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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

GURMEET SINGH Petitioner, v. JUAN BALTASAR, Warden of the Denver Contract Detention Facility; TODD LYONS, Acting Director of Immigration and Customs Enforcement; MARKWAYNE MULLIN, Acting Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States Respondents.	Civil No. 1:26-cv-01155-SKC

PETITIONER'S REPLY TO RESPONSE AND ORDER TO SHOW CAUSE

I. INTRODUCTION

Respondents' filing confirms that this case is not factually or legally distinguishable from prior decisions of this Court rejecting the Government's position. (ECF No. 9).

Rather than meaningfully engage Petitioner's claims, Respondents concede this Court has already rejected their position, rely on out-of-circuit authority, and request only a bond hearing as a fallback remedy.

That approach fails for two independent reasons:

1. Statutorily, Petitioner is detained under § 1226(a), not § 1225(b); and
2. Constitutionally, even if § 1225 applied, the Government's conduct violates due process because it revoked previously granted liberty without any pre-deprivation process.

Because Respondents do not dispute the absence of pre-deprivation process, and because this Court's precedent forecloses their statutory argument, immediate release—not a bond hearing—is the appropriate remedy.

II. RESPONDENTS DO NOT MEANINGFULLY DISTINGUISH THIS CASE FROM CONTROLLING AUTHORITY

Respondents expressly acknowledge that the facts of this case are "not materially distinguishable" from prior decisions of this Court. (ECF No. 9).

That concession is dispositive. Respondents' concession directly answers the Court's Order to Show Cause: there are no material distinctions from Diallo. The Court's prior analysis therefore controls.

This Court has repeatedly rejected the Government's position that individuals like Petitioner—who were released into the interior and later re-detained—are subject to § 1225(b). Respondents offer no new facts, no new controlling authority, and no intervening Tenth Circuit decision.

Instead, they rely on Fifth Circuit authority (Buenrostro), Eighth Circuit authority (Avila), which are **non-binding** and contrary to this Court's existing rulings.

Under basic principles of horizontal consistency, this Court should adhere to its prior decisions absent a compelling reason to depart. Respondents provide none. Because Respondents concede no material distinction from Diallo, the Court may resolve this case on the same basis without reaching additional issues. However, the independent due process violation provides an additional and sufficient basis for relief.

III. THE STATUTORY ARGUMENT DOES NOT RESOLVE THE CASE

Respondents' statutory argument has already been considered and rejected by this Court.

A. Section 1225(b) Does Not Apply to Long-Present Noncitizens Arrested in the Interior

Respondents rely heavily on Jennings and the Fifth Circuit's decision in Buenrostro-Mendez.

But Jennings did not address the specific posture here: a noncitizen living in the interior for years, arrested by ICE, placed in § 1229a proceedings, and then detained pending removal.

Jennings described § 1225(b)(2) as a "catchall" for applicants for admission. But it did not hold that DHS may reclassify long-present interior noncitizens as border applicants for purposes of eliminating bond.

This Court has already rejected that expansion.

B. IIRIRA Eliminated the Entry Doctrine — It Did Not Expand Mandatory Detention

Respondents' legislative history argument actually confirms Petitioner's position.

IIRIRA replaced "entry" with "admission." But it did not collapse all detention authority into § 1225.

Congress preserved § 1226(a) as the discretionary detention authority for noncitizens pending removal proceedings inside the United States.

If § 1225(b) governs every person who entered without inspection regardless of time and presence, § 1226(a) becomes largely meaningless for a significant population of detained individuals.

That reading conflicts with statutory structure.

C. The 1997 Federal Register Statement Confirms the Proper Reading

Respondents attempt to minimize the 1997 Federal Register statement recognizing that noncitizens present without admission are eligible for bond.

But that contemporaneous interpretation is powerful evidence of how DHS understood IIRIRA's restructuring.

The Government's current interpretation represents a departure from long-standing administrative practice.

Respondents raise no new authority not already considered and rejected by this Court.

IV. PRIOR RELEASE CREATES A PROTECTED LIBERTY INTEREST

This case turns on a critical fact Respondents ignore. The Government granted Petitioner liberty—and then revoked it without process. That liberty was not theoretical. It was formal (release from custody), structured (conditions of supervision), and relied upon (Petitioner lived in the community).

