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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Luis Alejandro Chavez Semprun,
13
14 Petitioner,

15 v.

16 Warden, Florence Correctional Center, *et*
17 *al.*,

18 Respondents.

No. CV-26-02768-PHX-MJM (DMF)

**RESPONSE PETITION FOR WRIT
OF HABEAS CORPUS**

19 Respondents by and through undersigned counsel, hereby respond to the Petition for
20 Writ of Habeas Corpus (Doc. 1) and the Court's Order (Doc. 8).

21 **I. FACTUAL BACKGROUND**

22 Petitioner entered the United States on or about September 8, 2021, without
23 inspection, admission or parole. Ex. A, Record of Deportable/Inadmissible Alien, at 2.
24 Shortly after entry, United States Border Patrol encountered Petitioner. *Id.* Petitioner was
25 issued a Notice to Appear ("NTA") On September 10, 2021, charging him with violating
26 Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") as an alien present
27 without being admitted or paroled. Ex. B, Notice to Appear, at 1. That same day Petitioner
28 was released on an Order of Recognizance.

On February 2, 2026, Petitioner was arrested by the Florida Highway Patrol in Miami Dade County for Petit Theft. Ex. A at 2. On February 3, 2026, U.S. Immigration and Customs Enforcement (“ICE”) officers encountered Petitioner at the Turner Guilford Knight Correctional Center. *Id.* An Immigration Detainer was placed with the jail and a Warrant for Arrest of Alien was served upon Petitioner. *Id.*; Ex. C, Warrant for Arrest of Alien. Petitioner was informed of the reason for his re-detention. Ex. C. On May 5, 2026, Petitioner was ordered removed to Venezuela by an Immigration Judge. Ex. D, Order of the Immigration Judge. Petitioner reserved appeal which is due no later than June 4, 2026. *Id.*

II. THE HABEAS PETITION SHOULD BE DENIED

A. Petitioner violated the terms of his release.

Petitioner argues that his detention is unlawful based on the Department of Homeland Security’s (“DHS”) re-detention of Petitioner after his initial release on bond and lack of a subsequent bond hearing. Doc. 1 at 7. He also claims the ICE failed to provide him a hearing, warrant, or notice of why his detention was revoked. *Id.*

It is well established that DHS has the authority to revoke an immigration bond at any time under 8 U.S.C. § 1226(b). DHS did so here after Petitioner was arrested for Petit Theft. Ex. A. Courts across the country, including the Ninth Circuit Court of Appeals, have recognized that this is not a limitless power and have noted that there must be a material change in circumstances before re-detention is appropriate. *See Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (citing *In re Sugay*, 17 I&N Dec. 637 (BIA 1981)); *Lesic v. Larose*, Civ. No. 25-2746, 2025 U.S. Dist. LEXIS 222824, 2025 WL 3158675, at *2 (S.D. Cal. Nov. 12, 2025) (same); *Y.M.M. v. Wamsley*, Civ. No. 25-2075, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025) (same); *Chogllo Chafila v. Scott*, Civ. No. 25-437, 2025 U.S. Dist. LEXIS 184909, 2025 WL 2688541, at *10 (D. Me. Sept. 22, 2025) (same); *dos Santos v. Noem*, Civ. No. 25-12052, 2025 U.S. Dist. LEXIS 157488, 2025 WL 2370988, at *9 (D. Mass. Aug. 14, 2025) (same); *Rosado*, 2025 U.S. Dist. LEXIS 156344, 2025 WL 2337099, at *12 (same). However, upon such a change in relevant facts

1 as to the danger or flight risk of the alien, such re-detention may occur. *Y.M.M.*, 2025 WL
2 3101782 at *2.

3 As a condition of bond, Petitioner was required to comply with all terms and
4 conditions of his release. As in most instances where a detainee is released from custody,
5 the alien must refrain from violating the law of the United States in order to remain free
6 from detention. Petitioner violated local and state laws by allegedly committing a crime of
7 Petit Theft. Ex. A at 2. Here, Petitioner was only detained by ICE after violation of the
8 laws of the United States, and therefore violation of the terms of his conditional release.

9 Due to the change in material circumstances based on Petitioner's arrest, Petitioner
10 violated the terms of his conditional release and was properly re-detained for that violation.

