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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JORGE GONZALO SAMANIEGO, Petitioner, v. MARKWAYNE MULLIN, et al, Respondents.	Case No. 5:26-cv-03709-KS **FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR HABEAS CORPUS AND OPPOSITION TO APPLICATION FOR TEMPORARY RESTRAINING ORDER** Honorable Karen Stevenson United States Magistrate Judge

On July 3, 2026, Jorge Gonzalo Samaniego ("Petitioner") filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 seeking release from immigration detention. ECF 1. Simultaneously with the Petition, Petitioner filed an *ex parte* application for temporary restraining order ("TRO Application"), seeking an injunction against transferring or removing Petitioner from the Central District of California. ECF 2.

General Order No. 26-05 has been entered in this matter and provides 7 days for Respondents to respond to the Petition. ECF 7. Respondents file their response to the petition and the TRO Application through this filing in accordance with the Court's

Order dated July 6, 2026 (ECF 7).

Petitioner is lawfully detained, and the request for release should be denied. Accordingly, the Court cannot extend the writ of habeas corpus to Petitioner because he is not "in custody in violation of the Constitution or laws or treaties of the United States". 28 U.S.C. § 2241(c)(3).

A. Background

Petitioner is a native and citizen of Mexico. *See* Exhibit A at 2 (Form I-213 Record of Deportable/Inadmissible Alien). On June 3, 2026, Petitioner arrived at Los Angeles International Airport (LAX) via a flight from Mexico and presented a Mexican passport and I-551 Lawful Permanent Resident Card. Petitioner obtained lawful permanent resident status on January 9, 2011. *Id.* During inspection at LAX, DHS flagged Petitioner's 2018 criminal conviction for a felony violation of California Penal Code § 245(a)(4) involving assault with force likely to cause great bodily injury with a punishment enhancement under California Penal Code § 12022.7(a) for great bodily injury. *Id.* Petitioner includes a copy of the Superior Court records which confirm that his felony conviction was for a strike, and that he admitted to the enhancement for great bodily injury under Cal. Penal Code § 12022.7(a). ECF 1-4 at 8. This felony conviction was a "serious felony" and a "violent felony." ECF 1-4 at 10. Petitioner was sentenced to 2 days in jail, with 2 days credit for time served, and 36 months of probation. ECF 1-4 at 11-12.

On June 5, 2026, Petitioner was processed by DHS and they served a Notice to Appear to commence immigration proceedings to determine whether Petitioner was inadmissible to enter the United States of America as a returning Lawful Permanent Resident under Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act due to his felony criminal conviction. The issue of whether or not this is a crime of moral turpitude is presently before the Immigration Court to determine in Petitioner's removal proceedings.

B. Petitioner's detention is lawful pursuant to 8 U.S.C. § 1226(a).

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

Section 1226(a) and its associated regulations permit detention of Petitioner. While not mandatory, it turns on the government's exercise of discretion. Under Section 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

Petitioner's immigration removal proceedings were initiated when he was served with a Notice to Appear. The merits of the removal proceeding are not before this Court. The question of whether his defenses to removal (and whether his 2018 criminal conviction makes him inadmissible under Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act is for the Immigration Judge to decide in his removal proceedings. As to the question of whether Petitioner is lawfully detained, Petitioner concedes he is presently in removal proceedings, which is dispositive of the issue that he is lawfully detained pursuant to 8 U.S.C. § 1226(a). Accordingly, the Petition should be denied.

C. Petitioner has not been deprived of due process.

Petitioner contends that he has been deprived of due process, but cannot establish such violation. The Supreme Court has held that the Fifth Amendment entitles aliens to due process in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993). However, it is equally well established that in the exercise of its broad power over immigration and naturalization, "Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at 305-06. To that end, the Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

As Petitioner has been detained under 8 U.S.C. § 1226(a), he cannot establish any meritorious substantive due process claim. Nor can he establish any deprivation of

procedural due process.

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the "identification of the specific dictates of due process generally requires consideration of three distinct factors." *Id.* at 334-35. "*First*, the private interest that will be affected by the official action; *second*, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and *finally*, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

The first *Mathews* factor does not weigh in Petitioner's favor. Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a), and he has been in detention for about 5 weeks. Although Petitioner has a legitimate liberty interest in his freedom, § 1226(a) does not on its face limit the length of the detention it authorizes. And even following the issuance of a final order of removal, which Petitioner does not yet have, the Supreme Court has recognized six months as a presumptively constitutional removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Indeed, after six months of detention have elapsed for Petitioner, he may request a *Rodriguez* bond hearing at which the government bears the burden of establishing he is a flight risk or a danger to the community by clear and convincing evidence. *Rodriguez*, 715 F.3d at 1144.

The second *Mathews* factor – risk of an erroneous deprivation of Petitioner's interest through the procedures used, and the probable value of additional or substitute procedural safeguards – also does not weigh in Petitioner's favor. Petitioner may already request a bond hearing under section 1226(a), and after a period of six months, seek a *Rodriguez* bond hearing. Such procedures sufficiently protect Petitioner's liberty interest and mitigate the risk of erroneous deprivation.

The third *Mathews* factor also favors the government. As the Supreme Court has specifically instructed, in conducting a *Mathews* analysis, courts "must weigh heavily in

the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)). Indeed, "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Id.* (quoting *Demore*, 538 U.S. at 518). "This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings." *Id.*

Even if the Court finds a procedural due process violation, the remedy here should be a bond hearing—not release.

