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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 JORGE ANTONIO GUTIERREZ-
12 VALTIERRA,

13 Petitioner,
14

15 v.

16 TODD BLANCHE, *et al.*,

17 Respondents.
18
19

Case No.: 26-cv-02926-BAS-SBC

SUPPLEMENTAL BRIEFING

20 Pursuant to the Court's June 29, 2026 order for supplemental briefing, Respondents
21 hereby file this supplemental response addressing: "(1) whether—if the Court finds
22 Petitioner has been subject to prolonged detention in violation of the Due Process Clause—
23 Petitioner is now entitled to a second bond hearing where the burden of proof is on the
24 Government to show he would be a danger to the community or risk of flight if released."
25 [ECF No. 17, at 2.] Consistent with Ninth Circuit precedent, Petitioner is not entitled to a
26 second bond hearing, nor a bond hearing where the Government would carry the burden.
27 *See Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) (holding that due process
28

1 does not require, as a general matter in cases where a noncitizen is under prolonged
2 statutory nonmandatory detention pending removal proceedings, a second bond hearing
3 where the government would carry the burden).

4 **A. The *Mathews* Test Governs Petitioner's Habeas Petition**

5 This Court previously found that Petitioner is detained under 8 U.S.C. § 1226. *See*
6 No: 3:26-CV-1343-BAS-VET, ECF No. 11. Detention pursuant to § 1226(a) offers
7 “extensive procedural protections that are unavailable under other detention
8 provisions[.]” *Rodriguez Diaz*, 53 F.4th at 1202. “[W]ithin this Circuit and District, courts
9 have held that an alien detained under 8 U.S.C. § 1226(a) bears the burden of proof in a
10 bond hearing.” *Zhou v. Trump*, No. 25-cv-3503 JLS (DEB), 2026 WL 937125, at *3 (S.D.
11 Cal. Apr. 7, 2026) (citing *Rodriguez Diaz*, 53 F. 4th at 1202; *Al-Sadeai v. U.S. Immigr.*
12 *and Customs Enf't*, No. 21-CV-00296-GPC-MDD, 2025 WL 905522, at *7 (S.D. Cal.
13 Mar. 25, 2025)). “District courts in the Ninth Circuit have applied the *Mathews v.*
14 *Eldridge*, 424 U.S. 319 (1976), test when addressing due process where a petitioner has
15 already been afforded at a least one bond hearing[.]” while detained under § 1226(a).
16 *Chiapot Perez v. Immigration and Customs Enforcement*, No. 26-cv-2393-JES-AHG,
17 2026 WL 1333755, at *2 (S.D. Cal. May 13, 2026) (collecting cases); *see Hernandez v.*
18 *Bondi*, No. 26-cv-2676-JES-DDL, 2026 WL 1471891, at *2 (S.D. Cal. May 26, 2026)
19 (same); *see also Mercado-Arechiga v. Larose*, No. 26-cv-683-JES-DEB, 2026 WL
20 926901, at *5 (S.D. Cal. April 6, 2026) (applying *Mathews* to a petitioner detained under
21 1225(b) where had already been afforded two bond hearings). “*Mathews* [is] a flexible
22 test that can and must account for the heightened governmental interest in the
23 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206 (citations omitted).

24 “Under *Mathews*, the ‘identification of the specific dictates of due process
25 generally requires consideration of three distinct factors.’” *Rodriguez Diaz*, 53 F.4th at
26 1207 (quoting *Mathews*, 424 U.S. at 334-35).

1 *First*, the private interest that will be affected by the official action; *second*,
2 the risk of an erroneous deprivation of such interest through the procedures
3 used, and the probable value, if any, of additional or substitute procedural
4 safeguards; and [*third*], the Government's interest, including the function
5 involved and the fiscal and administrative burdens that the additional or
6 substitute procedural requirement would entail.

7 *Matthews*, 424 U.S. at 335 (emphasis added). The *Matthews* factors, as applied to
8 Petitioner, demonstrate that Petitioner should not receive a second bond hearing.

9 As to the first factor, Petitioner's private interest here is freedom from prolonged
10 civil detention. "[T]he Ninth Circuit has cautioned that courts should not 'overstate the
11 strength of [Petitioner]'s showing under the first *Mathews* factor.'" *Chiapot Perez*, 2026
12 WL 1333755, at *2 (second alteration in original) (quoting *Rodriguez Diaz*, 53 F.4th at
13 1207). Prior to *Rodriguez Diaz*, when courts in the Ninth Circuit "previously referred to
14 detentions longer than six months as 'prolonged,'" they did so "in the context of
15 detentions for which no individualized bond hearings had taken place at all because the
16 statutes on their faces did not allow for them." *Rodriguez Diaz*, 53 F.4th at 1207.
17 Consequently, this Court "cannot simply count [Petitioner's] months of detention and
18 leave it at that." *Rodriguez Diaz*, 53 F.4th at 1208. Instead, this Court "must also consider
19 the process [Petitioner] received during this time, the further process that was available
20 to him, and the fact that his detention was prolonged due to his decision to challenge his
21 removal order." *Id.*

22 Here, Petitioner has been afforded "extensive procedural protections" under §
23 1226(a). *Rodriguez Diaz*, 53 F.4th at 1202; *see also* No: 3:26-CV-1343-BAS-VET, ECF
24 No. 11. Petitioner chose to challenge the Immigration Judge's removal order. [ECF No.
25 8, at 2.] Petitioner's appeal is still pending before the Board of Immigration Appeals
26 (BIA). *Id.* Petitioner's interest is also "somewhat diminished" because Petitioner
27 already had a prior bond hearing and Petitioner has "not raise[d] any concerns with the
28 validity of the bond hearing in his petition." *Chiapot Perez*, 2026 WL 1333755, at *2

1 (citing *Alvarez v. Beccerra*, No. 1:26-CV-00008 DC SCR, 2026 WL 295552, at *4 (E.D.
2 Cal. Feb. 4, 2026)). Thus, the Court should find this factor favors the Government.

