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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CARLOS LOPEZ CONTRERAS,

Petitioner,

v.

TODD LYONS, in his official capacity as
Acting Director of the Immigration and
Customs Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;

PAMELA BONDI, in her official capacity as
Attorney General of the United States;

TONYA ANDREWS, in her official capacity as
Warden of the Golden State Annex;

Respondents.

Case No. 25-1291

**VERIFIED PETITION FOR A WRIT OF
HABEAS CORPUS**

*Pro Hac Vice Application Forthcoming

INTRODUCTION

1. Petitioner Carlos Lopez Contreras¹, (“Mr. Lopez” or “Petitioner”) is in the physical custody of Respondents at the Golden State Annex in McFarland, California. Mr. Lopez was unlawfully redetained at an ICE check-in in New Jersey on September 8, 2025, and he remains detained because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have erroneously concluded he is subject to mandatory detention.

2. After his release from ICE custody in 2023, Mr. Lopez was regularly checking in with Immigration and Customs Enforcement (ICE) pursuant to an Order of Supervision (OSUP) while his Motion to Reopen remained pending at the Board of Immigration Appeals (BIA). When his case was remanded to the immigration court and he was scheduled for an immigration hearing in 2027, his OSUP was void.

3. On August 28, 2025, Mr. Lopez was issued a call-in letter and made to appear at a check-in appointment, where he was summarily re-detained without any process, in violation of his statutory, regulatory and constitutional due process rights. He was taken from his family in New Jersey and shipped across the country twice before landing in California, where he remains detained.

4. Accordingly, Mr. Lopez seeks a writ of habeas corpus finding that he was unlawfully re-detained and requiring that he be immediately released so that he can rejoin his community and family, who depend greatly on his support.

JURISDICTION

5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension

¹ Mr. Lopez’s immigration paperwork incorrectly identifies him as “Antonio Absalon Catellanos-Contreras,” but his legal name is Carlos Absalon Lopez Contreras. It is unclear why DHS has identified him as such.

Clause”); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

6. District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The Court has jurisdiction to order Petitioner’s immediate release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“The typical remedy [for unlawful detention] is, of course, release.”) (citation omitted); *see also*, *Leslie v. Holder*, 865 F. Supp. 2d 627, 641 (M.D. Pa. 2012) (district court ordering release of non-citizen).

VENUE

7. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because at least one of the Respondents is a resident of this District, and a substantial part of the events giving rise to the claims in this action took place within this district. 28 U.S.C. § 1391. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973) (laying out traditional venue factors) (holding that venue lies where it is most convenient, where “material events took place,” and where “records and witnesses pertinent to petitioner’s claim are likely to be found.”). Mr. Lopez is physically detained in McFarland, California, which is located in this district and events or omissions giving rise to this action continue to occur in this district.

PARTIES

8. Mr. Lopez is a New Jersey resident and citizen of Honduras who has been in immigration detention since September 9, 2025. ICE unlawfully detained him during an ICE

check-in in Newark, NJ, without conducting a pre-deprivation hearing, and transferred him to the Golden State Annex, in McFarland, CA, across the country from his family and community, where he remains detained.

9. Respondent Todd Lyons is the Acting Director of ICE. As such, Todd Lyons is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

11. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

12. Respondent Tonya M. Andrews is employed as Warden of the Golden State Annex in McFarland, California, where Mr. Lopez is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

FACTS

13. Mr. Lopez has resided in the United States for twenty-five years, since he was five years old, and has lived in New Jersey in that time.

14. Mr. Lopez was detained by ICE in 2021 at the Essex County Correctional Center. At that time, he learned from prior counsel that he had been ordered removed in absentia in 2000, when he was five years old, precipitating the filing of a Motion to Reopen his immigration proceedings. Mr. Lopez was brought to this country by his half-brother's abusive father. Neither Mr. Lopez nor his mother, his legal guardian, were ever served a copy of his Notice to Appear (NTA). Though the Immigration Judge (IJ) denied this Motion to Reopen, Mr. Lopez appealed the decision to the BIA and filed a Motion to Remand. He was granted a Stay of Removal and ultimately released on an Order of Supervision on October 17, 2023, and ordered to comply with various conditions of release and routine check-in requirements. Exh. B, OSUP Conditions.