> "The habeas statute doesn't compel release from detention upon the finding of a violation, but instead provides courts with broad discretion to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. It is true that in habeas corpus cases "[t]he typical remedy for [unlawful] detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). But in modern doctrine, unconditional release is generally granted only where the detention is substantively (not merely procedurally) improper, or where a procedural violation is "so egregious, its consequences so grave, and the unlawful restraints already imposed on the petitioner's liberty so lengthy or severe that law and justice mandate unconditional discharge." James S. Liebman & Randy Hertz, Federal Habeas Corpus Practice and Procedure § 33.2. This is consistent with law going back over a century. *See United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) (Brandeis, J.) ("A writ of habeas corpus is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment." (quotation omitted)).

A.P.A., Petitioner, v. Paul Arteta et al., Respondents., No. 26-CV-3334 (AS), 2026 WL

1587452, at *3 (S.D.N.Y. June 3, 2026).

Here, law and justice require a bond hearing, not release.

D. Petitioner is not entitled to release.

While Petitioner seeks immediate release, to the extent Petitioner would be entitled to any remedy via the Petition, at most it would be a bond hearing to be held before an Immigration Judge under Section 1226(a). An immigration judge in the first instance should be permitted to determine whether Petitioner is entitled to release in a bond hearing.

Petitioner has been detained for about 5 weeks. Under applicable law, if Petitioner remains detained for six months (180 days), he will then be eligible for a *Rodriguez* bond hearing at which the government bears the burden of establishing he is a flight risk or a danger to the community by clear and convincing evidence. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022).

Here, Petitioner can request a Section 1226(a) bond hearing at any time, and should he remain detained for six months—he can then request a *Rodriguez* bond hearing. Such Section 1226(a) and *Rodriguez* bond procedures sufficiently protect Petitioner's liberty interest and mitigate the risk of erroneous deprivation While Petitioner seeks immediate release, to the extent Petitioner would be entitled to any remedy via the Petition, at most it would be a bond hearing to be held before an Immigration Judge under Section 1226(a).

An immigration judge in the first instance should be permitted to determine whether Petitioner is entitled to release, particularly in light of his repeated criminal convictions for violations of state law for driving under the influence.

Petitioner has been detained for less than 60 days. Under applicable law, if Petitioner remains detained for six months (180 days), he will then be eligible for a *Rodriguez* bond hearing at which the government bears the burden of establishing he is a flight risk or a danger to the community by clear and convincing evidence. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022).

Here, Petitioner can request a Section 1226(a) bond hearing at any time, and should he remain detained for six months—he can then request a *Rodriguez* bond hearing. Such Section 1226(a) and *Rodriguez* bond procedures sufficiently protect Petitioner's liberty interest and mitigate the risk of erroneous deprivation.

E. Petitioner's TRO Application should be denied under the General Order.

Given the sheer volume of habeas petitions in this District and the wasteful use of resources adjudicating separate petitions and TRO applications that often seek the same relief, the General Order has a general prohibition on TRO applications, unless they seek to address "imminent, irreparable harm that cannot be addressed by the standard scheduling order or by the expedited briefing schedule." ECF 5. The stated purpose for this standard was "to provide a prompt resolution to habeas petitions and reduce the contemporaneous filing of applications for a temporary restraining order." *Id.*

Judges throughout the District have quickly adopted the General Order, which in turn is leading to more uniform expeditious resolution of habeas petitions and a reduction of duplicative briefing within the same case. In one of the first decisions to apply the General Order, the Honorable Magistrate Judge McCormick explained the risk to case administration if the General Order were not applied in cases like this: "The harm Petitioner alleges is the same detention she challenges in her underlying habeas petition . . . . If the generalized harm of detention were sufficient to bypass the standard briefing schedule, nearly every immigration habeas petition filed in this District would warrant an emergency TRO." *Tang v. Warden*, 5:26-cv-01595-DFM, Dkt. 5 (C.D. Cal. Apr. 2, 2026) (denying TRO based on General Order 26-05); *see also Argueta v. Sec'y of Homeland Sec.*, 5:26-cv-01687-JLS-E, Dkt. 7 (C.D. Cal. Apr. 7, 2026) (similar); *Liu v. Mullin*, 5:26-cv-01697-SSC, Dkt. 6 (C.D. Cal. Apr. 7, 2026) (similar); *Chen v. Mullin*, 5:26-cv-01684-MCS-PVC, Dkt. 7 (C.D. Cal. Apr. 8, 2026) (similar); *Hernandez-Gomez v. Semaia*, 5:26-cv-01673-FWS-E, Dkt. 10 (C.D. Cal. Apr. 8, 2026) (similar); *Franco v. U.S. Dep't of Justice*, 2:26-cv-03678-SP, Dkt. 6 (C.D. Cal. Apr. 8, 2026) (complaints of

inadequate medical treatment for bronchitis, coughing fits, and a nosebleed not sufficient to meet the standard under the General Order).

Here, the General Order requires Respondents to provide two court days' notice to Petitioner and the Court of its intent to remove him from this District. ECF 5. Accordingly, Petitioner's allegations fail to meet the standard of "imminent, irreparable harm" that cannot be addressed on the expedited briefing schedule entered in this case under the General Order. ECF 5. Now that the General Order has been entered, the TRO Application fails to establish an emergency and should be denied for failing to meet the General Order's standard. Furthermore, Petitioner has not shown why he "should be allowed to go to the head of the line in front of all other [habeas] litigants and receive special treatment." *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Given that the General Order sets a briefing schedule that provides for expeditious adjudication of the Petition, the TRO Application should be denied.

WHEREFORE, Petitioner was lawfully detained, the Petition should be denied, and this action dismissed.

Dated: July 9, 2026

Respectfully submitted,

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