

1 Vanessa Molina (SBN 325672)
The Law Office of Vanessa Molina
1530 Lancaster Point Way
2 San Diego, CA 92154
Phone: (619) 790-4300
3 Email: vanessa@vanessamolinalaw.com

4 Roger Tavira (SBN 24099325)
The Tavira Law Firm, PLLC
550 Westcott St. Suite 300
5 Houston, Texas 77007
Phone: (972) 261-4116
6 Email: roger@taviralaw.com

7 *(Pro hac vice)*

8 *Counsel for Petitioner*

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

12 Ulises Monroy Martinez,
13 

Petitioner,

14 v.

15 Todd M. Lyons, Acting Director,
Immigration and Customs Enforcement;
16 Patrick Divver, Director of Field
Operations, San Diego Field Office,
17 Immigration and Customs Enforcement;
Kristi Noem, Secretary, U.S.
18 Department of Homeland Security;
Pamela Bondi, U.S. Attorney General;
19 Christopher J. LaRose, Warden, Otay
Mesa Detention Center
20

Respondents.

Case No.: 26-cv-02173-JLS-AHG

**PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN TO
HABEAS PETITION**

PETITIONER'S TRAVERSE

1
2 Petitioner, Mr. Monroy Martinez, by and through undersigned counsel, respectfully
3 submits this traverse in further support of his petition for a writ of habeas corpus. Herein,
4 Petitioner asserts the following: (1) the Immigration Judge's ("IJ") denial of Petitioner's release
5 on bond was a violation of his right to due process and the Administrative Procedure Act
6 ("APA"); (2) this Court should not require administrative exhaustion in this matter; and (3) this
7 Court has jurisdiction in this matter.

8 **I. The IJ's Arbitrary Reversal and Denial of Bond Violated Petitioner's Due**
9 **Process Rights and the APA, Claims Which Respondents Have Waived by**
10 **Failing to Address.**

11 Respondents' opposition rests on the circular assertion that Petitioner's detention under 8
12 U.S.C. § 1226(a) is lawful simply because an IJ denied bond earlier this year. *See* ECF No. 7 at
13 2-3. This argument, however, entirely ignores the dispositive fact that in June 2023, an IJ
14 reviewed the exact same criminal history at issue and affirmatively determined that Petitioner
15 was *not* a danger to the community, resulting in his release on an \$8,000 bond. *See* ECF No. 1,
16 Ex. 1.

17 Respondents offer no explanation for how the same underlying evidence—which led to a
18 finding of non-danger and a dismissal of proceedings via prosecutorial discretion 2023—could
19 suddenly support a contrary finding of dangerousness in 2026. Because Respondents failed to
20 present any evidence of changed circumstances or new conduct, their reliance on the second IJ's
21 decision is a non-sequitur that fails to address the "arbitrary and capricious" nature of this
22 reversal.

1 Critically, Respondents' brief is silent regarding Petitioner's claims under the Due
2 Process Clause and the APA. By failing to substantively engage with the legal argument that this
3 unexplained reversal constitutes a per se violation of Petitioner's rights, Respondents have
4 waived their defense to these claims. Their summary conclusion that detention is "proper"
5 merely because it was ordered is insufficient as a matter of law to overcome Petitioner's showing
6 of constitutional and procedural violations.

7
8 **A. The Continued Detention of Petitioner and Denial of Bond Without a Finding of
9 Changed Circumstances Violates the Due Process Clause of the Fifth
10 Amendment.**