Under established due process principles once the Government grants liberty, it cannot revoke it arbitrarily, and must provide notice and a meaningful opportunity to be heard before detention.

Respondents' theory would allow the Government to release individuals, wait months or years, and re-detain them without explanation or hearing.

That is precisely the type of arbitrary deprivation the Due Process Clause prohibits.

V. MATHEWS CONFIRMS THE CONSTITUTIONAL VIOLATION

Under Mathews v. Eldridge, the Court evaluates the private interest affected; the risk of erroneous deprivation and value of additional safeguards; and the Government's interest. Each factor overwhelmingly favors Petitioner.

A. Petitioner's Interest in Freedom from Physical Restraint Is Fundamental

The private interest at stake—freedom from physical detention—is "at the core of the liberty protected by the Due Process Clause."

This is not an initial detention case. Petitioner had already been released from custody, living in the community, and complying with all supervision requirements.

That context matters. Once the Government grants liberty and an individual relies on it, the individual's interest is heightened, not diminished. The abrupt revocation of that liberty—without notice, without explanation, and without any opportunity to be heard—implicates the most serious deprivation the Constitution protects against.

Courts consistently recognize that even temporary detention constitutes irreparable harm. Here, the deprivation is not only physical confinement, but the sudden destruction of settled expectations of liberty created by the Government itself.

This factor strongly favors Petitioner.

B. The Risk of Erroneous Deprivation Is Extreme Absent Pre-Deprivation Process

The second Mathews factor is decisive.

Respondents do not dispute that Petitioner was given **no advance notice**, no statement of alleged violations, and no opportunity to respond before being detained.

Instead, the Government's process operates in reverse detention first, justification later. That structure creates an intolerable risk of error, particularly where Petitioner had demonstrated compliance,

there was no contemporaneous finding of violation, and any justification is asserted only after litigation begins.

Basic procedural safeguards—such as notice of the alleged basis for detention and a brief opportunity to respond before a neutral decisionmaker—would significantly reduce the risk of erroneous deprivation. These are minimal, well-established protections.

Respondents' reliance on a post-detention bond hearing does not cure this defect. A later hearing cannot prevent the initial erroneous deprivation, cannot restore lost liberty, and shifts the burden onto the detainee after the deprivation has already occurred.

The Constitution does not permit a system where liberty is taken first and process is offered only after the fact—particularly where the Government itself created and then revoked that liberty.

This factor weighs heavily in Petitioner's favor.

C. The Government's Interest Does Not Justify Dispensing with Pre-Deprivation Process

The Government identifies no legitimate interest that justifies eliminating pre-deprivation safeguards.

There is no claim that exigent circumstances existed, Petitioner posed an immediate danger, or Petitioner was likely to abscond if minimal notice were provided.

To the contrary, Petitioner had been known to DHS, appearing for required check-ins, and fully compliant with supervision.

In such circumstances, providing minimal process—such as advance notice and an opportunity to be heard—would impose negligible administrative burden.

Nor does the Government have an interest in preserving a system that allows for arbitrary detention. Administrative convenience cannot outweigh the constitutional requirement of due process.

This factor therefore also favors Petitioner.

D. The Balance of the Mathews Factors Requires Pre-Deprivation Process—and Confirms the Violation

When properly weighed, the Mathews factors compel a straightforward conclusion: the private interest is fundamental; the risk of error without pre-deprivation process is severe; and the Government has no countervailing interest sufficient to justify dispensing with basic procedural safeguards.

Accordingly, the Constitution required Respondents to provide notice and a meaningful opportunity to be heard before revoking Petitioner's liberty.

Because Respondents failed to provide any such process, Petitioner's detention violates due process.

And because the violation occurred at the moment of detention, post hoc procedures—such as a bond hearing—cannot cure it.

VI. POST HOC PROCESS DOES NOT CURE THE VIOLATION

Respondents contend that any defect in Petitioner's detention can be remedied by a subsequent bond hearing. That argument fails as a matter of constitutional law.

A. Due Process Requires Process Before the Deprivation of Liberty

The core defect in this case is temporal.

The Constitution requires that, absent extraordinary circumstances, the Government provide notice and an opportunity to be heard before depriving an individual of liberty. This is a foundational principle of due process, not a procedural technicality.

Here, Respondents do not dispute that Petitioner was seized and detained without advance notice. No hearing was provided prior to detention, and no neutral decisionmaker evaluated the basis for custody before liberty was revoked.

