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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Gilberto Gonzalez-Diaz,

15 Petitioner,

16 v.

17 Pamela Bondi, *et al.*,

18 Respondents.

Case No. 2:26-cv-00413-APG-BNW

**REPLY IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER [ECF NO. 8]**

19 Respondents' Response to the Motion for Temporary Restraining Order and
20 Amended Petition for Writ of Habeas Corpus, ECF Nos. 12, 13,¹ fails to address any
21 elements of Mr. Gonzalez-Diaz's Motion for Temporary Restraining Order ("TRO").
22 Notably, Respondents failed to provide any arguments to contest that (1) Mr.
23 Gonzalez-Diaz has suffered irreparable harm from his detention without a bond
24 hearing and prolonged detention, and (2) the balance of hardships and public
25 interest weigh in Mr. Gonzalez-Diaz's favor. *See* ECF Nos. 12, 13.

26
27 ¹ ECF Nos. 12 and 13 appear to be identical pleadings.

1 Respondents' failure to address the substance of Mr. Gonzalez-Diaz's Motion
2 for TRO effectively amounts to a failure to respond, and thus, this court may grant
3 the Motion on this ground alone. *See* LR 7-2(d) ("The failure of an opposing party to
4 file points and authorities in response to any motion, except a motion under Fed. R.
5 Civ. P. 56 or a motion for attorney's fees, constitutes a consent to the granting of the
6 motion."); *United States v. Orozco*, 858 F.3d 1204, 1210 (9th Cir. 2017) (holding "the
7 U.S. Attorney waived this argument by failing to address it in his answering brief").

8 At the very least, the government has waived any arguments with respect to
9 irreparable harm, balance of hardships, and public interest elements required to
10 obtain a TRO. Although Respondents did not directly address Mr. Gonzalez-Diaz's
11 arguments that he is likely to succeed on the merits of Claims One and Two raised
12 in the Amended Petition, ECF No. 7, in an abundance of caution, Mr. Gonzalez-Diaz
13 addresses Respondents' substantive arguments with respect to Claims One and
14 Two.

15 As discussed below, this Court should grant Mr. Gonzalez-Diaz's Motion for
16 TRO because the records provided by Respondents establish (1) Mr. Gonzalez-Diaz
17 has never received a bond hearing to which he is entitled under 8 U.S.C. § 1226(a);
18 and (2) the almost eight months he has spent in detention, since July 2025, without
19 a bond hearing has resulted in a violation of his due process rights, particularly
20 when there is nothing in Mr. Gonzalez-Diaz's records to support a finding that he is
21 a flight risk or danger to the community. Accordingly, Mr. Gonzalez-Diaz is likely to
22 succeed on the merits of both of these claims.

23 RELEVANT FACTS

24 Gilberto Gonzalez-Diaz is a Cuban citizen who applied for asylum in
25 December 2022 because he fears persecution and torture if removed back to Cuba.
26 *See* ECF No. 13-2 at 7. Mr. Gonzalez-Diaz has lived in this country for the last four
27 years, and although he was originally detained by United States Border Patrol in

1 Del Rio, Texas, he was eventually released on his own recognizance after USCIS
2 confirmed an I-130 Petition for Alien Relative had been approved for Mr. Gonzalez-
3 Diaz through his United States citizen brother back in 2016. *See id.*

4 On July 15, 2025, Mr. Gonzalez-Diaz was arrested in Las Vegas, Nevada for
5 drug charges, which have since been denied for prosecution, and subsequently
6 placed in custody at Clark County Detention Center (“CCDC”). *See* ECF No. 7-1.
7 That same day, CCDC reached out to Enforcement and Removal Operations
8 (“ERO”) Salt Lake City to flag Mr. Gonzalez-Diaz. ECF No. 13-2 at 7. ERO Salt
9 Lake City subsequently “lodged an immigration detainer” and arrested Mr.
10 Gonzalez-Diaz the next day. *Id.* As of July 2025, Mr. Gonzalez-Diaz’s asylum
11 petition was still pending. *Id.* Although Respondents appear to misconstrue the
12 facts by avoiding any mention of this initial arrest in Las Vegas on July 15, it is
13 important to emphasize that it was this arrest in Las Vegas, that ultimately landed
14 Mr. Gonzalez-Diaz in immigration custody. Prior to this arrest, Mr. Gonzalez-Diaz
15 had been living at liberty in the United States.

16 On October 10, 2025, an Immigration Judge denied Mr. Gonzalez-Diaz’s
17 asylum petition and ordered him removed to Cuba. ECF No. 13-3 at 4. On October
18 13, 2025, Mr. Gonzalez-Diaz appealed the Immigration Judge’s denial. *See id.* at 6.
19 In the appeal, Mr. Gonzalez-Diaz reiterated his fear of persecution and torture if
20 returned to Cuba, and his brother, Ernesta Geralda, expressed his need to have his
21 brother help care for him. *Id.* at 8, 12. Mr. Gonzalez-Dias has received no
22 notification that his appeal has been resolved.