11 Petitioner's claim is parallel to the claim this Court considered in *Rovelo-Gallegos v.*
12 *Larose*, No. 26-CV-596 JLS (MSB) (S.D. Cal. Feb. 11, 2026). In *Rovelo-Gallegos*, the petitioner
13 "was released on conditional parole pursuant to 8 U.S.C. § 1226 after a determination that he
14 was neither a flight risk nor a danger to the community." *Id.* at *2 (internal quotations omitted).
15 Immigration and Customs Enforcement ("ICE") rearrested Rovelo-Gallegos six years later
16 without informing him "why he was detained or what change in circumstances justified his re-
17 detention." *Id.* at *2. After a lengthy analysis considering the factors outlined in *Matthews v.*
18 *Eldridge*, 424 U.S. 319, 335 (1976), the Court found "that all three factors support a finding that
19 the Government's revocation of Petitioner's parole without notification, reasoning, or an
20 opportunity to be heard, denied Petitioner of his due process rights." *Id.* at *5. The Court
21 ultimately ordered: (1) Rovelo-Gallegos's immediate release "subject to the conditions of his
22 preexisting parole; (2) that prior to any re-detention, petitioner must receive notice of the reasons
23 for revoking his parole and a hearing before a neutral decisionmaker to determine whether

1 detention is warranted; and (3) that the “Government shall bear the burden of establishing, by
2 clear and convincing evidence, that Petitioner poses a danger to the community or a risk of
3 flight.” *Id.* at *8. Petitioner asks the Court to issue the same relief in the instant case as the
4 unjustified revocation of Petitioner’s bond is comparable to the unlawful revocation of Rovel-
5 Gallegos’s preexisting parole.

6 “The Supreme Court has made clear that ‘civil commitment for *any* purpose constitutes a
7 significant deprivation of liberty that requires due process protection.” *Id.* (citing *Addington v.*
8 *Texas*, 441 U.S. 418, 423 (1979)) (emphasis in original). “[I]dentification of the specific dictates
9 of due process generally requires consideration of three distinct factors”: (1) “the private interest
10 that will be affected by the official action”; (2) “the [g]overnment’s interest, including the
11 function involved and the fiscal and administrative burdens that the additional or substitute
12 procedural requirement would entail,” and (3) “the risk of an erroneous deprivation of such
13 interest through the procedures used, and the probable value, if any, of additional or substitute
14 procedural safeguards.” *Mathews*, 424 U.S. at 335.

15 The first *Mathews* test weighs in favor of Petitioner in this analysis. Like Rovel-
16 Gallegos, Petitioner “has a significant liberty interest in remaining out of custody pursuant to
17 his” prior release on bond.” *Rovelo-Gallegos*, No. 26-CV-596 JLS (MSB) at *5. “Freedom from
18 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
19 the heart of the liberty [the Due Process Clause] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690
20 (2001) Like Rovel-Gallegos, “Petitioner has an interest in remaining with his family and
21 continuing the process of seeking” relief from removal in the form of cancellation of removal.

1 *Rovelo-Gallegos*, No. 26-CV-596 JLS (MSB) at *5 (citing *Morrissey v. Brewer*, 408 U.S. 471,
2 482 (1972)). Thus, the first prong of the *Mathews* test weighs in Petitioner’s favor.

3 The second *Mathews* test also weighs in Petitioner’s favor. The risk of an erroneous
4 deprivation of Petitioner’s liberty interest is high—since the Government’s “initial determination
5 that Petitioner should be [released from bond] because he posed no danger to the community and
6 was not a flight risk, there is no evidence that these findings have changed.” *Id.* (citing *Saravia v.*
7 *Sessions*, 280 F.Supp.3d 1168, 1170 (N.D. Cal. 2017)). “Once a noncitizen has been released, the
8 law prohibits federal agents from rearresting him merely because he is subject to removal
9 proceedings.” *Saravia*, 280 F.Supp.3d at 1760. “Rather, the federal agents must be able to present
10 evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact
11 dangerous or has become a flight risk[.]” *Id.* Again, like *Rovelo-Gallegos*, Respondents “fail[ed]
12 to address Petitioner’s Due Process argument in their response [and] do not point to any material
13 circumstances that have changed that would warrant reconsideration” of his bond. *Id.* at *6; *see*
14 *also* ECF No. 7. Instead, Respondents point to the 2026 IJ decision as a self-justifying
15 conclusion, failing to explain how his criminal history that warranted release on bond in 2023
16 could—without more—render Petitioner a danger today. Thus, the second *Mathews* test weighs
17 heavily in Petitioner’s favor.

