CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
KENNETH BRAKEBILL (CABN 196696)
Chief, Civil Division
MICHAEL J. STARRETT (NYBN 5444575)
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7073
Fax: (415) 436-7000
Michael.starrett@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EDUARDO RUIS GARCIA,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 3:26-cv-12237-RFL

RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 1

III. LEGAL STANDARD 3

A. Immigration Detention Pending Removal Proceedings Under 8 U.S.C. § 1226(a) 3

IV. ARGUMENT 4

A. Petitioner's Warrantless Arrest Claim is Meritless 4

1. The Form I-200 Issued by U.S. Immigration and Customs Enforcement ("ICE") is Valid 4

2. A Warrantless Arrest Is Not A Recognized Ground For Habeas Relief 6

B. Petitioner Was Lawfully Arrested And Detained Under 8 U.S.C. § 1226(a) 7

C. Section 1226(a) Provides Procedural Protections That Satisfy Due Process 7

D. Petitioner Has Failed To Exhaust His Administrative Remedies 10

E. Any Court Order Should Not Provide for Immediate Release and Should Not Reverse the Burden of Proof 12

V. CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Carreno Ortiz v. Albarran, No. 26-cv-8708 (N.D. Cal., Aug. 28, 2026) 8
Castro-Cortez v. INS, 239 F.3d 1037 (9th Cir. 2001) 10
Chateauneuf v. Chestnut, No. 26-cv-1073, 2026 WL 523695 (E.D. Cal. Feb. 25, 2026) 12
Chavez v. Noem, 801 F. Supp. 3d 1133 (S.D. Cal. 2025) 11
Coke v. Scott, No. 25-cv-694, 2025 WL 2108711 (W.D. Wash. June 18, 2025) 11
Demore v. Kim, 538 U.S. 510 (2003) 3, 7
Fernandez-Vargas v. Gonzales, 548 U.S. 30 (2006) 10
Francisco Cortez v. Nielsen, No. 19-cv-754, 2019 WL 1508458 (N.D. Cal. Apr. 5, 2019) 11
Garcia Gabriel v. Hermosillo, 2026 WL 194233 (W.D. Wash. Jan. 26, 2026) 6
Geronimo Ruiz v. Semaia, No. 26-cv-4785, 2026 WL 2618420 (C.D. Cal. Sept. 3, 2026) 12
Herrera v. Blanche, No. C26-1684, 2026 WL 1733493 (W.D. Wash. June 16, 2026) 6
I.N.S. v. Lopez-Mendoza, 468 U.S. 1032 (1984) 7
Jennings v. Rodriguez, 583 U.S. 281 (2018) 1, 3, 4, 7
Laing v. Ashcroft, 370 F.3d 994 (9th Cir. 2004) 11
Leonardo v. Crawford, 646 F.3d 1157 (9th Cir. 2011) 4, 10
Matter of Guerra, 24 I. & N. Dec. 37 (BIA 2006) 12
Matter of Uluocha, 20 I. & N. Dec. 133 (BIA 1989) 4
Navarro Aguilar v. Albarran, No. 26-cv-11309-RFL, 2026 WL 3085458 (N.D. Cal. Oct. 15, 2026) 6
Nemiro v. Albarran, No. 26-cv-7853 (N.D. Cal. Aug. 6, 2026) 8
Njonjo v. Albarran, No. 26-cv-2188, 2026 WL 716771 (N.D. Cal. Mar. 13, 2026) 8
Prieto-Romero v. Clark, 534 F.3d 1053 (9th Cir. 2008) 3, 7
Puga v. Chertoff, 488 F.3d 812 (9th Cir. 2007) 10
Qian v. Janecka, No. 26-cv-4453, 2026 WL 2533148 (C.D. Cal. Aug. 27, 2026) 12
Revuelta Torres v. Albarran et al., No. 26-cv-5242 (N.D. Cal. Jun. 4, 2026) 12
Reyes v. Hermosilla, 2026 WL 528692 (W.D. Wash. Jan. 15, 2026) 6
Rivas Lopez, v. Andrews, No. 26-cv-6138, 2026 WL 2416013 (E.D. Cal. Aug. 18, 2026) 8, 10, 12, 13

Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022) ..... passim

Rojas Sosa v. Hernandez, No. C26-1706, 2026 WL 1871891 (W.D. Wash. June 30, 2026) 7

Salcedo Aceros v. Kaiser, No. 25-cv-6924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025) 8

Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011) 13

Sormunen v. Nagle, 59 F.2d 398 (9th Cir. 1932) 7

Streeter v. Craven, 418 F.2d 273 (9th Cir. 1969) 7

Urias v. Warden-Facility Adm'r, No. 26-cv-1972, 2026 WL 1419045 (C.D. Cal. May 20, 2026) 7

Valencia Zapata v. Kaiser, 801 F. Supp. 3d 919 (N.D. Cal. 2025) 8

Statutes

8 U.S.C. § 1226(a) 1, 3, 4, 12

Regulations

8 C.F.R. § 1003.19 4

8 C.F.R. § 1236.1 4

8 C.F.R. § 236.1 ..... 4, 9, 10

I. INTRODUCTION

Petitioner was arrested in the interior of the United States, and under recent Ninth Circuit precedent, is subject to detention under 8 U.S.C. § 1226(a), pending a decision on whether he was to be removed. Under the Immigration and Nationality Act ("INA"), U.S. Immigration and Customs Enforcement ("ICE") therefore was entitled to initiate removal proceedings against Petitioner and detain him under 8 U.S.C. § 1226(a) pending a decision on whether he is to be removed. DHS exercised its discretion to do precisely that on October 16, 2026.

Despite his lack of lawful status, Petitioner argues that he was unlawfully detained without a pre-deprivation hearing. But the law does not provide for or require a *pre-deprivation* hearing. Petitioner was arrested in the interior of the United States and therefore 8 U.S.C. § 1226(a) governs his detention. Petitioner is entitled to the ample process afforded to all section 1226(a) detainees pursuant to a statutory and regulatory scheme that has long been considered sufficient to protect the interests of noncitizens. Petitioner's habeas claim is not cognizable because he has not exhausted his administrative remedies through the "substantial procedural protections" available under Section 1226(a). *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). Petitioner cannot be heard to complain that he has been denied an opportunity to be heard before a neutral adjudicator when an individualized bond hearing is available to him upon request. Petitioner should not be granted the relief sought here before being required to seek that relief in his administrative proceedings.

II. FACTUAL BACKGROUND

Petitioner Eduardo Ruis Garcia, a.k.a. Eduardo Antonio Ruiz Garcia, ("Petitioner") is a native and citizen of Honduras who illegally entered the United States in April or May 2026. Dkt. No. 1 ¶ 14. Ex. 2.[1] Petitioner had not had any contact with immigration authorities prior to his arrest on October 16,

[1] Pursuant to this Court's order, Dkt. No. 4, Respondents submit a copy of the arrest warrant and Form I-213 in Petitioner's case. There is currently no final order of removal. On information and belief, ICE is waiting until Petitioner is discharged from the hospital to serve him with the Notice to Appear. As such, he is currently not yet in removal proceedings before the Executive Office for Immigration Review.

2026. Dkt. No. 1 ¶ 19.

In May 2026, Petitioner was arrested and charged with possession with intent to sell a controlled substance in violation of Cal. Health & Safety Code §§ 11351 and 11378. Dkt. No. 1 ¶ 17. On September 21, 2026, the Superior Court of California, County of San Francisco, granted Petitioner pretrial mental health diversion and suspended criminal proceedings. *Id.*

Petitioner came to ICE's attention on July 1, 2026 when he was identified during a joint targeted enforcement action with the United States Marshal Service ("USMS") at a location known for drug trafficking and members of transnational organized crime. *Id.* Supervisory Detention and Deportation Officer ("SDDO") Castro interviewed Petitioner, who stated he was born in Honduras and entered the United States without being admitted or paroled. *Id.*

On July 2, 2026, SDDO Castro issued and signed a Form I-200, Warrant for Arrest of Alien ("I-200" or "arrest warrant"), for Petitioner's arrest. Ex. 1.