23 On February 10, 2026, Mr. Gonzalez-Diaz requested a bond hearing, which
24 the Immigration Judge denied after finding “[t]he court does not have jurisdiction.”
25 ECF No. 13-4 at 2 (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

26 Mr. Gonzalez-Diaz has no criminal history—the charge for which he was
27 originally arrested in July 2025 in Las Vegas was denied for prosecution—and his

1 immigration records show no active wants or warrants, no gang affiliations, and no
2 “other adverse information.” ECF Nos. 7-1, 13-2 at 8. Mr. Gonzalez-Diaz has been
3 in this country for the last four years and is fighting to remain. His brother, Ernesto
4 Geralda, is a United States citizen who is suffering from a serious and advanced
5 form of throat cancer, and Mr. Gonzalez-Diaz is fighting to be with his brother
6 during his last stage of life.

7 Over the last eight months since Mr. Gonzalez-Diaz has been detained, he
8 has never had a bond hearing. Even if given a bond hearing, there is nothing in the
9 record to support a finding of dangerousness or flight risk, and Respondents do not
10 provide any arguments to support such findings. In fact, Respondents fail to raise
11 any substantive arguments supporting Mr. Gonzalez-Diaz’s continued detention
12 other than the same statutory interpretation that several courts have repeatedly
13 rejected.

14 Accordingly, Mr. Gonzalez-Diaz urges the Court to follow and adopt the
15 reasoning in *Escobar Salgado v. Mattos*, 809 F. Supp. 3d 1123 (D. Nev. 2025), which
16 is in line with several district courts around the country that are similarly rejecting
17 Respondents’ interpretation of the INA. Applying this reasoning, Mr. Gonzalez-Diaz
18 is likely to succeed on the merits because his prolonged detention without a bond
19 hearing violates the INA as well as his due process rights under the Fifth
20 Amendment of the United States Constitution. Mr. Rodriguez-Diaz asks this Court
21 to grant his Motion for TRO and order his release, which is a return to the status
22 quo.

23 ARGUMENT

24 I. Mr. Gonzalez-Diaz is likely to succeed on the merits of Claim One.

25 As discussed in the Amended Petition, Respondents’ position that Mr.
26 Gonzalez-Diaz is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)
27 without the opportunity for a bond hearing is both contrary to decades of practice

1 and simply incorrect. *See* ECF No. 7 at 5-7. Several courts, including courts in this
2 district, have rejected Respondents' interpretation in *Matter of Yajure Hurtado*, 29
3 I&N Dec. 216. *See, e.g., Escobar Salgado v. Mattos*, 809 F. Supp. 3d 1123 (D. Nev.
4 2025) (rejecting Respondents' interpretation and noting courts that have done the
5 same).

6 As the records provided by Respondents make clear, Mr. Gonzalez-Diaz was
7 arrested in Las Vegas on July 15, 2025, for an alleged drug offense that has since
8 been denied for prosecution. *See* ECF No. 12-1 at 7. He was then transferred from
9 Clark County Detention Center to immigration custody. *Id.* As a result, Mr.
10 Gonzalez-Diaz is a noncitizen who was arrested in the interior of the United States,
11 as opposed to a noncitizen getting arrested at or near the border while seeking
12 admission into the country.

13 The process of seeking admission involves attempting to acquire lawful entry
14 through inspection and authorization. Unlike an arriving noncitizen, a noncitizen
15 arrested and detained in the interior United States is not attempting that process.
16 *See Francisco T. v. Bondi*, No. 25-cv-3219, 2025 WL 3490809, at *5 (D. Minn. Sept.
17 5, 2025) (finding the statute "applies to noncitizens attempting or intending to gain
18 lawful entry into the United States" and "[n]othing suggests [petitioner] was
19 attempting or requesting to gain lawful entry into the United States when he was
20 detained"). Interior noncitizens therefore fall outside the scope of Section
21 1225(b)(2)(A), which requires mandatory detention only when a noncitizen is
22 "seeking admission," i.e., attempting to secure lawful entry through inspection and
23 authorization.

24 Accordingly, the only authority under which Mr. Gonzalez-Diaz may properly
25 be detained is 8 U.S.C. §1226(a). Detention under § 1226(a) is discretionary, not
26 mandatory. *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General,
27 an alien may be arrested and detained pending a decision on whether the alien is to

1 be removed from the United States.”) “[T]he discretionary authority in § 1226(a)
2 requires an individualized bond determination before a noncitizen may be taken
3 into custody.” *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *8
4 (E.D.N.Y. Oct. 6, 2025) (citing *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241
5 (S.D.N.Y. 2020) (“the government does not dispute that 8 U.S.C. § 1226(a) and its
6 implementing regulations require ICE officials to make an individualized custody
7 determination”) (internal quotations omitted)). Under the implementing
8 regulations, the factors that be considered under § 1226(a) prior to detention are
9 whether the noncitizen poses a “danger to property or persons” and whether he is
10 “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. §
11 236.1(c)(8). These factors counsel in favor of Mr. Gonzalez-Diaz’s release.