18 Finally, the Government’s interest in continuing to detain Petitioner is low. *See id.*
19 Respondents declined to appeal the IJ’s 2023 release order, rendering that finding final and
20 effectively conceding Petitioner’s lack of dangerousness at that time. Furthermore, “ Respondents
21 fail to point to any burdens on the Government if it were to have provided proper notice,
22 reasoning, and a pre-deprivation hearing.” *Id.*

1 Absent a showing of changed circumstances that would justify a departure from the 2023
2 non-danger finding, Petitioner’s continued detention lacks a rational basis and violates the
3 fundamental protections of the Due Process Clause. The appropriate remedy is to order
4 Petitioner’s immediate release subject to the same conditions as his 2023 release.

5 **B. The Arbitrary Reversal of Petitioner’s Liberty Status Without New Evidence**
6 **Constitutes a Per Se Violation of the APA.**

7 Under the Administrative Procedures Act, a court shall “hold unlawful and set aside
8 agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in
9 accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is:

10 [A]rbitrary and capricious if the agency has relied on factors which Congress has
11 not intended it to consider, entirely failed to consider an important aspect of the
12 problem, offered an explanation for its decision that runs counter to the evidence
before the agency, or is so implausible that it could not be ascribed to a difference
in view or the product of agency expertise.

13 *Motor Vehicle Mfrs Ass’n of U.S., Inc. v State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983);

14 This standard of review is narrow and deferential, and courts “should accept the agency’s factual
15 findings if those findings are supported by substantial evidence on the record as a whole.”

16 *Arkansas v Oklahoma*, 503 U.S. 91, 113 (1992).

17 The final agency action at-issue in the present case is Respondents’ decision to deny
18 Petitioner release on bond. As previously explained, in 2023, Respondents concluded that
19 Petitioner was not a danger to society or a flight risk. *See* ECF No. 1. They released him on bond
20 *and* dismissed his removal proceedings as a matter of prosecutorial discretion. *Id.* Nevertheless,
21 on July 13, 2025, ICE re-detained Petitioner and denied his release on bond, which an IJ later
22
23

1 reaffirmed, despite *no changed circumstances* from the IJ's 2023 findings that he did not present
2 a danger or a flight risk. *Id.*

3 This decision, made by both ICE and the IJ, are arbitrary and capricious because they ran
4 counter to the evidence before the agency and the conclusions reached were so implausible that it
5 could not be ascribed to a difference in view or the product of agency expertise. *See Motor*
6 *Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43.

7 First, it is not logical that in 2023, Respondents reviewed Petitioner's criminal history
8 and found him to *not* be dangerous; but in 2026, three years later, that same criminal history
9 somehow now makes Petitioner a danger. *See Y.S.G v Andrews*, 2025 WL 2979309, at *10 (E.D.
10 Cal. Oct. 22, 2025) ("As noted above, there was nothing in the IJ record in August 2025 showing
11 petitioner's new charges involved dangerous conduct. Under these circumstances, the new arrest
12 could not, standing alone, and under the same clear and convincing standard, demonstrate a
13 material change in circumstances warranting a different dangerousness outcome in August 2025
14 relative to the dangerousness outcome in May 2023."). The Immigration Judge offered no
15 explanation as to what circumstances changed to warrant this finding, and Respondents make no
16 such argument in their response. *See* ECF No. 7. As such, the finding of danger is arbitrary and
17 capricious and an abuse of Respondents' discretion.