On October 16, 2026, ICE Enforcement and Removal Operations ("ERO") officers conducted a targeted enforcement operation in Emeryville, CA, to locate and arrest Petitioner. Ex. 2. One of the officers approached Petitioner and instructed Petitioner to stop, to which Petitioner complied. *Id.* While searching for weapons, ERO officers identified what appeared to be a small plastic bag wrapped around a white powdery substance in Petitioner's front left pocket. *Id.* An officer then instructed Petitioner to place his hands behind his back, to which Petitioner initially complied. *Id.*DO Guan cuffed his right hand. When an officer identified himself as an immigration officer, Petitioner immediately began to resist arrest. *Id.* Two officers assisted Petitioner to the ground utilizing the amount of force necessary to effect the arrest. *Id.* Petitioner continued resisting the officers and got to his feet. *Id.* An officer warned Petitioner that he would be pepper sprayed, and then deployed oleoresin capsicum ("OC") spray at Petitioner. *Id.* The officers were then able to effectuate Petitioner's arrest and transported him to Highland Hospital in Oakland, CA for medical clearance due to the possible exposure to OC. *Id.*

During intake screening at Highland Hospital, while ERO officers were present, medical staff questioned Petitioner regarding any pain he was experiencing. *Id.* Petitioner indicated to the staff that he had pain in his abdomen area. Which he had been experiencing since he fell approximately thirty feet from a ladder while painting two days prior. *Id.* An ERO officer advised the medical staff that Petitioner

was brought to the emergency room due to possible OC exposure and the team had no prior knowledge of any preexisting injuries. *Id.*

While Petitioner was in an exam room, he spontaneously started conversing with an ERO officer in Spanish, which the officer was fluent in. *Id.* Petitioner then told the ERO officer about the ladder incident a few days prior, that he didn't seek medical treatment and continued working as he needed money, and that he uses crystal meth to help with the pain. *Id.* The ERO officer told Petitioner that he should tell the doctors about the ladder injury as it's their job to provide care. *Id.*

ICE arrested Petitioner to place him in removal proceedings, and he is in their custody pursuant to 8 U.S.C. § 1226(a). On information and belief, ICE has not yet served Petitioner with the Form I-200 or Notice to Appear because they are waiting until he is discharged from the hospital, and they are not sure if he is currently under any medication that would alter his mind frame for service. On information and belief, Petitioner is still at Highland Hospital in Oakland, CA.

III. LEGAL STANDARD

A. Immigration Detention Pending Removal Proceedings Under 8 U.S.C. § 1226(a)

Congress enacted a multi-layered statute that provides for the civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. ICE's authority to detain individuals who were previously lawfully present in the country but are now in removal proceedings (such as a nonimmigrant who overstayed his visa) is generally governed by 8 U.S.C. § 1226. *Jennings*, 583 U.S. at 288. The default rule, Section 1226(a), "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Id.* at 306 (quoting Section 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Every individual apprehended under Section 1226(a) is individually considered for release on

bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306(citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). "Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final." *Rodriguez Diaz*, 53 F.4th at 1197. "The detainee may be represented by counsel and can submit evidence in support of his claims." *Id.* Bond hearings are separate and apart from, and form no part of, an individual's removal hearings. 8 C.F.R. § 1003.19(d).

The individual may appeal the IJ's custody redetermination to the Board of Immigration Appeals ("BIA"). 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Further, an alien who remains detained pursuant to Section 1226(a) after the initial bond hearing may request that the IJ conduct another custody redetermination whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). If dissatisfied with the outcome of any subsequent hearing, an alien may appeal that decision to the BIA as well. *See Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

IV. ARGUMENT

Respondents respectfully maintain the position that detention of an alien present without admission, like Petitioner here, should be governed by 8 U.S.C. § 1225(b)(2)(A). However, Respondents acknowledge that controlling Ninth Circuit precedent, *Rodriguez Vazquez*, holds that § 1226(a) governs Petitioner's detention. Petitioner is therefore entitled to request a custody redetermination hearing before an immigration judge.

A. Petitioner's Warrantless Arrest Claim is Meritless

1. The Form I-200 Issued by U.S. Immigration and Customs Enforcement ("ICE") is Valid

Petitioner's entire legal theory requires the conflation of two specific and different legal terms. At the outset, it is important to recognize the distinction between *issuing* an arrest warrant and *serving* the warrant. *Compare* Fed. R. Crim. P. 4(a) ("Issuance" of arrest warrant), *with* Fed. R. Crim. P. 4(c) ("Execution or Service" of arrest warrant). While a Form I-200 is an administrative warrant, and not a judicial warrant, this same distinction still applies. *See* 8 C.F.R. §§ 236.1(b)(1) ("A warrant of arrest

may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter"); (b)(2) ("If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation."). Additionally, the regulations expressly authorize different immigration officers to issue arrest warrants for immigration violations than those who can serve those same warrants. *See* 8 C.F.R. §§ 287.5(e)(2) ("Issuance of arrest warrants for immigration violations"); (e)(3) ("Service of warrant of arrests for immigration violations").

