 2026 LX 27982, at *7 (M.D. Fla. Jan. 8, 2026).

Petitioners were previously conditionally released on orders of release on recognizance, which can only issue pursuant to 8 U.S.C §1226(a), just like immigration court bonds. As one federal district court explained: "DHS's decision to release an individual on bond [or, as here,

conditional parole on an order of release on recognizance], as opposed to humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), constitutes strong evidence that DHS intended to detain the individual under §1226(a) and not under § 1225(b)....the government cannot later turn back the clock, and neither can the Court." (internal citations omitted). *Sanchez v. Bondi*, No. 1:25-cv-018888, 2025 LX 536398 at *9 (E.D. Va. Nov. 14, 2025). Someone released from custody under 8 U.S.C. 1226(a) and then re-apprehended therefore can only be detained subject to the default discretionary detention statute, 8 U.S.C. §1226(a). *See Ramirez Franco v. Bondi*, 25-cv-25466 (S.D.Fla 2025). Both as a matter of statute and constitutionally, Petitioners are entitled to release or a meaningful opportunity to challenge their detention under section 1226(a).

Petitioner Rodriguez Izquierdo's habeas claims were last addressed in October of 2025, where the court noted, referencing *Zadvydas*, that "Petitioner has been detained, at this point, for only four months, far short of the six-month period that is presumptively constitutional." *Izquierdo v. Ripa*, Case 0:25-cv-61845-RS, at 8 (S.D. Fla. Oct. 24, 2025). Petitioner Montelier Chaviano's entitlement to habeas relief was last examined even earlier, in June of 2025, where his due process rights were acknowledged, but the ruling centered on the factual scenario then at play, including "his detention for the last month." *Chaviano v. Bondi.*, Case 1:25-cv 22451-MD, DE 32, at 18 (S.D. Fla. June 23, 2025). Petitioners' circumstances have manifestly changed since these decisions were rendered, both by the passage of time and by fundamental shifts in the procedural posture of their immigration matters. Their due process claims are ripe for redetermination.

Respondent attempts to foreclose all review of Petitioners' due process claims by way of various inapposite jurisdiction-stripping provisions included in the Immigration and Nationality Act. However, courts faced with these challenges have noted the limitations of these restrictions, notably when due process and habeas corpus are at play: Even assuming arguendo that the Court

cannot review the Respondent's discretionary decision to commence expedited removal proceedings or prevent the attempted execution of an expedited removal order, the immigration statutes do not divest federal courts of jurisdiction to consider the legal basis of detention under principles of habeas corpus, especially after expedited removal has been extinguished by the service of a notice to appear. *See Hinojosa Garcia v. Noem*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025) and *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025). *Hernandez Giron v. Noem*, Case 2:25-cv-01201-SPC-NPM, 2026 LX 27982, at 4 (M.D. Fla. Jan. 8, 2026). *See also Hernandez v. ICE Field Off. Dir.* No. EP-26-CV-67-KC, 2026 WL 503958 (W.D. Tex. Feb. 23, 2026) (differentiating a statutory challenge to detention from a court's determination of whether a petitioner "is being detained in violation of her constitutional right to procedural due process").

When analyzing due process challenges, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). The relevance of this analytical framework to the immigration detention arena is well settled: To determine whether detention violates procedural due process, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, "when considering due process challenges to 7 [discretionary noncitizen detention] other circuits ... have applied the *Mathews* test"). *Merino v. Ripa*, Case 01:25-cv-23845-JEM at 7-8 (S.D. Fla. Oct. 15, 2025).

Under *Mathews*, courts weigh three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of any additional or substitute procedural safeguards; and, finally, the Government's interest, including the fiscal and administrative burdens

that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. All three factors weigh in favor of Petitioners. The private interest being affected by the official action in this case is of the utmost importance, as it relates to the Petitioners' physical liberty and right to be free from government detention. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. In addition, noncriminal detention requires a special justification outweighing "the individual's constitutionally protected interest in avoiding physical restraint." *Id.*

In addition, the risk of an erroneous deprivation of the right to be free from detention is evident in this case. The government's actions have not been undertaken subsequent to individualized determinations that an interest in orderly and efficient immigration processing has been jeopardized. Quite the contrary; prior to the government's sudden decision to initiate expedited removal nearly three years after the Petitioners had arrived in the United States, both Petitioners had been compliant with immigration processing. "[A]bsent a pre-detention hearing in front of a neutral arbiter, the risk of erroneous deprivation is high." *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025).

The unilateral decision-making in this case, shielded from judicial review, presents a clear risk of erroneous deprivation of liberty that has reached a crescendo here. Because "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," mandatory detention in situations other than those explicitly carved out by Congress "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8, 2025).

Finally, the government's interest in avoiding fiscal and administrative burdens from alternate or substitute procedures in this case is negligible at best. The government is currently detaining Petitioners under 24-hour supervision in a detention facility at taxpayer expense despite their history of compliance with court orders and hearings; providing them conditional release or a bond hearing would, if anything, ultimately lighten the government's burden were release ordered. The immigration courts are more than capable of providing a speedy and efficient follow-up process post-release or a bond hearing to the Petitioners, as they do for thousands of other noncitizens every day.