11 **B. Petitioner was not subject to a warrantless arrest.**

12 Petitioner argues that his detention is unlawful as he was the subject of a warrantless
13 arrest. Doc. 1 at 4. Petitioner alleges that immigration officials failed to provide any
14 warrant, notice, or explanation regarding the circumstances surrounding his arrest. *Id.*

15 However, Petitioner was not encountered by ICE until he was already taken into
16 custody by local officials. Ex. A at 2. Petitioner was taken into state custody and charged
17 with a violation of a local law, namely Petit Theft. *Id.* In fact, ICE did not immediately take
18 Petitioner into their custody. An immigration detainer and a Warrant for Arrest of Alien
19 were lodged with the Turner Guilford Knight Jail until his release from local custody. Ex.
20 A at 2. On February 3, 2026, when Petitioner was released, he was served with a Warrant
21 for Arrest of Alien which contained the reasons for his arrest. Ex. C. Immigration officials
22 had probable cause to arrest him based on his prior immigration history and currently
23 pending criminal charges.

24 Petitioner was not subject to a warrantless arrest and received due process upon
25 being taken into ICE custody. This portion of the Petitioner's claim should fail.

26 **C. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c).**

27 Petitioner argues that his detention is unlawful. However, Petitioner is subject to
28 mandatory detention under 8 U.S.C. § 1226(c) and the Laken Riley Act, Pub. L. no. 119-

1 1, 139 Stat. 3 (2025) (“LRA”) due to his criminal history. Section 1226 is generally the
 2 authority that directs the arrest and detention of aliens pending their removal. *Jennings v.*
 3 *Rodriguez*, 583 U.S. 281, 288 (2018). While Section 1226(a) states the general rules,
 4 Section 1226(c) “carves out a statutory category of aliens who may *not* be released under
 5 § 1226(a). *Id.* at 289. On January 29, 2025, President Donald Trump signed the LRA into
 6 law which amended those categories of aliens subject to mandatory detention and codified
 7 those changes within the INA. As relevant here, the LRA specifically expanded 8 U.S.C.
 8 § 1226(c) by adding 8 U.S.C. § 1226(c)(1)(E) requiring the Secretary of Homeland
 9 Security to detain any alien who:

- 10 (i) is inadmissible under paragraph (6)(A) or (7) of Section 212(a); and
- 11 (ii) is charged with, is arrested for, is convicted of, admits having
 12 committed, or admits committing acts which constitute the
 13 essential elements of any burglary, theft, [or] larceny...

14 The LRA further indicates that the crimes listed “have the meanings given such terms in
 15 the jurisdiction in which the acts occurred.” 8 U.S.C. § 1226(c)(2).

16 In this case, it is undisputed that the Petitioner was arrested in Miami Dade County,
 17 Florida, for a charge of Petit Theft on February 2, 2026. Ex. A at 2. Currently, the case
 18 remains pending. *Id.* at 3. Petitioner was charged with INA §§ 212(a)(6)(A)(i) and has been
 19 arrested for Petit Theft, which is a crime that falls squarely under the definition of aliens
 20 subject to mandatory detention under the LRA. The *Jennings* Court found that Section
 21 1226(c) authorized continued detention under its authority pending a decision on removal
 22 of the alien unless the Attorney General decided certain, specific conditions were met, and
 23 that such detention was constitutional. 583 U.S. 281 at 303, 305-306. Therefore,
 24 Petitioner’s habeas should be dismissed.

25 **D. Petitioner is not entitled to a pre-detention hearing.**

26 The Due Process Clause did not prohibit ICE from re-detaining Petitioner.
 27 Moreover, there is no statutory or regulatory requirement that entitles Petitioner to a “pre-
 28 deprivation” hearing, much less one involving burden-shifting against the government. *See*

1 generally 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4. For this Court to read one into the
2 immigration custody statute would be to create a process that the current statutory and
3 regulatory scheme do not provide for. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573,
4 580-82 (2022). Thus, Petitioner can cite no liberty or property interest to which due process
5 protections attach.