There is no dispute that a Form I-200 must be issued prior to an arrest. *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested"); *see also* 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained"); *M-J-M-A- v. Hermosillo*, No. 6:25-cv-2011, 2026 WL 562063, at *13 (D. Or. Feb. 27, 2026) ("the Immigration and Nationality Act ('INA') and its implementing regulations require immigration officers to obtain an arrest warrant before making an arrest for an immigration violation."). However, there is no such requirement that the Form I-200 be served at the time of arrest. *But see Marleni S.B. v. Bondi*, No. 26-1707, 2026 WL 710624, at *3 (D. Minn. Mar. 13, 2026) ("A detainee being held pursuant to § 1226(a), as Petitioner is here, must have been served an arrest warrant prior to detention.") (citing *Ahmed M. v. Bondi*, No. 25-cv-4711, 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (collecting cases involving issuance of warrant) but conflating "issued" and "served").

The regulations specify that, at the time of arrest, an immigration officer "shall, as soon as it is practical and safe to do so: (A) Identify himself or herself as an immigration officer who is authorized to execute an arrest; and (B) State that the person is under arrest and the reason for the arrest." 8 C.F.R. § 287.8(c)(2)(iii). The regulations do not provide a requirement that the Form I-200 must be served at that time as well. Even in the criminal context, there is no requirement to serve an arrest warrant at the time of arrest if it is not feasible. *See* Fed. R. Crim. P. 4(c)(3)(A) ("Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.").

Here, SDDO Castro issued a Form I-200 on July 2, 2026, which he was authorized to do under 8 C.F.R. § 287.5(e)(2)(xxxii). *See* Ex. 1. As such, there is no reasonable dispute as to whether ICE had obtained a warrant prior to Petitioner's arrest. *See* Dkt. No. 1 ¶ 19 n.2.

ICE issued the Form I-200 prior to their arrest of Petitioner, as required by statute and regulation. Their decision to hold off on serving it on Petitioner until ICE can be sure he is in the appropriate mental state does not impact the validity of the warrant. Therefore, the Form I-200 issued by ICE was valid, and ICE properly arrested Petitioner pursuant to that warrant.

2. A Warrantless Arrest Is Not A Recognized Ground For Habeas Relief

"As the Ninth Circuit has recognized, the Supreme Court 'declined to hold that the consequences of an illegal arrest, search, or interrogation is to let the defendant go free because of the unlawfulness of the arrest, search, or interrogation." *Herrera v. Blanche*, No. C26-1684, 2026 WL 1733493, at *2 (W.D. Wash. June 16, 2026) (quoting *U.S. v. Garcia-Beltran*, 443 F.3d 1126, 1132 (9th Cir. 2006)).

This Court has recently come to the same conclusion. *See Navarro Aguilar v. Albarran*, No. 26-cv-11309-RFL, 2026 WL 3085458, at *1 (N.D. Cal. Oct. 15, 2026) ("Assuming without deciding that Navarro Aguilar was arrested without a warrant, he has not demonstrated that this justifies habeas relief . . . Navarro Aguilar has not identified any case law that discusses this reasoning and reaches a contrary conclusion in the context of a habeas petition. Nor has he otherwise provided a basis to find this reasoning inapplicable. The same is true for Navarro Aguilar's argument that Respondents did not have sufficient cause to justify arrest.").

Even assuming that Petitioner's arrest was unlawful because the warrant was issued shortly after the arrest, he is not entitled to habeas relief. "'The remedy for an unlawful arrest'— even one that violates the Constitution—"is suppression of evidence, not release from custody." *Reyes v. Hermosilla*, 2026 WL 528692, at *2 (W.D. Wash. Jan. 15, 2026), *report and recommendation adopted*, 2026 WL 525103 (W.D. Wash. Feb. 25, 2026); *see also Garcia Gabriel v. Hermosillo*, 2026 WL 194233, at *5 (W.D. Wash. Jan. 26, 2026) ("[E]ven if Petitioner's arrest amounts to a Fourth Amendment violation, he is not entitled to habeas relief on that basis."). This is because "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *I.N.S. v. Lopez-*

Mendoza, 468 U.S. 1032, 1039 (1984).