18 Furthermore, "[i]t is Respondents' burden to 'provide a reasoned explanation for their
19 action.'" *Y-Z-L-H-*, 792 F.Supp.3d at 1146-47 (cleaned up) (quoting *F.C.C. v. Fox Television* ,
20 556 U.S. 502, 515 (2009)). Respondents initially released Petitioner on bond in 2023, but in 2025
21 and 2026 they revoked his bond and denied his request for release. "Respondents have not
22 provided a reasoned explanation or any changed circumstances that would justify their current

1 departure from their prior decision.” *Id.* Like in *Y-Z-L-H-*, “the changed circumstances in the
2 record weigh against terminating” Petitioner’s bond. *See id.*

3 Again, to survive an APA claim, Respondents bear the burden to “provide [a] reasoned
4 explanation for their action,” which “exists where the agency considered the relevant factors and
5 articulated a rational connection between the facts found and the choices made.” *See Y-Z-L-H-*,
6 792 F.Supp.3d at 1146-47 (quoting *Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008).
7 “*Post hoc* explanations of agency action by . . . counsel cannot substitute for the agency’s own
8 articulation of the basis for its decision.” *Id.* (quoting *Arrington*, 516 F.3d at 1113).
9 “Respondents, however, provide no record evidence of an articulation by the agency of *any*
10 reason for the change to terminate Petitioner’s [bond], let alone a ‘rational basis for its
11 decision.’” *Id.* at 1147. In fact, Respondents did not address Petitioner’s APA claim in any way.
12 *See* ECF No. 7. “This ‘unexplained inconsistency between agency actions is a reason for holding
13 the decision to be an arbitrary and capricious change.” *Id.* (cleaned up) (citing *Organized Vill Of*
14 *Kake v US Dep’t of Agric*, 795 F.3d 956, 966 (9th Cir. 2015)). Thus, this constitutes “an
15 independent and alternative basis for finding Respondents’ termination of Petitioner’s bond and
16 continued detention arbitrary and capricious and a violation of the APA.” *See id.*

17 As such, Respondents’ decisions to revoke Petitioner’s 2023 bond and otherwise deny
18 bond in 2025 and 2026, finding Petitioner to be a danger, constitute arbitrary and capricious
19 decisions and an abuse of discretion, and thus violations of the APA. Consequently, this Court
20 should remedy the decisions by ordering Petitioner released from custody under the same
21 conditions as his 2023 bond, or any conditions this Court deems appropriate.

22

23

1 **II. The Court Should Waive Any Exhaustion Requirement to Redress Petitioner’s**
2 **Prolonged Unlawful Detention.**

3 As outlined in the Petition, Petitioner asks this Court to waive any exhaustion
4 requirement as it would be futile due to the Ninth Circuit’s stay on *Maldonado Bautista*. See ECF
5 No. 1; see also *Ward v Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012) (“exhaustion can be waived
6 if pursuing those administrative remedies would be futile”). Considering the Ninth Circuit’s stay
7 on *Maldonado Bautista*, and the fact that Petitioner is not detained within the Central District of
8 California, the Board of Immigration Appeals (“BIA”) takes the position that *Matter of Yajure*
9 *Hurtado* still applies to Petitioner within any immigration proceedings, including an appeal to the
10 BIA. As such, if Petitioner were to appeal the denial to the BIA, the BIA would more likely than
11 not deny the appeal, finding that the IJ had no jurisdiction to consider Petitioner’s release on
12 bond. Accordingly, further administrative remedies “would be futile” and the Court should not
13 require prudential exhaustion in this matter. See *id*

14 **III. Petitioner’s Habeas Claim Properly Challenges the Legality of His Detention,**
15 **Not Discretionary Agency Decisions.**

16 Respondents seemingly characterize the Petitioner as an attack on the “commencement of
17 removal proceedings” or the merits of “relief applications.” See ECF No. 7 at *4. While
18 Respondents correctly note that habeas relief is limited to challenging “the legality or duration of
19 confinement,” they ignore the plain language of the Petition. Petitioner does not seek to enjoin
20 his removal proceedings or litigate his underlying relief applications in this forum; rather, he
21 challenges the legal and constitutional basis for his ongoing detention. As established in the
22 Petitioner and supra Part I, Petitioner’s detention is the direct result of a procedural reversal that
23 violates the Due Process Clause and the APA. Because Petitioner’s claims strike at the very heart

1 of the government’s authority to deprive him of his liberty, this matter is a prototypical exercise
2 of the Court’s habeas jurisdiction.

