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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT

9 ZAMIR FAIZI,

10 Petitioner,

11 v.

12 SERGIO ALBARRAN, San Francisco Field
13 Office Director of Enforcement and Removal
14 Operations,
15 SAN FRANCISCO Field Office, Immigration
16 and Customs Enforcement;
17 MARKWAYNE MULLEN, Secretary, U.S.
18 Department of Homeland Security;
19 U.S. DEPARTMENT OF HOMELAND
20 SECURITY;
21 TODD BLANCHE, U.S. Attorney General;
22 EXECUTIVE OFFICE FOR IMMIGRATION
23 REVIEW;
24 TONYA ANDREWS, Warden of California
25 Golden State Annex

26 Respondents.

Case No. 1:26-CV-05112-DAD-SCR

**[TRAVERSE] RESPONSE TO
OPPOSITION TO WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§2241**

27 PETITIONER'S TRAVERSE
28

A. The Respondents did not distinguish the present case from the matters mentioned in the minute order

The Respondents did not distinguish the present case from any of the courts decisions in *Ayala Cajina v. Wofford, etc.* On July6, 2026, Courtroom Deputy District Judge Dale A Drozd ordered the Respondents to “file written opposition to the pending motion for temporary restraining order by 5:00pm on Tuesday 7/7/2026” and “[i]n that opposition Respondents shall substantively address whether any provision of law or fact in this case would distinguish it from the courts’ decisions in *Ayala Cajina v. Wofford*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083 (E.D. Cal. Nov. 21, 2025); *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK (HC), 2025 WL 3187578 (E.D. Cal. Nov. 14, 2025); *Chavarria v. Chestnut*, No. 1:25-cv-01755-DAD-AC, 2025 WL 3533606 (E.D. Cal. Dec. 9, 2025); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778 (E.D. Cal. Aug. 20, 2025); *Quichimbo-Jimenez v. Warden, Cal. City Corr. Ctr.*, 2:26-cv-00739-DAD-EFB (HC), 2026 WL 679378 (E.D. Cal. Mar. 10, 2026); *Cardenas v. Chestnut*, et al., No. 1:26-cv-02073-DAD-SCR (HC), 2026 WL 785871 (E.D. Cal. Mar. 20, 2026); *J.P.C. v. Chestnut*, 1:26-cv-02108-DAD-JDP, 2026 WL 788129 (E.D. Cal. Mar. 20, 2026). The Respondents failed to distinguish the above cited cases in their response and thereby concede that this case is not substantively distinguishable. *ECF Doc. 7, dated July 6, 2026.*

In *Perez v. Albarran*, this Court “ordered immediate release of the Petitioner from the Respondent’s custody with the same conditions as she was subject to immediately prior to her detention...,” Respondents are Enjoined and Restrained from re-detaining petitioner for any purpose, absent exigent circumstances...,” and “under the circumstances of this case, the Petitioner was not required to post bond pursuant to Rule 65(c).” *Perez v. Albarran*, No. 1:25-CV-01540-DAD-CSK (HC), 2025 WL 3187578 (E.D. Cal. Nov. 14, 2025). The result was similar in *Chavarria v. Chestnut*, No. 1:25-cv-01755-DAD-AC, 2025 WL 3533606 (E.D. Cal. Dec. 9, 2025).

B. The Respondents waived any 4th Amendment arguments

Respondents have failed to justify the warrantless nature of Petitioner’s arrest. *ECF 7.*

1 Section 287.8(c)(2)(ii) of Title 8 of the Code of Federal Regulations provides: “A warrant of
2 arrest shall be obtained except when the designated immigration officer has reason to believe that
3 the person is likely to escape before a warrant can be obtained.” Respondents offer no evidence
4 that the arresting officers had “reason to believe” that Petitioner was “likely to escape” before a
5 warrant could be obtained. Petitioner’s longtime residence, employment, regular attendance at
6 hearings, and family ties belie any suggestion that the arresting officers had “reason to believe
7 that [Petitioner was] likely to escape before a warrant [could] be obtained.” See also 8 U.S.C. §
8 1226(a) (“On a warrant issued by the Attorney General, an alien may be arrested and detained
9 pending the decision on whether the alien is to be removed from the United States.”) (emphasis
10 added).

11 More fundamentally, Petitioner’s more than four -months long detention without a hearing
12 has violated his due process rights under the federal Constitution. The Constitution guarantees the
13 availability of the writ of habeas corpus “to every individual detained within the United States.”
14 *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). “The essence of habeas corpus is an attack by a
15 person in custody upon the legality of that custody, and . . . the traditional function of the writ is
16 to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A
17 petitioner held in custody in violation of the Constitution or federal law is entitled to habeas
18 relief. See 28 U.S.C. § 2241(c)(3). Due process, which extends to noncitizens present in the
19 United States, prohibits deprivations of life, liberty and property without due process of law. *See*
20 *U.S. Const. Amend. V*; *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025); *Zadvydas v. Davis*, 533 U.S.
21 678, 693-94 (2001). Due process requires that a person be afforded notice and an opportunity to
22 be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319,
23 333 (1976).