Despite the strong interests Petitioners can demonstrate under the *Mathews* framework, Respondent summarily contends that their claims for habeas relief "fares no better" than the earlier petitions. Respondent cites the June 23, 2025, habeas order in Petitioner Montelier Chaviano's case, without regard to the significant changes to the procedural posture of the cases that have occurred since June of last year. Respondent also does not address the crucial fact that Petitioner Montelier Chaviano has now been detained for nine months, with Petitioner Rodriguez Izquierdo's detention also approaching the nine-month mark. The prior habeas petitions were decided after periods of detention "far short of the six-month period that is presumptively constitutional." However, that presumptive period has now been far exceeded.

Respondent also relies on cases, listed briefly in the June 23, 2025 habeas order, where detention did not rise to the level of a due process violation after that presumptive six-month period had elapsed. However, even a cursory review of those cases is sufficient to differentiate them. In the listed cases, the habeas petitioners had been afforded exactly the type of protective safeguards that have been denied to Petitioners here (and which the Petitioners are requesting) including, notably, individualized bond hearings. *See, e.g.*, *O.D. v. Warden*, Stewart Det. Ctr., No. 4:20-CV-

222 CDL-MSH, 2021 WL 5413968, at *5 (M.D. Ga. Jan. 14, 2021), report and recommendation adopted, 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (citing, *inter alia*, the provision of a bond hearing and judicial determination on continued detention to determine that no due process violation occurred); *Sigal v. Searls*, No. 1:18-CV-00389, 2018 WL 5831326, (W.D.N.Y. Nov. 7, 2018) (finding continued detention justified where noncitizen convicted of criminal offenses and subject to final order of removal was deemed a risk to the community via an individualized determination); *Hylton v. Shanahan*, No. 15-CV-1243-LTS, 2015 WL 3604328, at 6 (S.D.N.Y. June 9, 2015) (finding no due process violation where petitioner requested continuances and prolonged proceedings, but nonetheless ordering an individualized bond determination).

Ultimately, the mere fact that detention longer than six months may have been permissible, under certain distinct and particular factual circumstances, and after individualized review, is by no means sufficient to neutralize the demands of due process for the Petitioners here. Unlike the noncitizens in the listed cases, who had largely been convicted of criminal offenses in separate criminal proceedings where due process was safeguarded, and who then received additional procedural safeguards via individualized risk determinations, Petitioners have been summarily detained for nine months, with no such protections afforded to them. This is a violation of their due process rights, and this Court is both empowered and entitled to order their release or order an individualized bond hearing.

Respondent argues that this court's judicial review is constrained by the initial circumstances causing this detention – the placing of Petitioners into expedited removal proceedings. Petitioners were both served with a Form I-860, and this was the operative framework when the judiciary last ruled on the habeas claims in these cases. And yet, as Respondent acknowledges, the procedural posture has since shifted. Both Petitioners were screened for their

credible fear of return to their home countries; both established a credible fear of return, necessitating the termination of their expedited removal and reintroduction of full removal proceedings.

Respondent's argument that the expedited removal process somehow survives a final determination of credible fear, and the institution of 1229a proceedings, flies in the face of the statutory and regulatory framework created to surround expedited removal. Expedited removal is commenced with the filing of a separate charging document, Form I-860. *See* 8 C.F.R. § 235.3(b)(2). The regulations also clarify that noncitizens placed in expedited removal are generally "not entitled to a hearing before an immigration judge in proceedings conducted pursuant to section 240 of the Act." *Id.* at 235.3(b)(2)(ii). Once the expedited removal charging document, Form I-860, is superseded by a notice to appear, particularly after a credible fear has been established, the expedited removal process terminates. Both Petitioners have been issued Notices to Appear and are presently in removal proceedings.

In essence, Respondent argues that the initial cause of detention forever alters the judiciary's scope of review, even when the statutory grounds for limited scope of judicial review – expedited removal proceedings – are no longer operative. Respondent's position would result in an irrational limitation of the scope of constitutional protections available to noncitizens. It cannot be said that an act of governmental discretion to place a noncitizen in expedited removal, which that noncitizen successfully challenges due to a recognizable humanitarian protection interest, nonetheless serves to perpetually and continually shield a case from judicial review. Simply put, Respondent continues to claim that this detention "arose from" the expedited removal process, without meaningfully addressing the constitutional ramifications of a *continued* detention after the expedited removal process is complete. What is more, even if section 1225(b)(1) applied to their

detention, at this juncture after passage through a credible fear screening, release or a constitutionally adequate bond hearing is needed as a matter of due process. *Safinejad v. LaRose*, No. 26-cv-531-JES-AHG, 2026 LX 23998, at *7 (S.D. Cal. Feb. 3, 2026); *L.B.O.M. v. Hermosillo*, No. 2:25-cv-02695-GJL, 2026 LX 32035, at *9 (W.D. Wash. Feb. 2, 2026); *Mashchenko v. Rokosky*, Civil Action No. 25-12387 (RK), 2026 LX 90129, at *8 (D.N.J. Jan. 25, 2026). Petitioners therefore respectfully request conditional release or constitutionally adequate bond hearings.

Date: February 25, 2026

Respectfully submitted,

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