3 As to the second factor, “where a noncitizen has been afforded some process, ‘the
4 risk of an erroneous deprivation of his liberty interest and the value of additional
5 procedures is very low unless he can demonstrate a material change in circumstances
6 since his last bond hearing.’” *Chiapot Perez*, 2026 WL 1333755, at *3 (quoting *Jensen*
7 *v. Garland*, No. 5:21-cv-01195-CAS (AFM), 2023 WL 3246522, at *6 (C.D. Cal. May
8 3, 2023). Here, Petitioner’s detention under § 1226(a) provides:

9 extensive procedural protections that are unavailable under other detention
10 provisions, including several layers of review of the agency’s initial custody
11 determination, an initial bond hearing before a neutral decisionmaker, the
12 opportunity to be represented by counsel and to present evidence, the right
13 to appeal, and the right to seek a new hearing when circumstances materially
14 change.

15 *Rodriguez Diaz*, 53 F.4th at 1202. The strength of the procedures afforded to Petitioner
16 is evidenced by that fact that prior to the Supreme Court’s decision in *Jennings v.*
17 *Rodriguez*, 583 U.S. 281, 297 (2018), the Ninth Circuit “cited § 1226(a)’s procedures as
18 a reference point for what [they] believed should be required under [] other statutory
19 provisions.” *Rodriguez Diaz*, 53 F.4th at 1202 (citations omitted). Petitioner’s last bond
20 hearing was just over three months ago. [ECF No. 8, at 1.] “This falls short of the length
21 of time where courts generally find this factors tips to Petitioner.” *Chiapot Perez*, 2026
22 WL 1333755, at *3 (finding factor weighed against petitioner where previous bond
23 hearing was “about six months ago.”) (collecting cases). Nor has Petitioner articulated
24 any changed circumstances that may affect the bond determination. Accordingly, this
25 Court should find that this factor weighs against Petitioner.

26 As to the third factor “the government clearly has a strong interest in preventing
27 aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
28 53 F.4th at 1208 (alterations in original) (quoting *Demore v. Hyung Joon Kim*, 538 U.S.

1 510, 518 (2003)). “Enforcement of our immigration law serves both a domestic law
2 enforcement and foreign relations function. The Supreme Court has thus specifically
3 instructed that in a *Mathews* analysis, [courts] ‘must weigh heavily in the balance that
4 control over matters of immigration is a sovereign prerogative, largely within the control
5 of the executive and the legislature.’” *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Landon*
6 *v. Plasencia*, 459 U.S. 21, 34 (1982)). “[C]ourts have distinguished the strength of this
7 interest depending on whether the noncitizen seeks release or another bond hearing.”
8 *Mercado-Arechiga*, 2026 WL 926901, at *6. Here, Petitioner seeks “immediate release
9 from detention[.]” [ECF No. 1.] Such a remedy “would implicate the highest
10 governmental interests.” *Mercado-Arechiga*, 2026 WL 926901, at *6. Consequently, this
11 Court should find that this factor favors the Government.

12 Accordingly, under a *Mathews* analysis, Petitioner is not entitled to a second bond
13 hearing.

14 **B. Petitioner Bears the Burden of Proof in any Future Bond Hearing**

15 Even if this Court finds that Petitioner is entitled to a second bond hearing,
16 Petitioner will still bear the burden of proof. The Ninth Circuit has previously explained
17 that “even when there are deficiencies in individual § 1226(a) proceedings, they may be
18 redressable through means short of major changes to the burden of proof.” *Rodriguez*
19 *Diaz*, 53 F.4th at 1214 (citing *Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022)
20 (explaining that if particular procedures are problematic, “they—rather than the burden
21 of proof—should be the subject of [a petitioner’s] challenge”). “Although the Ninth
22 Circuit has added certain procedural protections—such as shifting the burden of proof to
23 the government to prove dangerousness or flight risk—to bond hearings for noncitizens
24 who have been subjected to prolonged detention, it has declined to do the same for bond
25 hearings under 8 U.S.C. § 1226(a)[.]” *Ayala-Martinez v. Noem*, No. 26-cv-0905-LL-
26 BJW, 2026 WL 948667, at *4 (S.D. Cal. Apr. 8, 2026). The Ninth Circuit has declined
27 to extend burden shifting to § 1226(a) bond hearings because that statute “provides
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1 ‘extensive procedural protections that are unavailable under other detention
2 provisions[.]’” *Ayala-Martinez*, 2026 WL 948667, at *4 (citing *Rodriguez Diaz*, 53 F.4th
3 at 1202); *Xie v. Larose*, No. 26-cv-1421-LL-BLM, 2026 WL 1471889, at *1 (S.D. Cal.
4 May 26, 2026); *Lu v. Divver*, No. 26-cv-781-JES-DEB, 2026 WL 1755174, at *4 (S.D.
5 Cal. June 2, 2026) (collecting cases).

6 For the reasons stated herein, Respondents respectfully assert, consistent with Ninth
7 Circuit precedent, Petitioner is not entitled to a second bond hearing, nor a bond hearing
8 where the Government would carry the burden.

9 DATED: July 8, 2026

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