15. Mr. Lopez complied with his check-in requirements upon release from ICE custody. On December 15, 2023, the BIA granted Mr. Lopez's Motion to Remand. Exh. C, BIA Remand Decision. On January 18, 2024, an Immigration Judge granted his Motion to Change Venue from Harlingen, Texas, to Newark, New Jersey. Mr. Lopez also re-filed his I-589 application for asylum, which was accepted by the Immigration Court in July 2024, and was subsequently docketed for an immigration hearing in 2027.

16. Because he was once again in proceedings before the Immigration Court, Mr. Lopez and his counsel understood his OSUP to be null and void. However, on September 8, 2025, Mr. Lopez was called in for a check-in with ICE where he was summarily re-detained. Mr. Lopez was given a copy of an I-200 arrest warrant but was not given any custody determination paperwork. Exh. D, I-200. Despite requesting it from ICE, Mr. Lopez's counsel was not given any paperwork

until Mr. Lopez was able to send her pictures of the arrest warrant that he received. *Id.* When Mr. Lopez asked why he was being re-detained, he was told by one officer that it was because he was allegedly “not legal in this country” and by another officer that it was because he had missed an ICE check-in. He was not interviewed by any officers after he was re-detained, nor did any officer discuss his OSUP with him.

17. Mr. Lopez is currently in removal proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Lopez with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Exh. A, Notice to Appear.

18. Mr. Lopez provides indispensable support to his mother, stepfather, and brothers, two of whom are U.S. citizens. He supports his mother, who is sick with liver disease, by helping her pay rent and cooking and cleaning for his brothers. He has played a fatherly role for his three younger brothers for his entire life, especially since his mother discovered that one of Mr. Lopez’s younger brothers [REDACTED] another one of Mr. Lopez’s half-brothers. Since this difficult time for the family over a decade ago, Mr. Lopez’s priority has been to work hard and provide financial and emotional support to his family. Mr. Lopez has never been arrested for any crime involving danger, threats, or harm to another person and has not had any issues with law enforcement since completing his criminal sentence in 2022. After his release from ICE custody in 2023, Mr. Lopez spent all of his time working, attending virtual church services with his Pastor of many years, and supporting his family by paying for rent and groceries, helping his mother with household chores, and helping his brothers with their homework and spending time with them.

19. Following Mr. Lopez’s arrest, he was taken into custody at the Elizabeth Detention Center. Mr. Lopez was then transferred to Louisiana and Arizona, before ultimately being transferred to the Golden State Annex. ICE issued a custody determination to continue Mr. Lopez’s detention without an opportunity to post bond or be released on other conditions.

20. Mr. Lopez subsequently requested a bond redetermination hearing before an IJ on October 24, 2025. The IJ found she did not have jurisdiction to hear Mr. Lopez’s request for bond. On December 4, 2025, Mr. Lopez requested bond a second time in light of the holding in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), and the IJ likewise found she did not have jurisdiction and denied the request. Exh. E, December 4, 2025, IJ Decision.

LEGAL FRAMEWORK

I. Revocation of Release and Due Process.

21. The Fifth Amendment’s Due Process Clause prevents the Government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). It is well established that such protection extends to noncitizens, including those who are in removal proceedings. *See id.* at 693 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Reno v. Flores*, 507 U.S. 292, 306 (1993).

22. “Even noncitizens have a liberty interest in continued freedom from civil immigration confinement.” *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *2 (S.D.N.Y. June 18, 2025) (citing *Lopez v. Sessions*, No. 18 Civ. 4189, 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (“Petitioner’s re-detention, without prior notice, a showing of changed

circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.”)).