24 An alien, such as Petitioner, who builds a substantial life in the United States over a
25 period of many years after entering and being released on order of recognizance develops a
26 constitutionally protected liberty interest in remaining out of custody. *see also Pinchi v. Noem*,
27 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (“Even individuals who face significant constraints
28 on their liberty or over whose liberties the government wields significant discretion retain a

protected interest in their liberty.”). As in *Ramirez-Serna*, the warrantless arrest and hearingless detention here violated federal due process. The most appropriate remedy for this violation would be to return Petitioner to the previous status quo by immediately releasing him from detention. See *Ramirez-Serna*, at 7; *Maciel v. Noem*, 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026); see also *Moctezuma v. Henkey*, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (collecting cases and noting respondents’ “refusal to abandon their unlawful policy”); *Domingo Case 5:26-cv-03374-E Document 11 Filed 06/29/26 Page 4 of 5 Page ID #:97 v. Kaiser*, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) (even if the alien received a “prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm . . . that is, his potentially erroneous detention”).

C. The respondents waived the arguments regarding pre-deprivation hearing before detention

The Respondents did not address the issue of whether they violated the Petitioner’s fifth Amendment right to due process by re-detaining the Petitioner without a pre-deprivation hearing and by not addressing it they waive their argument.

The Petitioner realleges that ICE violated his Fifth Amendment right to due process by redetaining him without a predeprivation hearing. The Petitioner re asserts that he has a protected liberty interest in conditional release that is comparable to a parolee. See *ECF No. 1, page 17, at 14*. The three-part test articulated in *Mathews v. Eldridge* should apply. According to petitioner, *Mathews* “required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.” *Id. at 23*. Petitioner submits that “[t]he existence of non-violent allegations that the agency has been aware of since April 2025 did not significantly increase the government’s interest in detaining him in March 2026, and it certainly did not increase that interest enough to outweigh the private interests at stake in this case.” *Id. at 33-34*. With respect to flight risk, petitioner points out that the government has not proffered an itemized list of those allegations.

D. The Petitioner is not subject to mandatory detention under 8 U.S.C. §1226(c)(1)(E) for theft

Although Respondents assert that Petitioner has been charged with several crimes, the charges remain pending, and Petitioner remains innocent until proven guilty. No neutral arbiter has determined that Petitioner is a flight risk or danger to the community. No neutral arbiter has determined that circumstances had materially changed sufficiently to justify revocation of parole. Given the absence of any procedural safeguards to determine if his detention was justified, “the probable value of additional procedural safeguards, i.e., a bond hearing, is high.” A.E., 2025 WL 1424382, at *5.” In this case, because the Petitioner will suffer irreparable harm on July 21, 2026, his final hearing date at EOIR, immediate release as a return to the status quo is appropriate.

E. The Petitioner’s detention is not constitutional

The Petitioner realleges that mandatory detention pursuant to §1226(c)(1)(E)(ii) violates his due process because he has not been afforded due process in criminal proceedings to determine his guilt, nor due process by way of a bond hearing to evaluate whether he poses flight risk or a public safety risk were he to remain free on the order of recognizance. *Id. at S.E. v. Kristi Noem*, Case No. 1:26-cv-00356-DAD-SCR. The Petitioner re-asserts his applied challenge.

“The Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). When considering due process challenges in the immigration context, courts may apply the *Mathews v. Eldridge* test. *Mathews v. Eldridge*, 424 U.S. 319 (1976). As mentioned in his Motion for Temporary Restraining order, the Petitioner’s private liberty interest given his mental health concerns and time spent in detention, and risk of erroneous deprivation, outweighs the government’s interest. ECF 2. The Respondents allege that they have an interest in to “protect the public and ensure he attends his hearings.” ECF, page 5, at 14. However, the Respondents have not addressed how these interests are furthered by the detaining the petitioner without any due process based on his arrest. *E.C.*, 2025 WL 2916264, at *11; see also *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (Noting that in 2017 “the costs to the public of immigration detention are staggering: \$158 each day per detainee, amounting to a

1 *total daily cost of \$6.5 million. Supervised release programs cost much less by comparison:*
 2 *between 17 cents and 17 dollars each day per person.").*

3 Respondents may argue that if the court orders a bond hearing, they should not be
 4 required to bear the burden of establishing that petitioner is a flight risk or a danger. (Doc. No. 9
 5 at 7.) However, the Ninth Circuit recently noted that it is the government that bears the burden of
 6 proof at a bond hearing where the petitioner is detained pursuant to § 1226(c). *Martinez v. Clark*,
 7 *124 F.4th 775, 785 (9th Cir. 2024) (reviewing an IJ's public safety risk determination); see also*
 8 *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 WL 2381464, at *8 (E.D. Cal.
 9 Aug. 15, 2025) (ordering the government to provide a post-deprivation bond hearing to § 1226(c)
 10 detainee where the government bears the burden of proof).

