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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PEDRO SIMON JUAN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

Respondents.

CASE NO.: 26-cv-2237-AGS-MMP

Supplemental Briefing

**[Civil Immigration Habeas Petition
Under 28 U.S.C. § 2241]**

INTRODUCTION

Mr. Simon Juan is a citizen of Guatemala who was allowed into the country through conditional parole or release of recognizance (“OREC”) under 8 U.S. Code § 1226(a)(2)(B). Return, ECF 12-1. By releasing him into the country, ICE made a determination that he was neither a flight risk nor a danger to the community. *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025); *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1, 2025).

It is uncontested that on July 9, 2025, Mr. Simon Juan was re-detained by ICE without any pre-detention process. Amended Petition, ECF 9-1 at 3 ¶ 6; Return 12 at 2. More than a month later, on August 29, an immigration judge denied Mr. Simon Juan bond finding that he had not met his burden of proof of establishing that he was not a flight risk or a danger to the community. Respondent’s Supplemental, ECF 15-1 at 2. In his Amended Petition, he argued, in part, that the Due Process Clause requires *pre-deprivation* notice and hearing. ECF 9 at 1, 6-11.

At a May 14, 2026 hearing, this Court narrowed the issue as to whether Mr. Simon Juan is entitled to release under the Due Process Clause. The Court recognized that the due process analysis applies to people who, like Mr. Simon Juan, were released into the country under OREC and then re-detained. For purposes of this supplemental briefing, Mr. Simon Juan addresses whether the post-detention bond hearing cured the lack of pre-detention individualized process. Several courts within the Ninth Circuit have held that it does not.

In *Perez Bueno*, the district court held that due process requires notice and a pre-deprivation hearing *before* detention, and that the proper remedy for a failure to provide such process is immediate release from detention, not a bond hearing. *Perez Bueno v. Janecka*, No. 5:25-CV-03376-CAS-BFM, 2026 WL 309934, at *3 (C.D. Cal. Feb. 5, 2026). Like the Mr. Simon Juan, the petitioner in that case was released into the country under OREC and ICE subsequently re-detained the petitioner without notice of a pre-deprivation hearing. *Id.* The district court noted

1 that although a “post-detention bond hearing generally satisfies due process for the
2 detention of a noncitizen pending removal proceedings pursuant to 8 U.S.C. §
3 1226(a), it did not foreclose ‘as-applied due process challenges to § 1226(a).’” *Id.*
4 (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022)). The
5 district court held that in the context of where the government uses its discretion to
6 release a noncitizen and later re-detains, a post-detention bond hearing is
7 inadequate. *Perez Bueno*, 2026 WL 309934, at *3.

8 Applying the three-part test established in *Mathews v. Eldridge*, 424 U.S.
9 319 (1976), the district court reasoned that post-detention bond, does not cure the
10 harm already caused. First, there is a significant liberty interest at stake where the
11 government had already used its discretion to release the noncitizen into the
12 community. *Id.* Second, the court found a “risk of erroneous deprivation of liberty
13 is high absent the procedural safeguard of a *pre-deprivation hearing* before a
14 neutral decisionmaker.” *Id.* (emphasis added). The district court noted that to the
15 extent ICE believes that the noncitizen is now a flight risk or danger that “argument
16 can be made to a neutral decisionmaker in a *pre-deprivation hearing*.” *Id.* The
17 district court reasoned that even if the government believes it has a valid reason to
18 detain, it “does not eliminate its obligation to effectuate the detention in a manner
19 that comports with due process.” *Id.* (citing *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d
20 1316, 1322 (W.D. Wash. 2025)). Finally, the risk to the government is low because
21 it can provide a pre-detention hearing to evaluate any risk of flight or danger. *Perez*
22 *Bueno*, 2026 WL 309934, at *3.¹ Thus, the district court determined that a post-
23 detention hearing does not cure the harm already caused. *Id.*

24 Other courts have similarly concluded that a post-detention bond hearing is
25 insufficient to cure a violation of procedural due process arising from detention
26 without a pre-deprivation hearing. *See, e.g., Domingo v. Kaiser*, 2025 WL 1940179,

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28 ¹ In fact in this case, Mr. Simon Juan was reporting to ICE once a week in person
and one a month in person since 2023. ECF 9-1 at ¶ 4.

1 at *3 (N.D. Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-
2 detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he
3 will have already suffered the harm that is the subject of his motion: that is, his
4 potentially erroneous detention.”) (citation omitted); *Esmail v. Noem*, No. CV 25-
5 08325-WLH-RAOx, 2025 WL 3030590, at *6 (C.D. Cal. Sep. 12, 2025)
6 (“Providing Petitioner an interview ex post facto, while keeping him detained in
7 ICE's custody, would not remedy the apparent constitutional violation that
8 Petitioner has suffered in being re-detained without any measure of due process.”).

9 Accordingly, the bond hearing held in Mr. Simon Juan’s case, post-detention,
10 does not cure the due process violation and he should be ordered released.

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12
13 Respectfully submitted,

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15 Dated: May 29, 2026

s/ Zandra Lopez

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