23. Civil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community, *see id.*, *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Velasco Lopez v. Decker*, 978 F.3d 842, 853-54 (2d. Cir. 2020). Indeed, the regulations implementing § 1226(a) delegate to DHS officers the authority to grant bond or conditional parole, and pursuant to such authority, a DHS officer must make this individualized determination as to the appropriateness of detention. *See* 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”)

24. The Due Process Clause bars the government from re-detaining a noncitizen without first providing a hearing where it must prove he is a flight risk or danger. *Padilla*, 704 F. Supp. 3d 1163, 1172 (“The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government’s legitimate goals.”).

25. A petitioner’s Due Process claim is analyzed “in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution.” *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)).

J.C.L.A. v. Wofford, No. 1:25-CV-01310-KES-EPG (HC), 2025 WL 2959250, at *3 (E.D. Cal. Oct. 17, 2025).

26. A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). “To determine whether a specific conditional release rises to the level of a protected liberty interest, ‘[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.’” *J.A.E.M. v. Wofford*, 2025 WL 3013377, at *3 (E.D. Cal. Oct. 27, 2025) (quoting *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted)).

27. “In *Morrissey*, the Supreme Court explained that parole ‘enables [the parolee] to do a wide range of things open to persons’ who have never been in custody or convicted of any crime, including to live at home, work, and ‘be with family and friends and to form the other enduring attachments of normal life.’” *Id.* (quoting *Morrissey*, 408 U.S. at 482). “‘Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens,’ such as monitoring and seeking authorization to work and travel, his ‘condition is very different from that of confinement in a prison.’” *Id.* (quoting *Morrissey*, 408 U.S. at 481-84).

28. In addition, “the government’s decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the ... conditions [of release].’” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (“The more than two years that she has spent out of custody since ICE initially released her have only heightened her liberty interest in remaining out of detention.”) (citing *Morrissey*, 408 U.S. at 482, 92 S.Ct. 2593). “Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that

individual is released from custody she has a protected liberty interest in remaining out of custody.” *Id.*, see also *Ortega*, 415 F. Supp. 3d at 969 (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.”); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention.”).

29. Because of this strong interest against re-detention, “[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.” *J.C.E.P. v. Wofford*, No. 1:25-CV-01559-EFB (HC), 2025 WL 3268273, at *3 (E.D. Cal. Nov. 24, 2025)(citing *Young v. Harper*, 520 U.S. 143, 147-49 (1997) (Due Process requires pre-deprivation hearing before revocation of parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context)). These procedural protections include, in general, a pre-deprivation hearing, as the Supreme Court has recognized that “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” See *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Courts have found this requirement applies in the case of re-detention of non-citizens by DHS. See, e.g., *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025) (“absent evidence of urgent concerns, a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ”); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. 2025) (“[Petitioner’s] re-detention without a pre-detention hearing before a neutral decisionmaker is ‘likely unconstitutional’”...)(internal citation omitted).

30. This Court has likened the revocation of parole described in *Morrissey* to that of a noncitizen who was released on their own recognizance pending removal proceedings, finding that the noncitizens had a protected liberty interest in continued release. *See, e.g., J.A.E.M. v. Wofford*, 2025 WL 3013377, at *3 (E.D. Cal. Oct. 27, 2025); *J.C.L.A. v. Wofford*, 2025 WL 2959250, at *3 (E.D. Cal. Oct. 17, 2025); *J.S.H.M v. Wofford*, 2025 WL 2938808, at *7 (E.D. Cal. Oct. 16, 2025); *Perez v. Albarran*, 2025 WL 3187578, at *3 (E.D. Cal. Nov. 14, 2025) (finding that “the length of time of her release strengthens petitioner’s interest in her continued release,” Citing *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (“Moreover, the actions of the Government in allowing Petitioner to remain in the community for over five years strengthen Petitioner’s liberty interest. Governmental actions may create a liberty interest entitled to the protections of the Due Process Clause.”)).

