

I. Petitioner Detention Is Not Authorized by INA § 235(b), 8 U.S.C. § 1225(b); At Minimum, His Custody Is Governed by INA § 236(a), 8 U.S.C. § 1226(a)

Respondents' motion to dismiss rests on the premise that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) as an "applicant for admission." That premise is not supported by the procedural posture DHS created in this case, the statutory charges DHS elected to bring, or the custody authority DHS affirmatively exercised.

Although DHS initially placed Petitioner into expedited removal under 8 U.S.C. § 1225(b)(1), that process did not proceed to completion. After Petitioner expressed a fear of return and was found to have a credible fear of persecution, DHS vacated expedited removal pursuant to 8 C.F.R. § 208.30(f). Once expedited removal is vacated, DHS proceeds under the ordinary removal framework rather than the expedited scheme.

Consistent with that framework, DHS issued a Notice to Appear under 8 U.S.C. § 1229a, initiating removal proceedings before an immigration judge. In the Notice to Appear, DHS charged Petitioner as inadmissible under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), alleging that he was present in the United States without being admitted or paroled and lacked valid entry documents. DHS did not charge Petitioner as an arriving alien, and the Notice to Appear did not designate him as such. The statutory provisions DHS invoked define the procedural posture of the removal proceedings and are also relevant to the scope of DHS's custody authority.

Following issuance of the Notice to Appear, DHS exercised custody authority consistent with INA § 236(a). DHS released Petitioner into the interior of the United States under

supervision pursuant to 8 C.F.R. § 236.1(c), imposed reporting and monitoring requirements, accepted Petitioner's compliance, and elected to manage him in the community rather than through continued detention. DHS maintained that custodial determination over time. These actions are consistent with the discretionary detention and release framework of § 1226(a) and are not characteristic of the mandatory detention regime applicable during expedited removal under § 1225(b).

DHS's custody regulations reinforce this conclusion. Once DHS proceeds under INA § 236(a), detention or release is administered through the regulatory framework governing discretionary custody determinations. 8 C.F.R. § 236.1(c) provides for release on bond or recognizance and contemplates continued supervision unless DHS makes a lawful determination to alter custody. DHS's summary re-detention of Petitioner at a routine check-in was not accompanied by any indication that DHS reevaluated custody under that regulatory framework.

Respondents attempt to avoid this statutory mismatch by relying on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and definitional regulations at 8 C.F.R. §§ 1.2 and 1001.1(q). Neither supplies the missing statutory authority here. *Jennings* addressed whether certain detention statutes could be construed to require periodic bond hearings as a matter of statutory interpretation. It did not decide which detention statute governs when DHS vacates expedited removal, initiates proceedings under § 1229a, and administers custody under § 1226(a). Nor did it authorize DHS to recharacterize custody under a different detention regime after selecting a statutory and regulatory posture. The definitional regulations on which Respondents rely define the term "arriving alien" for limited regulatory purposes; they do not themselves confer detention authority and do not state that § 1225(b) continues to govern custody after expedited removal has

been vacated and DHS has proceeded under § 1229a.

Ninth Circuit precedent confirms that detention authority must fit the noncitizen's actual custodial posture at the time custody is imposed. In *Nadarajah v. Gonzales*, 443 F.3d 1069, 1079–80 (9th Cir. 2006), the court granted habeas relief where the government relied on detention authority that did not apply to the petitioner's custodial posture. Likewise, charging inadmissibility does not, by itself, convert interior presence into “seeking admission” for purposes of detention authority. *Torres v. Barr*, 976 F.3d 918, 933–35 (9th Cir. 2020).

Independent authority further forecloses Respondents' reliance on § 1225 as a blanket detention tool for interior arrests. In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, the court entered final judgment vacating DHS's July 8, 2025 Interim Guidance and rejected DHS's effort to apply § 1225(b)(2)(A) to individuals present in the interior of the United States. The court concluded that DHS's interpretation collapses the statutory distinction Congress drew between §§ 1225 and 1226 and results in the denial of bond hearings in circumstances where detention is governed by § 1226(a).