There is no dispute that a warrant was issued in this case. As such, *Lopez-Mendoza* and *Garcia-Beltran* are controlling in this case. *See also Streeter v. Craven*, 418 F.2d 273, 274 (9th Cir. 1969) ("[D]efects in an arrest are not cognizable in habeas corpus."); *Sormunen v. Nagle*, 59 F.2d 398, 398–99 (9th Cir. 1932) (holding that a detainee's contention that he was taken into custody without a warrant was "immaterial" in a petition for writ of habeas corpus where the detainee was lawfully subject to detention under a relevant immigration statute); *Urias v. Warden-Facility Adm'r*, No. 26-cv-1972, 2026 WL 1419045, at *1 (C.D. Cal. May 20, 2026) (rejecting the claim that release is the proper remedy for a warrantless arrest). As such, petitioner's Fourth Amendment claim should be dismissed. *See Rojas Sosa v. Hernandez*, No. C26-1706, 2026 WL 1871891, at *2 (W.D. Wash. June 30, 2026) (finding that petitioner's Fourth Amendment claim "is not cognizable in a habeas petition," but still granting habeas relief because petitioner's "mandatory detention under § 1225(b) violates the INA").

B. Petitioner Was Lawfully Arrested And Detained Under 8 U.S.C. § 1226(a)

Because Petitioner was arrested in the interior of the country, he is subject to the discretionary detention under 8 U.S.C. § 1226(a) while his removal proceedings are pending. Petitioner was properly arrested pursuant to that provision, which provides that "[o]n a Warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *See Jennings*, 583 U.S. at 306 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)). Detention pursuant to § 1226(a) is part of this multi-layered civil detention structure created by Congress and sanctioned by the Supreme Court. The Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523.

C. Section 1226(a) Provides Procedural Protections That Satisfy Due Process

"Section 1226(a) and its implementing regulations provide extensive procedural protections that

are unavailable under other detention provisions." *Rodriguez Diaz*, 53 F.4th at 1202; *see also Rivas Lopez, v. Andrews, et al.*, No. 26-cv-6138, 2026 WL 2416013, at *2 (E.D. Cal. Aug. 18, 2026). This statute provides "numerous levels of review, each offering [the detainee] the opportunity to be heard by a neutral decisionmaker," which ensure that "the risk of erroneous deprivation" is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1209-10. In *Rodriguez Diaz*, the Ninth Circuit concluded that these "procedures satisfy due process, both facially and as applied to Rodriguez Diaz." *Rodriguez Diaz*, 53 F.4th at 1213.

Numerous courts throughout this district routinely find that noncitizens subject to detention under § 1226(a), like Petitioner, have no due process right to a pre-deprivation hearing. *See Carreno Ortiz v. Albarran*, No. 26-cv-8708, Dkt. No. 10 (N.D. Cal., Aug. 28, 2026) ("As an individual who has overstayed her visa and absent any other circumstances, Ms. Carreno Ortiz is subject to arrest under section 1226(a). As long as the government complies with all the procedural requirements within that statute, including honoring a request for a detention hearing, I cannot say that her initial arrest and detention is a violation of due process."); *Njonjo v. Albarran*, No. 26-cv-2188, 2026 WL 716771, at *3 (N.D. Cal. Mar. 13, 2026) ("In light of the explicit holding from *Rodriguez Diaz* that the [§ 1226(a)] post-deprivation procedures satisfied the strictures of due process, the Court is unable to adopt Njonjo's position [that he is owed a pre-deprivation hearing]"); *Nemiro v. Albarran*, No. 26-cv-7853, Dkt. No. 9 (N.D. Cal. Aug. 6, 2026) ("The predetention hearing cases Nemiro cited are distinguishable because they involved noncitizens whom the government previously 'determined not to be a danger to the community', a factor not present with Nemiro, who simply overstayed his O-1 visa. . . . Consequently, the extraordinary relief of a TRO is not warranted.") (citation omitted); *Valencia Zapata v. Kaiser,* 801 F. Supp. 3d 919, 938 (N.D. Cal. 2025) ("the statutory protections of § 1226(a) require only a prompt post-deprivation hearing"); *Salcedo Aceros v. Kaiser*, No. 25-cv-6924, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025) ("the Section 1226 framework typically provides for a post-detention, rather than pre-deprivation, bond hearings. If Section 1226 and its regulations are followed, this provides for sufficient process, as detentions will only be made upon an initial DHS determination that an individual is a flight risk or poses a danger to society.").