31. This Court has also found that re-detention in this context requires a pre-deprivation bond hearing, and that the remedy for those deprived of one is release. *J.S.H.M v. Wofford*, 2025 WL 2938808, at *7 (E.D. Cal. Oct. 16, 2025) (citing *Pinchi* 2025 WL 2084921, at *4).

II. Authority for Detention of Noncitizens by DHS.

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

34. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

35. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

36. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

37. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

38. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

39. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104–469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

40. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”² claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

41. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

42. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

43. Court after court has found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States, rejecting ICE and EOIR’s new interpretation. Since Respondents adopted their new policies, in more than 350 cases “decided by over 160 different judges sitting in about fifty different courts spread across the United States,” courts have rejected ICE and EOIR’s new interpretation of § 1225. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025). Overwhelmingly, courts have found that discretionary detention under § 1226, not mandatory detention under § 1225, applies to individuals like Mr.

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

Lopez. Most recently, the district court in *Maldonado Bautista et al v. Noem* echoed the reasoning of district courts across the country, finding that the class members are detained under § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 25, 2025).

44. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Mr. Lopez.

45. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

46. The text of § 1226(c) also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

47. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

48. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

49. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Lopez, who have already entered and were residing in the United States at the time they were apprehended.

50. Most recently, the district court in *Maldonado Bautista v. Santacruz* echoed the reasoning of district courts across the country, finding that bond denial class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 25, 2025).

III. Revocation of Release under an Order of Supervision.

51. When a case is reopened, the prior order of removal is no longer in force, and the case returns to a pending, non-final posture. *See Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (9th Cir. 2002) (“The BIA’s granting of the motion to reopen means there is no longer a final decision to review”); *see also* 8 CFR 241.4(b)(1) (“A[] [noncitizen] who has filed a motion to reopen...shall remain subject to the provisions of this section unless the motion to reopen is granted. Section 236 of the Act and 8 CFR 236.1 govern custody determinations for [noncitizens] who are in pending immigration proceedings before the Executive Office for Immigration Review.”)

52. Other circuits have held the same. *See Guerra v. Shanahan*, 831 F.3d 59, 63 (2d Cir. 2016), abrogated by *Johnson v. Guzman Chavez*, 594 U.S. 523, 141 S. Ct. 2271, 210 L. Ed. 2d 656 (2021) (quoting *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (“an order of removal was not final when the BIA denied asylum and upheld the IJ’s removal order but then remanded the alien’s claims for withholding. Because the [noncitizen’s] “remanded applications ... if granted, effectively would result in the cancellation of any order removing [him],” the order was not final).

53. An Order of Supervision is issued under 8 U.S.C. § 1231(a)(3), which applies only to individuals in the post-final order “removal period”—i.e., noncitizens with final orders of removal. Accordingly, ICE’s statutory authority to issue an OSUP requires a final order of removal. *See* 8 U.S.C. § 1231(a)(3) (“If the [noncitizen] does not leave or is not removed during the removal period, the [noncitizen], pending removal, shall be subject to supervision under regulations prescribed by the Attorney General”). An OSUP applies only after a removal order becomes final and the “removal period” has begun. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1231(a)(3). The supervision regulations at 8 C.F.R. §§ 241.4 and 241.5 implement release and revocation under § 1231(a)(6). These provisions likewise apply only to noncitizens released from custody pursuant to a final order of removal and define the conditions of release after the removal period. *See* 8 C.F.R. § 241.5 (“A[] [noncitizen] released pursuant to § 241.4 shall be released pursuant to an order of supervision.”).

54. When a noncitizen is, however, subject to an OSUP, ICE’s must follow particular procedures to revoke that OSUP. 8 C.F.R. § 241.4 sets forth various procedures for the “[c]ontinued detention of inadmissible, criminal, and other aliens beyond the removal period,” including, as relevant here, procedures for both release and the revocation of release. 8 C.F.R. §

241.4(d), (l). Under these procedures, ICE must follow certain procedures if it revoked a noncitizen's release.