While *Maldonado Bautista* involved individuals who had not been subject to inspection-stage detention, its reasoning confirms that § 1225(b)(2)(A) cannot be applied categorically to interior arrests divorced from an ongoing inspection process. To the extent Respondents rely on the vacated Interim Guidance or advance the same statutory interpretation rejected in *Maldonado Bautista*, that authority does not support detention under § 1225(b)(2)(A) in this case. Other district courts have applied the same statutory framework in cases involving parole-based or supervised release followed by interior re-arrest and likewise rejected reliance on § 1225(b)(2)(A). See *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *8; *Pinchi v. Noem*, 2025

WL 2084921.

At minimum, if any detention authority applies to Petitioner, it is § 1226(a). That provision governs discretionary detention of noncitizens already present in the United States and expressly authorizes release on bond or conditions. 8 U.S.C. § 1226(a)(2). The Supreme Court has described § 1226(a) as the default rule governing immigration detention, with mandatory detention existing only where Congress has clearly provided otherwise. *Jennings*, 583 U.S. at 287. The Ninth Circuit requires an individualized custody determination under § 1226(a), with the government bearing the burden of establishing flight risk or danger by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

Respondents have provided Petitioner no such determination. Petitioner has no criminal history, complied with all reporting requirements, updated ICE with address and telephone changes, appeared as directed, worked lawfully under DHS authorization, and lived openly at a known address. Detention in these circumstances cannot be justified by status alone.

Recent congressional action further reinforces Congress's decision to place mandatory detention for interior arrests within § 1226(c), not § 1225(b). The Laken Riley Act amended § 1226(c) to impose mandatory detention for specified criminal conduct. Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025). If § 1225(b)(2) already authorized mandatory detention in Petitioner's posture, that amendment would have been unnecessary. *Corley v. United States*, 556 U.S. 303 (2009).

Petitioner does not fall within § 1226(c) because he does not have criminal history. Because his detention is governed by § 1226(a), and Respondents have not provided the individualized process that statute requires, his custody exceeds the authority granted by

Congress. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). The Court should therefore deny Respondents' motion to dismiss, grant the petition for a writ of habeas corpus, and order Petitioner's immediate release from immigration custody. Only if the Court declines to order immediate release should it require a prompt, individualized bond hearing under § 1226(a) at which the government bears the burden of establishing that continued detention is justified.

II. Petitioner's Re-Detention Violated the Fifth Amendment Due Process Clause

Respondents' opposition does not meaningfully engage with the procedural due process framework governing re-detention following DHS-authorized release, nor does it dispute the factual circumstances under which Petitioner was re-detained. Instead, Respondents rely on a categorical detention theory that bypasses the governing standard and does not account for DHS's withdrawal of liberty it had previously conferred and maintained.

As established, the Fifth Amendment to the United States Constitution provides that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. The Supreme Court has made clear that "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States," including noncitizens whose presence is unlawful. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is physical presence, rather than immigration status, that triggers constitutional protection.

Immigration detention is civil rather than criminal and is therefore subject to substantive and procedural due process limitations. *Zadvydas*, 533 U.S. at 690. Civil detention must remain nonpunitive and must bear a reasonable relationship to legitimate regulatory purposes, such as ensuring appearance at immigration proceedings or, in limited circumstances, protecting the community. *Id.* at 690–91; *Demore v. Kim*, 538 U.S. 510, 523 (2003). Even where detention is

authorized at the outset, the Constitution prohibits confinement that is arbitrary or imposed without adequate procedural safeguards.

The Supreme Court has further recognized that heightened procedural protections are required where the government affirmatively grants liberty and later seeks to revoke that liberty through physical confinement. In *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), the Court explained that conditional liberty “includes many of the core values of unqualified liberty,” and that its termination “inflicts a grievous loss.” When the government creates and maintains conditional liberty, it may not withdraw that liberty without procedures sufficient to guard against arbitrary deprivation.

The fundamental requirement of procedural due process is “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process is due, courts balance: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional or substitute procedural safeguards; and (3) the government’s interests, including the administrative burdens associated with additional procedures. *Id.*

Courts within the Ninth Circuit apply this framework to civil immigration re-detention following parole or supervised release. See *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1031–34 (N.D. Cal. 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *5–7 (N.D. Cal. Sept. 12, 2025); *R.D.T.M. v. Wofford*, 2025 WL 2617255, at *3–4 (E.D. Cal. Sept. 9, 2025); *Rico-Tapia v. Smith*, 2025 WL 2950089, at *6–8 (D. Haw. Oct. 10, 2025). The inquiry in such cases is whether DHS provided constitutionally adequate procedures before withdrawing liberty it had previously authorized and maintained.