Here, ICE detained Petitioner pursuant to 8 U.S.C. § 1226(a). The next step is a custody

redetermination hearing before a neutral adjudicator. 8 C.F.R. § 236.1(d)(1). That procedure remains available to him. Petitioner cannot be heard to assert a constitutional infirmity when the law already provides for the very mechanism that he asks the Court to require—a lawful and individualized custody determination.

Petitioner has not established an event in his immigration history that would give rise to a constitutionally protected liberty interest. Because Petitioner lacks a constitutionally protected liberty interest, the test from *Mathews* does not apply. However, even under the *Mathews* test, Petitioner's detention under 8 U.S.C. § 1226(a) would satisfy the requirements of due process.

In *Rodriguez Diaz*, the Ninth Circuit considered the constitutional adequacy of the procedures in § 1226(a) under the balancing test set forth in *Mathews*. *See* 53 F.4th at 1207–10. The Ninth Circuit also noted that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206. Petitioner does not accrue a constitutionally protected liberty from the *lack* of a detention in his six months unlawfully present in the United States. However, even assuming *arguendo* that he did have a private interest that weighed in his favor, the second and third factors weigh in the government's favor.

The second *Mathews* factor is "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". 424 U.S. at 335. As described above, section 1226(a) provides "numerous levels of review, each offering [the detainee] the opportunity to be heard by a neutral decisionmaker," which ensure that "the risk of erroneous deprivation" is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1209-10. As such, consistent with *Rodriguez Diaz*, "the existing agency procedures sufficiently protected [Petitioner]'s liberty interest and mitigate[] the risk of erroneous deprivation", so this factor weighs in the governments favor. *Id.* at 1209.

As to the third *Mathews* factor, "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore v. Kim*, 538 U.S. 510, 518 (2003). This factor "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." *Landon v. Plasencia*, 459 U.S. 21, 34, (1982).

D. Petitioner Has Failed To Exhaust His Administrative Remedies

This Court should require Petitioner to avail himself of the substantial procedural protections of Section 1226(a) before seeking habeas relief in a federal district court. Respondents do not contest that Petitioner is subject to detention under 8 U.S.C. § 1226(a) and thus entitled to a bond hearing before an IJ. Petitioner has not alleged any reason why an IJ would deny his request for a bond hearing. Nor has Petitioner requested a bond redetermination hearing from an IJ. 8 C.F.R. § 236.1(d)(1). And even if he were to disagree with an IJ's future bond decision, he would be able administratively appeal the decision to the BIA. Therefore, Petitioner has several layers of process available to him prior to seeking this Court's intervention. And as explained above, Petitioner's arrest and detention did not violate Petitioner's due process rights, and so the agency would be in the best position to decide the issue, as it has done countless times before. *See Immigration Court Bond Hearings and Related Case Decisions*, TRAC Immigration, https://tracreports.org/phptools/immigration/bond/ (last visited Sep. 9, 2026) (58,790 bond hearings have been held in immigration court in fiscal year 2026, through July 2026).

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.* Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonard*, 646 F.3d at 1160.

"The *Puga* factors weigh in favor of requiring exhaustion here." *Rivas Lopez*, 2026 WL 2416013, at *2. As such, the Court should not allow Petitioner to move forward with this litigation

without first exhausting his administrative remedies. *See Coke v. Scott*, No. 25-cv-694, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), *report and recommendation adopted*, 2025 WL 2107736 (W.D. Wash. July 28, 2025). As in *Coke*, all of the elements that favor the exhaustion requirement are present here. First, Petitioner seeks release from detention, which "requires consideration of numerous facts which should be developed for presentation and then weighed by an IJ in the first instance." *Coke*, 2025 WL 2108711, at *5. The BIA "has a special expertise in reviewing the question of whether the bond record as a whole makes it substantially unlikely that the Department w[ill] prevail on [the petitioner's] challenge to removability." *Francisco Cortez v. Nielsen*, No. 19-cv-754, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019) (internal quotation marks omitted). Second, "a waiver of prudential exhaustion would tend to encourage detainees to deliberately bypass the administrative scheme which contemplates a bond determination made by an IJ rather than the Court." *Coke*, 2025 WL 2108711, at *5. And third, exhaustion would not be futile because "an IJ has not yet been given a chance to address whether Petitioner should be released pending a final determination of removal. The agency should thus be afforded the opportunity to address bail in the first instance." *Id.*