55. Paragraph (d)(1) permits certain designated officials to “release a[] [noncitizen] if the [noncitizen] demonstrates to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such [noncitizen's] removal from the United States.” *Id.* § 241.4(d)(1). It also requires “[a] copy of any decision ... to release or to detain a[] [noncitizen] to be provided to the detained [noncitizen].” *Id.* § 241.4(d).

56. Paragraph (l) concerns revocation of that supervised release. Under paragraph (l)(2), “[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody” a noncitizen who was previously released. *Id.* § 241.4(l)(2).

57. Pursuant to paragraph (l)(2), a noncitizen's release “may be” revoked if, “in the opinion of the revoking official,”:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

Id.

58. Paragraph (l)(1), entitled “Violation of conditions of release,” provides that “[u]pon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release or parole,” as well as “an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the

notification.” *Id.* § 241.4(l)(1). Paragraph (l)(3) discusses “[t]iming of review when release is revoked.” *Id.* § 241.4(l)(3).

59. 8 C.F.R. § 241.4(l)(2) further provides that the “Executive Associate Commissioner” and “district director” have authority to revoke release of a noncitizen “previously approved for release under the procedures in this section.”

60. Several courts, including in this district, have found that when the DHS revokes the release of a noncitizen, 8 C.F.R. § 241.4(l) requires the noncitizen to be notified of the reasons for revocation under paragraph (l)(1) and given an initial informal interview. *See Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *5 (E.D. Cal. Sept. 5, 2025) (“The Court agrees with those decisions that the notice and interview requirements apply to anyone whose supervision has been revoked pursuant to 8 C.F.R. § 241.4(l)(1).”); *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 225, 2025 WL 2084102, at *1-2 (D. Mass. 2025). Further, such notice must provide “adequate notice of the basis for the revocation decision such that he [can] meaningfully respond at the post-detention ‘informal interview,’ ” *Id.* at *2. *See also Zhen Yi Mei v. Doe*, 2025 WL 2258586, at *10 n.19 (N.D. Ohio Aug. 7, 2025) (observing, in case of petitioner whose release was revoked pursuant to paragraph (l)(2)(iii), that “there are certain procedural requirements when revoking supervision pursuant to § 241.4,” including “notif[ying] [her] of the reasons for [the] revocation [and] ... her return to [ICE] custody,” and “afford[ing] her an opportunity to respond to the reasons for revocation stated in the notification,” which “precedes a full custody review conducted ‘approximately three months after release is revoked’ ” (alterations and omission in original) (quoting *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 652 (D. Mass. 2018))). *Zhu v. Genalo*, 2025 WL 2452352, at *7 (S.D.N.Y. Aug. 26, 2025).

61. “Numerous district courts, including courts in the Ninth Circuit, ‘have determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner’s release must be ordered.’ *Rokhfirooz v. Larose*, Case No.: 25-cv-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting a habeas petition and ordering the petitioner’s release where the Government failed to comply with § 241.13); *Uzzhina v. Chestnut*, 2025 WL 3458787, at *6 (E.D. Cal. Dec. 2, 2025) (“Courts have consistently ordered the release of petitioners and enjoined re-detention absent a pre-detention hearing when ICE failed to follow its own regulations or failed to show an actual change in circumstances.”); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *9 (E.D. Cal. Sept. 5, 2025) (ordering release for Petitioner who was not afforded notice or opportunity to be heard before being detained, in violation of § 241.4); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on his unlawful redetention claim because “there is no indication that an informal interview was provided”).

CLAIMS FOR RELIEF

COUNT I

Violation of the Fifth Amendment to the United States Constitution (Substantive Due Process)

62. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

63. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 69.

64. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*

65. Petitioner is not a flight risk or danger to the community. His release on an order of supervision under section 241.4 necessarily means he was found not to constitute either a danger to the community or a flight risk. *See* 8 C.F.R. § 241.4(d)-(f). Respondents' detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

66. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas. *See Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

COUNT II

Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process)

67. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

68. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-incarceration after his release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

69. Accordingly, “[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.”). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

70. Long after deciding to release Petitioner from custody, Respondents re-detained Petitioner with no notice or opportunity to contest his re-detention before a neutral adjudicator before being taken into custody. Petitioner’s re-detention without a pre-deprivation hearing violated due process.