6 With respect to the precise nature of the government function, the Supreme Court
7 has long held that “Congress regularly makes rules” regarding immigration that “would be
8 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Under
9 these circumstances, Petitioner does not have a cognizable liberty interest in a pre-detention
10 hearing, but even assuming he had one, it would be reduced based on the immigration
11 context. The procedural process provided to Petitioner, if re-detained, is constitutionally
12 adequate in the circumstances and no additional process is required. “Procedural due
13 process imposes constraints on governmental decisions which deprive individuals of
14 ‘liberty’ or ‘property’ interests within the meaning of the [Fifth Amendment] Due Process
15 Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement
16 of [procedural] due process is the opportunity to be heard ‘at a meaningful time and in a
17 meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

18 To determine whether procedural protections satisfy the Due Process Clause, courts
19 consider three factors: (1) “the private interest that will be affected by the official action”;
20 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and
21 the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
22 Government’s interest, including the function involved and the fiscal and administrative
23 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

24 The first factor favors Respondents. The Supreme Court has long recognized that
25 due process as applied to aliens in matters related to immigration does not require the same
26 strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when
27 exercising its “broad power over naturalization and immigration, Congress regularly makes
28 rules regarding aliens that would be unacceptable if applied to citizens.” *Diaz*, 426 U.S. at

1 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are
2 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.
3 at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the
4 individuals subject to immigration detention possess at least a limited liberty interest, it has
5 also recognized that aliens' liberty interests are less than full. *See Diouf v. Napolitano*, 634
6 F.3d 1081, 1086-87 (9th Cir. 2011). This factor does not indicate that Petitioner must be
7 afforded a pre-detention hearing.

8 The second *Mathews* factor also favors Respondents. Under the existing procedures,
9 aliens including Petitioner face little risk of erroneous deprivation. As explained above,
10 there is no risk of erroneous deprivation because Section 1226 unquestionably authorizes
11 Petitioner's ability to be detained during the pendency of proceedings and to receive custody
12 redetermination hearing after detention. These regulations allow for Petitioner to request a
13 bond redetermination hearing, which he has not yet done. Even if Petitioner is subject to
14 mandatory detention under § 1226(c), he may still request a hearing under *Matter of*
15 *Joseph*, 22 I&N Dec. 799 (BIA 1999) which allows for review as to whether Petitioner
16 meets the criteria for mandatory detention. These procedures are more than adequate and
17 unquestionably provide Petitioner notice and opportunity to be heard during his detention.

18 The third *Mathews* factor—the value of additional safeguards relative to the fiscal
19 and administrative burdens that they would impose—weighs heavily in favor of
20 Respondents. As previously explained, Petitioner's proposed safeguard—a pre-deprivation
21 hearing—adds little value to the system already in place in which he will receive periodic
22 reviews to ensure his removal remains reasonably foreseeable and in which the entire
23 purpose of his detention is to ensure compliance with his removal proceedings and,
24 eventually, effectuate his removal. Petitioner's proposed safeguard would disrupt the
25 removal process. Because the hearing Petitioner proposes would, by definition, involve a
26 non-detained individual, there would be hurdles to efficiently scheduling a hearing.
27 Further, a pre-deprivation hearing would give aliens such as Petitioner more rights than a
28 United States Citizen. In a similar context, a citizen does not have the right to a hearing

1 prior to their detention on probable cause. Rather, any hearing occurs after the arrest.
2 Creating an entirely new procedure that grants such a hearing to aliens would not only
3 burden the government but grant more due process to an alien than even a citizen has.

4 Respondents recognize that Petitioner is making an individualized challenge here.
5 However, the additional procedure he requests would have a significant impact on the
6 removal system and actually provide Petitioner more rights than those a United States
7 Citizen would receive in the same type of proceeding. It would require ICE and the
8 Executive Office of Immigration Review to set up a novel administrative process for
9 Petitioner who—for all intents and purposes—represents a large portion of the final order
10 alien population. Therefore, considering all of the *Mathews* factors together, due process
11 does not require a pre-deprivation hearing.

12 For the foregoing reasons, Respondents respectfully request that this Court deny the
13 Petition for Habeas Corpus (Doc. 1).

14 RESPECTFULLY SUBMITTED this 5th day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2026, I electronically transmitted a Notice of Service for the attached document to the Clerk's Office using the CM/ECF System and mailed a copy of the foregoing by First Class Mail to the following CM/ECF non-registrant:

Luis Alejandro Chavez Semprun

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