Application of the *Mathews* Factors

Respondents do not dispute the material facts surrounding Petitioner's release, supervision, or re-detention. Applying the *Mathews* framework to those facts demonstrates that the procedures DHS employed were constitutionally inadequate.

1. Private Interest

Petitioner's interest in remaining free from physical confinement is substantial. Freedom from civil detention lies at the core of the liberty protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. That interest is especially weighty here because DHS affirmatively released Petitioner into the interior of the United States under a structured system of supervision and then maintained that release over time.

DHS released Petitioner on recognizance, imposed reporting and monitoring requirements, required regular ICE check-ins, and accepted compliance over an extended period. This was not a brief or incidental release. At the time of Petitioner's initial apprehension, DHS conducted background checks memorialized in the Form I-213 and found no criminal history, no indication that Petitioner posed a danger to the community, and no basis to conclude that he presented a flight risk. DHS elected release rather than continued detention based on that individualized assessment. That custodial decision reflects a reasoned evaluation of Petitioner's circumstances and directly informs the *Mathews* analysis.

By structuring custody around compliance-based supervision rather than detention, DHS created conditional liberty and conveyed an implied assurance that liberty would continue so long as Petitioner complied with supervision requirements and remained available to immigration authorities. That implied assurance was not abstract. It was operationalized through ongoing

supervision, repeated check-ins, and DHS's continued acceptance of compliance. Under *Mathews*, the existence of an implied promise embedded in the custodial framework strengthens the private interest at stake because it defines the expectations DHS itself created regarding the circumstances under which detention would occur.

Petitioner relied on that implied assurance. He complied with all supervision conditions, appeared for ICE check-ins as directed, maintained contact with authorities, and pursued asylum relief through established legal processes. DHS accepted that compliance and continued to permit Petitioner to live and function in the community without identifying any violation or change in circumstances. Where the government induces reliance by administering custody through a compliance-based supervisory regime, the individual's interest in avoiding abrupt re-detention without process is heightened. Courts applying *Mathews* in the re-detention context have recognized that supervised release followed by sudden detention represents severe deprivation of liberty. See *Pinchi*, 792 F. Supp. 3d at 1032–33; *Salcedo Aceros*, 2025 WL 2637503, at *6; *R.D.T.M.*, 2025 WL 2617255, at *4.

The abrupt withdrawal of liberty in these circumstances, without notice or explanation, disregarded the expectations DHS itself created and magnified the intrusion on Petitioner's liberty. Under *Mathews*, that induced reliance and implied promise substantially increase the weight of the private interest and support the need for robust procedural protections before detention is imposed.

2. Risk of Erroneous Deprivation

The risk of erroneous deprivation was high. DHS re-detained Petitioner at a routine ICE check-in without advance notice, without a written explanation of the basis for custody, and

without affording Petitioner any opportunity to respond before his liberty was withdrawn.

At the time of re-detention, DHS did not identify any violation of supervision conditions or make any individualized finding regarding flight risk or danger. Where DHS has fostered reliance through sustained supervised release, summary re-detention imposed without explanation heightens the risk that detention rests on categorical assumptions rather than an individualized assessment. Courts have recognized this heightened risk in similar circumstances. *Rico-Tapia*, 2025 WL 2950089, at *6–7; *Salcedo Aceros*, 2025 WL 2637503, at *6.

The safeguards Petitioner seeks are limited and familiar: advance notice, a statement of reasons, and an individualized custody determination. Courts applying *Mathews* in the re-detention context have concluded that these procedures materially reduce the risk of erroneous deprivation without imposing undue administrative burdens. *Pinchi*, 792 F. Supp. 3d at 1033.

Respondents have not identified any basis to conclude that these procedures were impracticable or otherwise provided.

3. Government Interests

The government's stated interests are ensuring appearance at immigration proceedings and protecting the community. *Demore v. Kim*, 538 U.S. 510, 523 (2003). Those interests must be evaluated in the factual context DHS itself created in this case.