Additionally, in his habeas petition, Petitioner has not argued why his failure to exhaust should be excused. *See generally* Dkt. No. 1. Where the *Puga* factors weigh in favor of prudential exhaustion, courts may waive the exhaustion requirement when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). "The party moving the court to waive prudential exhaustion requirements bears the burden of demonstrating that at least one of these *Laing* factors applies." *Chavez v. Noem*, 801 F. Supp. 3d 1133, 1139 (S.D. Cal. 2025). In his habeas petition, Petitioner claims "exhaustion is not required because no other forum exists in which Petitioner can raise their claims, exhaustion would be futile, there is no requirement to exhaust before challenging the constitutionality of an arrest or detention, and Petitioner will 'suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim.'" Dkt. No. 1 ¶ 22 (quoting *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992)). Petitioner does not explain why exhaustion would be futile or what harm would occur. Additionally, as discussed in great detail above, there are significant statutory procedures that provide Petitioner a forum to raise his claims.

See 8 U.S.C. § 1226(a).

Accordingly, the Petition should be dismissed to the extent Petitioner seeks a bond hearing before a neutral adjudicator because Petitioner has failed to exhaust his administrative remedies. *See Rivas Lopez*, 2026 WL 2416013, at *2 ("The Court further finds that the petition is premature as Petitioner has failed to exhaust his administrative remedies by appealing his § 1226(a) bond determination to the BIA."); *Qian v. Janecka*, No. 26-cv-4453, 2026 WL 2533148, at *2 (C.D. Cal. Aug. 27, 2026) (dismissing substantive due process claim for failure to exhaust by requesting a bond hearing); *Geronimo Ruiz v. Semaia*, No. 26-cv-4785, 2026 WL 2618420, at *1 (C.D. Cal. Sept. 3, 2026) (dismissing habeas petition with prejudice because "Petitioner does not allege that he has been unlawfully denied a bond hearing or otherwise show that his unlawful arrest warrants his release from custody."); *Chateauneuf v. Chestnut,* No. 26-cv-1073, 2026 WL 523695, at *3 (E.D. Cal. Feb. 25, 2026) ("[T]he court will waive the prudential exhaustion requirement because the relief that the court will grant by this order—a hearing in front of an immigration judge at which Petitioner's eligibility for bond must be considered—is precisely the relief that prudential exhaustion would require.").

E. Any Court Order Should Not Provide for Immediate Release and Should Not Reverse the Burden of Proof

Immediate release is improper in these circumstances, where Petitioner is not entitled to a pre-detention hearing. If the Court is inclined to grant any relief whatsoever, such relief should be limited to providing Petitioner with a bond hearing while he is detained. *See, e.g.*, *Revuelta Torres v. Albarran et al.*, No. 26-cv-5242, Dkt. No. 14 (N.D. Cal. Jun. 4, 2026) ("Within 14 days of the date of service of this order, unless Petitioner consents to a later date, Respondent SHALL provide Petitioner with an individualized bond hearing before an Immigration Judge").

Moreover, at any bond hearing, Petitioner should have the burden of demonstrating that he is *not* a flight risk or danger to the community. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). It would be improper to reverse the burden of proof and place it on the government here. *See Rodriguez Diaz*, 53 F.4th at 1210-12 ("Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases.").

The Ninth Circuit previously held that the government bears the burden by clear and convincing evidence that an alien is not a flight risk or danger to the community for bond hearings in certain circumstances. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011). But following intervening Supreme Court decisions, the Ninth Circuit has explained that "*Singh's* holding about the appropriate procedures for those bond hearings . . . was expressly premised on the (now incorrect) assumption that these hearings were statutorily authorized." *Rodriguez Diaz*, 53 F.4th at 1196, 1200-01. Thus, the prior Ninth Circuit decisions imposing such a requirement are "no longer good law" on this issue and the Court should follow *Rodriguez Diaz* and the Supreme Court cases. *See also Rivas Lopez*, No. 26-cv-6138, 2026 WL 2416013, at *3 (E.D. Cal. Aug. 18, 2026) ("in any event, the Ninth Circuit has found that due process does not always require placing the burden of proof on the government at § 1226(a) bond hearings.").

V. CONCLUSION

For the foregoing reasons, the Court should deny the habeas petition and enter judgment in favor of Respondents.

Dated: October 21, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Michael J. Starrett
MICHAEL J. STARRETT
Special Assistant United States Attorney

Attorneys for Respondents