That sequence—detention first, process later—is precisely what due process forbids.

Where pre-deprivation process is feasible, the Government cannot substitute post-deprivation procedures as a constitutional workaround. The violation is complete at the moment liberty is taken without process.

B. A Bond Hearing Does Not Remedy the Initial Constitutional Harm

Respondents' proposed remedy—a bond hearing—does not address the constitutional injury.

A post-detention bond hearing does not prevent the erroneous deprivation of liberty, does not restore the period of unlawful detention already endured, and does not address the Government's failure to provide process at the critical moment of liberty revocation.

Instead, it improperly shifts the burden to Petitioner to justify release after the Government has already acted without constitutional authority.

The Due Process Clause does not permit the Government to detain first and justify later.

C. The Government Cannot Benefit from Its Own Due Process Violation

Accepting Respondents' position would create a perverse incentive structure that the Government could bypass constitutional safeguards, detain individuals without notice or hearing, and then argue that a later bond hearing cures the violation.

That is not how due process operates.

Courts have consistently rejected post hoc justifications where the Government failed to provide required procedures at the outset. Allowing such a practice would effectively eliminate the pre-deprivation requirement altogether.

D. This Case Is Distinct from Initial Detention Cases Where Bond Hearings May Suffice

Respondents rely on cases suggesting that a bond hearing is an adequate remedy. Those cases are inapposite.

They involve initial detention decisions, where no prior liberty interest had been granted, and detention occurred at the outset of proceedings.

This case is fundamentally different.

Petitioner was previously released, living in the community, and compliant with all supervision requirements.

The Government affirmatively granted liberty, and then revoked it without process.

That distinction is critical. Once liberty has been conferred and relied upon, due process imposes heightened procedural protections, including pre-deprivation safeguards.

A routine bond hearing cannot substitute for those protections.

E. The Appropriate Remedy Must Address the Constitutional Violation

Because the violation stems from the absence of pre-deprivation process, the remedy must restore the status quo ante.

A bond hearing leaves Petitioner detained, legitimizes the unconstitutional seizure, and fails to prevent recurrence of the same conduct.

By contrast, immediate release restores the liberty unlawfully revoked, and ensures that any future deprivation occurs only after constitutionally adequate procedures.

F. Post Hoc Process Cannot Cure a Completed Due Process Violation

In sum, Respondents' position rests on a flawed premise—that due process can be satisfied retroactively. It cannot.

Once the Government deprives an individual of liberty without required procedural safeguards, the constitutional violation is complete. Subsequent proceedings may bear on future custody, but they do not erase the original violation.

Accordingly, Respondents' request for a bond hearing should be rejected, and the Court should order immediate release as the only remedy that meaningfully addresses the constitutional harm.

VII. RESPONDENTS' JURISDICTIONAL ARGUMENT FAILS

Respondents assert that 8 U.S.C. § 1252 bars jurisdiction.

That argument fails because Petitioner does not challenge a removal order. Instead, Petitioner challenges the lawfulness of his detention and the absence of constitutionally required process—claims that fall squarely within this Court's habeas jurisdiction.

Courts routinely exercise jurisdiction over custody challenges, and due process violations in immigration detention.

Nothing in § 1252 eliminates that authority here.

VIII. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY

Respondents argue that the Court should order only a bond hearing. Respondents rely on district decisions suggesting that a bond hearing is sufficient relief. Those cases are distinguishable because they address initial detention or purely statutory violations, not the revocation of previously granted liberty without pre-deprivation process. Where the constitutional violation occurs at the moment of seizure, courts retain authority to order immediate release to restore the status quo ante.

That is incorrect for two reasons:

1. A bond hearing does not remedy the constitutional violation

The violation is pre-deprivation. The remedy must restore the status quo ante.

2. This Court has authority to order release

Where detention is unlawful, courts routinely order immediate release.

A bond hearing would allow the Government to benefit from its own constitutional violation, and perpetuate the same unlawful framework.

IX. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

1. Grant the Petition;
2. Order Petitioner's immediate release;
3. Enjoin re-detention absent:
    - advance notice, and
    - a pre-deprivation hearing before a neutral decisionmaker; and
4. Grant any additional relief the Court deems appropriate.

Dated this 9th day of April, 2026.

/s/Gurpreet Kaur
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