

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Rafael Loera Solis,

Petitioner,

V.

Kristi Noem, Secretary of Homeland Security;
Pamela Bondi, U.S. Attorney General,
Todd M. Lyons, Acting Director
of Immigration and Customs Enforcement;
Marcos Charles, Acting Director
of Enforcement and Removal Operations;
Warden of ERO El Paso Camp East
Montana Detention Facility

Civil Case No. 3:26-cv-00010-LS

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

I. INTRODUCTION

1. Petitioner is in receipt of an Order for Supplemental Briefing issued by the Honorable United States District Judge Leon Schydlower on January 30, 2026.
2. In such order, the Court requests Petitioner to brief three issues identified by the Court: (1) whether he or she was arrested "on a warrant issued by the Attorney General"; (2) if not, how he or she is eligible for bond under 8 U.S.C. § 1226; and (3) if not eligible for a bond for want of an Attorney General-issued warrant, how habeas relief is available at all.
3. Petitioner was ordered to submit the present Supplemental Brief within 14 days of the mentioned order. As such, this supplemental brief is being timely filed.

II. LEGAL ANALYSIS

- A. Respondent was rearrested with no warrant and no allegation of a violation of the conditions of his previous release.**

4. Petitioner was redetained by Immigration and Customs Enforcement at an ICE Check-in on September 2, 2025, without the issuance of a warrant.
5. At the time of Petitioner's redetention, he had previously been released on his own recognizance on January 24, 2024, following a traffic stop.
6. Upon his redetention, Petitioner was not then served with a warrant nor allegations of having violated his conditions of release.

B. The appropriate remedy in response to Respondent's warrantless detention is immediate release.

7. 8 U.S.C. § 1226(a) provides that "On 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."
8. The issuance of a warrant is a necessary pre-requisite to arrest and detain under § 1226(a). *Roseline K. N., Petitioner, v. Pam Bondi, et al., Respondents*, No. 26-CV-540 (KMM/SGE), 2026 WL 185069, at *2 (D. Minn. Jan. 25, 2026); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (citing to District courts reaching the same conclusion across the 1st, 9th, and 11th Circuits.)
9. Here, Petitioner appears to have been rearrested with no warrant and no allegation of a violation of the conditions of his previous release.
10. As such, this Court should find that the appropriate remedy is Petitioner's immediate release as Respondents have failed to comply with the procedural requirements for arrest and detention under the statute.

C. Habeas relief is warranted in the interest of due process.

11. The Due Process Clause of the Fifth Amendment affords Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom 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).

12. Since the Supreme Court’s decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), the Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).
13. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).
14. Courts have found that automatic detention pending appeal “after a judicial officer has determined that release [] is appropriate,” where the government has made no “showing of dangerousness or flight risk,” “renders the continued detention arbitrary” and “raises a substantial Fifth Amendment claim.” *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). While this case is in the context of the automated stay of bond on appeal, the same reasoning applies here: “... no special justification exists that outweighs the individual’s constitutionally protected interest in avoiding physical restraint . . .” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).
15. Incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).
16. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. His interest in liberty and family unity is paramount, whereas the Government’s blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying him any opportunity to demonstrate eligibility for release. Moreover, the

Government's interest in ensuring appearance can be served by far less restrictive means.

17. Here, the Respondents can neither show that the continued detention of petitioner following his redetention is reasonably related to the original purpose nor that the *Mathews* tests are satisfied.
18. Petitioner has well established connections in the United States by virtue of living in the country for a substantial period of time and has thus acquired a liberty interest in being free from government detention without due process of law.
19. Petitioner's lengthy residence, family caretaking, steady employment, and community ties strengthen his liberty interest and raise the risk of erroneous detention. *See, e.g., Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025).
20. The Respondents previously released Petitioner into the community, then re-detained without a meaningful individualized custody determination in violation of due process.
21. Because Respondents have custody of Petitioner in violation of his Fifth Amendment rights, the Court should issue a writ of habeas corpus directing Respondents to release Petitioner to safeguard his constitutional liberties. 28 U.S.C. § 2241. Numerous courts throughout the country have found that the use of the mandatory detention provision, as affirmed in *Matter of Yajure-Hurtado*, violates an individual's right to meaningful procedural due process. *See, e.g., Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Hyppolite v. Noem*, 25-CV-4304 (NRM), . --- F.Supp.3d ----, 2025 WL 2829511, *12 (E.D.N.Y. Oct. 06, 2025).

III. PRAYER FOR RELIEF

For the foregoing reasons, the Petitioner requests that the Court enter an order:

- a. Granting a writ of habeas corpus finding that the Petitioner's detention is in

violation of the due process clause;

- b. Ordering the Petitioner's release from custody;
- c. Declaring that Petitioner's continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process; and
- d. Granting Petitioner such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Lauren Wallis

Lauren Wallis

Texas Bar No. 24079918

lauren@immigrationnation.net

Law Office of Jason Mills, PLLC
1403 Ellis Ave
Fort Worth, TX 76164
(817)335-0220 (telephone)

ATTORNEY FOR PETITIONER