3 **IV. This Court Has Jurisdiction Over Petitioner’s Claims.**

4 Finally, Respondents argue that this Court has no jurisdiction to consider Petitioner’s
5 claims, arguing that 8 U.S.C. §§ 1252(g) and (b)(9) bar judicial review. *See* ECF No. 7.

6 This Court has already rejected Respondents’ arguments, finding: “for claims challenging
7 ancillary or collateral issues arising independently from the removal process—for example, a
8 claim of indefinite detention—federal habeas corpus jurisdiction remains in the district court.”
9 *Rovelo-Gallegos*, No. 26-CV-596 JLS (MSB) at *3; *Khuria & Zumratshoeva v. Larose*, No. 26-
10 CV-1743 JLS (BJW), at *2-3 (S.D. Ca. Apr. 6, 2026).

11 Petitioner does “not challenge the decision to commence removal proceedings or any act
12 to adjudicate or execute a removal order.” *Khuria & Zumratshoeva*, No. 26-CV-1743 JLS (BJW)
13 at *3. Rather, Petitioner challenges the legality of his continued detention. Accordingly,
14 Petitioner is enforcing his “constitutional right[] to due process in the context of the removal
15 proceedings—not the legitimacy of the removal proceedings or any removal order.” *Id.* (quoting
16 *Garcia v Noem*, 803 F.Supp.3d 1064, 1074 (S.D. Ca. 2025). Thus, this Court should find that
17 “§ 1252(g) does not strip the Court of jurisdiction.” *Id.*

18 Similarly, § 1252(b)(9) does not bar Petitioner’s claims; while § 1252(b)(9) addresses
19 review of an order of removal and the proceedings leading to such an order, it does not convert
20 all challenges tangentially related to removal into issues that can only be raised in a petition for
21 review. *See, e g, Vieira v De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D.
22 Tex. Oct. 16, 2025). “[I]t is clear this jurisdictional statute cannot be read to be all-

1 encompassing.” *Id.* at *3. Petitioner is challenging the lawfulness of his continued detention and
2 the denial of his release on bond. As such, the Court should find that § 1252(b)(9) does not
3 present a jurisdictional bar to his claims.

4 **V. Conclusion**

5 In conclusion, Petitioner asks this Court to assert jurisdiction over his claims and to find
6 that his continued detention is unlawful, and that the denial of his release on bond constitutes a
7 violation of his right to Due Process and a violation under the APA. Petitioner asks this Court to
8 order his immediate release subject to the same conditions as his 2023 release on bond, and to
9 enjoin Respondents from re-arresting him unless he has committed a new violation of any
10 federal, state, or local law, or has failed to attend any properly noticed immigration or court
11 hearing or is subject to detention pursuant to a final order of removal. Petitioner also renews his
12 request for the additional and alternative relief outlined in his Petition. *See* ECF No. 1.

13 Respectfully submitted,

14 /s/ Roger Tavira

Roger Tavira
15 Lead Counsel for Petitioner
Tavira Law Firm, PLLC
16 550 Westcott St. Suite 300
Houston, Texas 77007
17 roger.tavira@gmail.com
P: 972-261-4116

18
19 Dated: April 17, 2026
20
21
22
23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Certificate of Service

I hereby certify that on April 17, 2026, I filed the foregoing petition for Writ of Habeas Corpus electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated this 17th day of April, 2026.

s/Roger Tavira
Roger Tavira