71. Alternatively, the abrupt, process-less decision to revoke his OSUP in violation of 8 C.F.R. § 241.4 violated Mr. Lopez’s due process rights.

72. Further, Respondents’ failure to provide a post-detention custody hearing to Mr. Lopez based on their improper determination that he is subject to mandatory detention violated his due process rights.

COUNT III

Violation of the INA and Implementing Regulations

73. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

74. To any extent that Mr. Lopez's OSUP remained in force at the time of his detention, ICE failed to follow its own regulations at 8 C.F.R. § 241.4 in the purported revocation of the OSUP, in violation of 8 U.S.C. § 1231.

75. 8 U.S.C. § 1231(a)(6) dictates that post-order detention is only permissible if an individual is a "a risk to the community or unlikely to comply with the order of removal." Once it is determined that a noncitizen is not a danger or flight risk and is released on an OSUP, the implementing regulations articulate certain bases upon which an OSUP can be revoked, *see generally* 8 C.F.R. §§ 241.13(i); 241.4(l)(2).

76. Government agencies are required to follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003).

77. When ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered. *Khamba v. Albarran*, No. 1:25-CV-01227 JLT SKO, 2025 WL 2959276, at *9 (E.D. Cal. Oct. 17, 2025), citing *See Ceesay*, 2025 WL 1284720, at *20-21; *Rombot v. Souza*, 296 F. Supp.3d 383, 387 (D. Mass. 2017).

78. In addition, Mr. Lopez is currently detained pursuant to 8 U.S.C. § 1226(a), which dictates that individuals are entitled to a bond hearing, and so Respondents' continued detention of Mr. Lopez without a bond hearing violates the INA.

COUNT III

Violation of the APA

79. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

80. Under the APA, a court shall “hold unlawful and set aside agency action” that is “arbitrary, capricious . . . or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

81. Agency action is arbitrary and capricious under the APA if the agency has not “reasonably considered the relevant issues and reasonably explained its decision.” *Fed. Commc’n Comm’n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021), or “if the agency has . . . entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

82. The government’s targeting of individuals at their immigration check-ins for arrest is arbitrary and capricious and therefore in excess of its statutory authority in violation of 5 U.S.C. § 706(2)(A).

83. Further, under the statutory and regulatory scheme, an OSUP may not be revoked without following the proper procedure at 241.4(l)(2), which requires notice, an informal interview and specific required findings. Despite not having violated the terms of his OSUP or being presented with any evidence of changed circumstances, Mr. Lopez was arrested and re-detained by ICE officers at a check-in appointment.

84. At minimum, the APA requires that agencies must comply with the procedures that they establish for decision-making. 5 U.S.C. § 706(2)(D) (“The reviewing court shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law). “ICE’s utter disregard for the agency’s own procedures” related to the revocation or OSUP and redetention. *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017).

85. Therefore, to any extent that Mr. Lopez’s OSUP remained in force at the time of his detention, the reversal of ICE’s decision to release Mr. Lopez on an OSUP is arbitrary and capricious in violation of the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Mr. Lopez from custody;
- c. Declare that Mr. Lopez's detention is unlawful;
- d. Order that Mr. Lopez shall not be transferred outside the Eastern District of California while this habeas petition is pending;
- e. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
- f. Award Mr. Lopez attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 15th Day of December.

Respectfully submitted,

s/ Jordan Weiner

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: December 15, 2025

Respectfully submitted,

/s/ Alex Mintz

Alex Mintz, Esq.

Pro Bono Counsel for Petitioner

Pro Hac Vice Application Forthcoming

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail to each of the following individuals:

Todd Lyons
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Dated: December 15, 2025

s/ Alex Mintz

Alex Mintz, Esq.

Pro Bono Counsel for Petitioner

*Pro Hac Vice Application Forthcoming