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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

ADAM BRYANT PEÑA BECERRA, Petitioner, v. KELLY SPARKS, et al., Respondents.	**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS** Case No. 2:26-cv-212 JNP

The court asked for briefing on four issues, and Respondents have just submitted their supplemental memorandum, which includes evidence of the "original warrant" that was issued in 2023. (ECF No. 26-1.) Mr. Pena agrees with the government that the availability of this document simplifies, somewhat, the response to the court's questions. Still, the government's authority to revoke release under § 1226(b) is not unbridled. Caselaw, regulations, and due process permit revocation only where there is a materially changed circumstance, and this fact must be found by a pre-arrest hearing by an immigration judge.

ANALYSIS

The court indicated at argument on the petition that it was inclined to follow its earlier ruling in *Torres Medina*. For the reasons stated there, it is clear that Mr. Pena is entitled to relief because he cannot lawfully be detained without bond under 8 U.S.C. § 1226(b)(2) as the

government argued, and the court's questions all speak to the question of what remedy should be ordered in this case: (a) an order that Respondents allow him to have a bond hearing (as in *Torres Medina*), or (b) an order that Respondents release him again on ORR (as in *Velasquez Montilla*). The INA, regulations, and Constitution require the latter.

ANALYSIS

I. The court does not need to decide whether the existence of an "original warrant" is required under § 1226(b) because the government has produced such a warrant.

The government acknowledges that Mr. Pena was previously released without a bond under 8 U.S.C. § 1226(a), arguing now that his rearrest is supported by § 1226(b). (ECF No. 26 at 5-6.) Mr. Pena agrees with the government that the court does not need to decide what authority the government would have in the absence of an "original warrant" because one has now been produced. (*See id.* at 3-4.)

II. Revocation authority under § 1226(b) requires, at a minimum, that Mr. Pena receive a bond hearing.

Mr. Pena does not deny that 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1 appear to give Respondents broad authority to revoke release that was previously granted under § 1226(b). Although this authority cannot be exercised arbitrarily or in violation of due process, the government's supplemental brief makes one dispositive concession. Rearrested under § 1226(b), as it now argues he was, Mr. Pena has the right "to request a bond redetermination" from the immigration court. (ECF No. 26 at 8.) This concession is critical because, thus far, Respondents and their agents have insisted that Mr. Pena is ineligible for bond redetermination because he was detained under § 1225(b). The government cannot have it both ways. If he was released under § 1226(a) (as the government now concedes), and he was rearrested under § 1226(b) (as the government now asserts), then he is entitled to a bond redetermination.

The government's evolving position on its authority to rearrest him cannot be endorsed. Nor can this court have any confidence that the actual custodians will respond to the government's concessions here without a court order. At a minimum, this court should direct respondent to give him a bond hearing within 7 days.

III. The due process clause prohibits rearrest that is arbitrary or done without notice and a chance to respond.

Furthermore, notwithstanding the broad language of § 1226(b), it is well established that a noncitizen who is granted release under § 1226(a) cannot be rearrested unless there is a material change in circumstances, a point the government has not denied. (*See* ECF No. 1 at 14 (citing *Velasquez Montillo v. Brooksby*, 4:26-cv-18 DN, ECF No. 23 at 8-17 (D. Utah Mar. 3, 2026); *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018); *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981))). The only way to protect against arbitrary deprivation of liberty is to give notice and the chance to respond *before* a person is rearrested.

For this reason, many courts have held that ICE cannot constitutionally re-arrest a person who was previously released under § 1226(a). *See, e.g., Ayala Cajina v. Wofford*, No. 1:25-cv-01566-DAD-AC, 2025 WL 3251083 (E.D. Cal. Nov. 21, 2025) (holding that due process required a pre-detention hearing to protect the petitioner's liberty interest in his continued release following his release pursuant to 8 U.S.C. § 1226(a)).

In order to comply with due process, the warrant requirement in § 1226 must be understood to require not only an *original* warrant, but also a warrant based on some changed circumstances. The original warrant was resolved by the decision to release. Due process requires that the reasons for a subsequent change to that decision be explained before the arrest is effectuated.

Additionally, existing regulations already contemplate a procedure where an initial determination is made by an ICE officer, but a subsequent *re*-determination must be made by an immigration judge on a showing of changed circumstances. The regulations governing custody determination are found in 8 C.F.R. § 1003.19. This section, titled "Custody/bond," describes the shared role that immigration agents and judges play in custody determinations: initial "[c]ustody and bond determinations" are "made by the service[1] pursuant to 8 CFR part 1236," and these may be "reviewed by an Immigration Judge pursuant to 8 CFR part 1236." 8 CFR § 1003.19(a). The next section describes this review by an immigration judge as "an initial bond *re*-determination." *Id.* § 1003.19(a) (emphasis added).

Here, we have an initial bond determination that was made in 2023 by a DHS official. The court should construe this regulation in light of the due process clause to mean that in order to revisit that original determination, ICE must file a written motion for bond redetermination. Without such a pre-arrest notice (motion) and opportunity to respond (hearing), a subsequent rearrest of a person released under § 1326(a) would violate due process.

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[1] The term "Service" refers to the former INS and "the offices of the Department of Homeland Security to which the functions of the former Service were transferred pursuant to the Homeland Security Act." 8 CFR § 1000.1(c). This is a distinct actor from an "immigration judge." *Id.* § 1000.1(l).

CONCLUSION

At a minimum, this court must order Respondents to give Mr. Pena a bond hearing within 7 days. The better view, however, in light of the Constitution and regulations governing custody determinations, is to order his immediate release back to the community on the same conditions of ORR that were in place before his rearrest.

DATED this 1st day of April 2026.

/s/ Benjamin C. McMurray
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