Petitioner was re-detained at a routine ICE check-in, the very process DHS required him to follow to demonstrate compliance with supervision. At the time of re-detention, Petitioner had complied with all reporting obligations, remained available to immigration authorities, and had not been identified as violating any condition of supervision. DHS's prior custody decisions, including continued supervision following background checks and sustained compliance, reflect

an assessment that appearance and public-safety concerns were being addressed without detention.

Re-detention imposed during compliance, rather than in response to any violation, does not meaningfully advance the government's asserted interests and underscores the need for procedural justification. Where liberty is withdrawn at a compliance event without notice or explanation, the government's interest in dispensing with process is minimal.

Providing basic procedural protections before re-detention would impose only limited administrative burden when compared to the substantial liberty interest at stake and the disruption caused by abrupt confinement under these circumstances. Courts have recognized that such safeguards do not interfere with legitimate enforcement objectives. *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *7; *Rico-Tapia v. Smith*, 2025 WL 2950089, at *8.

C. Balancing

Viewed as a whole, the Mathews factors weigh against the adequacy of the procedures employed here. DHS withdrew liberty it had affirmatively conferred and administered through a compliance-based supervisory framework without notice, explanation, or an opportunity to be heard. Respondents have not shown that the process afforded satisfied the governing constitutional standard.

D. DHS Failed to Follow Its Own Custody Regulations

An agency must comply with the regulations it has promulgated to govern the exercise of its discretion. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). Where regulations structure custody determinations or confer procedural protections, action taken in disregard of those rules is not in accordance with law. Courts have applied this principle in the

immigration context, holding that failure to follow binding custody regulations warrants relief without a separate showing of prejudice. See *Montilla v. INS*, 926 F.2d 162, 169 (2d Cir. 1991); *Leslie v. Att’y Gen.*, 611 F.3d 171, 178–80 (3d Cir. 2010).

After vacating expedited removal and initiating proceedings under 8 U.S.C. § 1229a, DHS administered Petitioner’s custody under INA § 236(a), implemented through 8 C.F.R. § 236.1(c). DHS released Petitioner, imposed supervision conditions, and managed him in the community through a compliance-based supervisory framework. That regulatory framework governed how Petitioner’s custody status was to be administered and modified.

When DHS re-detained Petitioner at a routine ICE check-in, it did so without advance notice, without a written statement of reasons, and without any indication that an individualized custody determination was made pursuant to § 236(a) and 8 C.F.R. § 236.1(c). Respondents identify no custody determination document, regulatory finding, or procedure demonstrating adherence to the governing framework at the time Petitioner’s liberty was withdrawn.

Because DHS altered Petitioner’s custody status without following the custody regulations applicable to discretionary detention, the re-detention was not in accordance with law. This regulatory violation independently warrants relief and confirms the due process deficiencies set forth above.

III. Petitioner’s Continued Detention Is Unconstitutionally Prolonged

Respondents’ opposition does not meaningfully address the constitutional limits on the duration of civil immigration detention or the custodial history that renders Petitioner’s continued confinement unlawful. Instead, Respondents rely on categorical detention authority without grappling with the length of detention, the absence of individualized justification, or the

procedural protections required once detention becomes prolonged.

As an initial matter, civil immigration detention is constitutionally limited in duration. In *Zadvydas v. Davis*, 533 U.S. 678, 690, 699–700 (2001) the Supreme Court held that a statute permitting potentially indefinite detention would raise serious constitutional concerns and therefore must be construed to authorize detention only for the period reasonably necessary to serve its regulatory purpose. The Court identified **six months** as a presumptively reasonable period of civil detention, after which continued confinement becomes constitutionally suspect and must be supported by present, individualized justification rather than categorical authority. *Id.* Although *Zadvydas* involved post-removal-order detention, its core constitutional principle applies more broadly: civil detention must remain reasonably related to its limited purposes and may not continue by default once those purposes are no longer served.