11 Regarding the remaining two Winters factors, the court incorporates the analysis from its
 12 prior decision in *Arshakym v. Warden of California City Det.*, No. 1:25-cv-01780-DAD-AC
 13 (HC), 2026 WL 143143, at *4–5 (E.D. Cal. Jan. 20, 2026), where the court determined that the
 14 petitioner had demonstrated irreparable harm due to the likely deprivation of constitutional rights,
 15 and the balance of the equities and the public interest weighed against respondents because they
 16 failed to show any harm was more than minimal, and the costs of detention were high. *See Also*
 17 *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK (HC), 2025 WL 3187578 (E.D. Cal. Nov. 14,
 18 2025); *Chavarria v. Chestnut*, No. 1:25-cv-01755-DAD-AC, 2025 WL 3533606 (E.D. Cal. Dec.
 19 9, 2025);

20 **F. Exhaustion of Remedies would be futile**

21 The federal habeas statute under which this case was filed does not require exhaustion of
 22 administrative remedies. *Compare 28 U.S.C. § 2241 with 28 U.S.C. § 2254(b)(1)(A)* (requiring
 23 exhaustion of state court remedies). Courts may require exhaustion as a prudential matter when
 24 “(1) agency expertise makes agency consideration necessary to generate a proper record and
 25 reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass
 26 of the administrative scheme; and (3) administrative review is likely to allow the agency to
 27 correct its own mistakes and to preclude the need for judicial review.” *Noriega-Lopez v. Ashcroft*
 28 *, 335 F.3d 874, 881 (9th Cir. 2003) (citation omitted)*. The exhaustion requirement may be

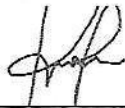
1 waived if “administrative remedies are inadequate or not efficacious, pursuit of administrative
2 remedies would be a futile gesture, irreparable injury will result, or the administrative
3 proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

4 Petitioner asserts that the exhaustion requirement should be waived based on irreparable
5 injury to his mental health and his upcoming hearing on July 21st 2026 where his fate will be
6 determined. *Hearing* The Petitioner asserts that his re-detention has caused irreparable harm in
7 the form of worsening of his mental health and loss of his income. *Exhibit 4*. After having been
8 released on recognizance for over three years, petitioner had obtained a work permit as well as
9 employment in many companies. *Declaration of Petitioner, Exhibit 4*. He had also developed
10 significant social ties to his community, reconnected with friends from Bagram airbase, and his
11 cousins. Based on his re-detention, petitioner has lost his health and savings. He has also
12 experienced emotional and psychological harm as a result of his re-detention. *Psychological*
13 *Evaluation, Exhibit 8*. Relief from the prudential exhaustion requirement is warranted in this case
14 for multiple reasons. First, petitioner has adequately demonstrated that irreparable injury will
15 result if he has to await the outcome of his BIA appeal. It will take up to four months to get a
16 hearing with the immigration court and the Petitioner’s final hearing is scheduled for July 21st,
17 2026. The Respondent’s mental health is of serious concern since he has exhibited suicidal
18 ideation behaviors previously. *Psychological Evaluation, Exhibit 8, page 13*.

19 Moreover, it is not at all clear that the BIA could evaluate the legality of the IJ’s bond
20 determination in relation to any court’s preliminary injunction order—the BIA has, for example,
21 consistently refused to reach and decide constitutional questions in many other cases. *See Matter*
22 *of Fede*, 20 I&N Dec. 35 (BIA 1989) (explaining why neither an IJ nor the BIA have the legal
23 authority to consider constitutional challenges to the immigration regulations they administer);
24 *Matter of Fuente sCampos*, 21 I&N Dec. 905, 912 (BIA 1997) (“[E]ven if we were to perceive a
25 constitutional infirmity in the unambiguous statute before us, we would be without authority to
26 remedy it.”). In light of the BIA’s scope of review, administrative remedies in this case are not
27 adequate to resolve petitioner’s due process challenge to the IJ’s bond determination. For all these
28 reasons, the exhaustion of administrative remedies should be waived in this case. *See Hernandez*

1 v. *Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017) (affirming district court decision to waive
2 exhaustion requirement in constitutional challenge to detention hearings); see also *Mau v.*
3 *Chertoff*, 562 F.Supp.2d 1107, 1113–14 (S.D. Cal. 2008) (finding administrative exhaustion did
4 not preclude a motion to enforce the district court's prior order because the BIA did not have
5 authority to enforce the federal court's judgment). In the interests of judicial economy, the should
6 find it unnecessary to address petitioner's remaining arguments justifying the waiver of the
7 exhaustion of administrative remedies.

8 Altogether, the Petitioner re-asserts his pre-deprivation arguments as to the 4th and 5th
9 amendment in his habeas claim. Given the irreparable harm to his life and to avoid further
10 irreparable harm he seeks immediate release and a grant of the restraining order requiring that prior
11 to any re-detention that the Petitioner be afforded the due process in the form of notice and a hearing
12 before a neutral decision maker. At any such hearing Respondents should have the burden of
13 establishing by clear and convincing evidence that Petitioner poses a current danger to the
14 community or a risk of flight.
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