Those purposes are narrow. Immigration detention is civil, not punitive, and is justified only to ensure appearance at immigration proceedings or, in limited circumstances, to protect the community. *Demore v. Kim*, 538 U.S. 510, 523 (2003). When detention becomes prolonged and untethered from those objectives, it violates due process. *Zadvydas*, 533 U.S. at 690. A detention that is initially lawful may therefore become unconstitutional if it extends beyond the period reasonably necessary to serve those ends. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Here, Petitioner has now been detained for **more than ten months** following his re-arrest on March 12, 2025. He has remained continuously confined since that date without any individualized custody hearing at which the government was required to justify detention. This period far exceeds the six-month benchmark the Supreme Court identified as presumptively

reasonable for civil immigration detention. *Zadvydas*, 533 U.S. at 699–700. The length of detention alone therefore triggers heightened constitutional scrutiny.

That scrutiny must be informed by Petitioner’s full custodial history. DHS initially apprehended Petitioner, conducted background checks, found no criminal history, no indication that he posed a danger to the community, and no basis to conclude that he was a flight risk. On that basis, DHS released Petitioner into the interior of the United States under supervision. For months thereafter, DHS elected to manage Petitioner in the community rather than through detention while Petitioner complied with all reporting requirements, pursued asylum relief, and remained available to immigration authorities. DHS’s own custodial history demonstrates that Petitioner can be effectively managed without physical confinement.

Nor is the length of detention attributable to Petitioner. He has not delayed proceedings, obstructed removal, or failed to comply with any supervision requirement. The duration of detention following re-arrest rests entirely on DHS’s decision to confine Petitioner without affording an individualized custody determination. Where prolonged detention is the result of government custodial choices rather than a noncitizen’s conduct, the constitutional concerns identified in *Zadvydas* are at their apex.

Under Ninth Circuit law, once detention becomes prolonged, due process requires heightened procedural safeguards. Continued confinement must be justified through an individualized custody determination at which the government bears the burden of establishing, by clear and convincing evidence, that detention remains necessary based on flight risk or danger. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011). Respondents do not identify any proceeding at which the government carried that burden or any process satisfying the

constitutional requirements articulated in *Singh*.

The absence of those safeguards renders continued detention unlawful. Once detention exceeds the period reasonably necessary to serve its civil purposes, the Constitution does not permit confinement to continue by default or on the assumption that process may be provided at some later time. *Zadvydas*, 533 U.S. at 690–92. Where prolonged detention has already become unconstitutional, a belated custody hearing cannot cure the violation. *Id.* at 699–701.

Accordingly, because Petitioner has been subjected to prolonged civil immigration detention without individualized justification or constitutionally adequate process, his continued confinement violates the Due Process Clause of the Fifth Amendment. Habeas relief is therefore required. Where detention lacks constitutional justification, the appropriate remedy is release from custody. *Zadvydas*, 533 U.S. at 699–701. Only if the Court determines that detention may lawfully proceed under 8 U.S.C. § 1226(a) should it order a prompt, individualized custody hearing at which the government bears the burden, by clear and convincing evidence, of establishing that continued detention is justified. *Singh*, 638 F.3d at 1203–05.

IV. Conclusion

Petitioner has now been detained for more than ten months without constitutionally adequate process. As demonstrated above, his continued confinement rests on detention authority that does not govern his custody, was imposed without adherence to binding regulations, and has become unconstitutionally prolonged. Each additional day of detention perpetuates the same constitutional and statutory violations that this habeas petition seeks to remedy.

Habeas relief exists to end unlawful confinement, not to prolong it through further delay. Where detention is unauthorized or violates due process, the appropriate remedy is release.

Zadvydas v. Davis, 533 U.S. 678, 699–701 (2001). Under these circumstances, a belated hearing cannot cure months of unlawful detention, and continued confinement would only extend the injuries the writ is designed to prevent.

Accordingly, the Court should deny Respondents’ motion to dismiss and grant the petition for writ of habeas corpus by ordering Petitioner’s immediate release from immigration custody.

Only if the Court determines that detention may lawfully proceed under 8 U.S.C. § 1226(a) should it order, in the alternative, a prompt, individualized bond hearing. At any such hearing, the government must bear the burden of establishing, by clear and convincing evidence, that continued detention is justified based on flight risk or danger. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

For these reasons, Petitioner respectfully requests that the Court deny Respondents’ motion to dismiss, grant the writ, and order his immediate release.

Dated: January 22, 2026

Respectfully Submitted,

/s/ Theodora E. Adoghe

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VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under the penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct.

Executed this 22nd day of January 2026.

/s/ Theodora E. Adoghe

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