12 Notably, Respondents made no argument that ICE made an individualized
13 assessment that detention was necessary prior to detaining Mr. Gonzalez-Diaz. *See*
14 ECF No. 13. Additionally, the records show nothing to support a finding, and
15 Respondents fail to make any arguments, that Mr. Gonzalez-Diaz is a flight risk or
16 danger to the community to even support Mr. Gonzalez-Diaz’s detention.

17 A “Treasury Enforcement Communications System records check” showed
18 Mr. Gonzalez-Diaz has no criminal history, wants, or warrants. ECF No. 12-1 at 7.
19 “Database checks” also uncovered “no evidence of gang affiliation or other adverse
20 information.” *Id.* at 8. Thus, there is no evidence Mr. Gonzalez-Diaz is a danger to
21 the community.

22 There is also no evidence that Mr. Gonzalez-Diaz is a flight risk. He has lived
23 in this country since his arrival in March 2022. He was originally released from ICE
24 custody on his own recognizance in 2022 after records revealed he had a valid I-130
25 petition which had been approved on February 23, 2016. *Id.* at 7. Mr. Gonzalez-Diaz
26 has expressed fear of persecution and torture if he is removed back to Cuba, *id.* at 8,
27 and he is continuing to fight the denial of his asylum claim via appeal that is still

1 pending, *see* ECF No. 12-3. Additionally, Mr. Gonzalez-Diaz is determined to stay in
2 this country so that he may help and support his brother who is suffering from a
3 very serious form of throat cancer. *See id.* at 8, 12.

4 Because records produced by Respondents have established there is no
5 justification to detain Mr. Gonzalez-Diaz, and Respondents failed to raise any
6 argument that Mr. Gonzalez-Diaz is a flight risk or a danger, this Court should
7 grant the Motion for a TRO, restore the status quo, and order Mr. Gonzalez-Diaz be
8 released immediately so that he can be reunited with his brother.

9 **II. Mr. Gonzalez-Diaz is likely to succeed on the merits of Claim Two.**

10 Mr. Gonzalez-Diaz has been detained for over eight months without a bond
11 hearing in violation of his Fifth Amendment rights to Due Process. In considering
12 the issue of prolonged detention in ICE custody, the Ninth Circuit has expressed
13 “grave doubts that any statute that allows for arbitrary prolonged detention without
14 any process is constitutional or that those who founded our democracy precisely to
15 protect against the government’s arbitrary deprivation of liberty would have
16 thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018).

17 Respondents argue “Congress made a legislative judgment to detain aliens
18 who have not been admitted during removal proceedings . . . that is the prerogative
19 of the legislative branch serving the interest of the government and the United
20 States.” ECF No. 13 at 13. However, Respondents ignore that “the government’s
21 discretion to incarcerate non-citizens is always constrained by the requirements of
22 due process.” *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). And, “[i]t is
23 well established that the Fifth Amendment entitles [noncitizens] to due process of
24 law in the context of removal proceedings.” *Trump v. J. G. G.*, 604 U.S. 670, 673
25 (2025) (internal quotation marks and citation omitted).

26 Respondents cite to *Demore v. Kim*, 538 U.S. 510, 513 (2003), to argue that
27 “Congress’s interest in dealing with illegal immigration by keeping specified

1 [noncitizens] in detention pending the removal period” under 8 U.S.C. § 1226(c)
2 justified “dispens[ing] of any Due Process concerns without engaging in the
3 ‘*Mathews v. Eldridge*’ test.” ECF No. 13 at 14. *Demore*, however, is distinguishable
4 for many reasons, the most important being that Mr. Gonzalez-Diaz is not subject to
5 mandatory detention under 8 U.S.C. § 1226(c). In *Demore*, the Court found
6 mandatory detention under §1226(c) “necessarily serves the purpose of preventing
7 deportable criminal aliens from fleeing prior to or during their removal proceedings”
8 based on evidence before Congress at the time of enactment demonstrating that
9 noncitizens convicted of certain crimes were statistically more likely to abscond
10 from removal proceedings. *Demore*, 538 U.S. at 526-27. But “[t]hat interest is not
11 implicated in the continued detention of [Mr. Gonzalez-Diaz], who ha[s] no criminal
12 convictions.” *Escobar Salgado*, 809 F. Supp. 3d at 1159.

13 Importantly, Respondents have otherwise failed to respond or contest the
14 *Mathews* factors Mr. Gonzalez-Diaz laid out in the Amended Petition. See ECF No.
15 7 at 9-14. As addressed in the Amended Petition, the *Mathews* factors weigh in Mr.
16 Gonzalez-Diaz’s favor because (1) Mr. Gonzalez-Diaz’s interest in being free from
17 prolonged detention (over eight months) without a bond hearing is substantial, see
18 *Singh v. Hodler*, 638 F.3d 1196, 1208 (9th Cir. 2011); (2) there is a significant risk
19 that Mr. Gonzalez-Diaz is being erroneously deprived of his liberty since
20 Respondents have never had to establish that detention was warranted based on
21 Mr. Gonzalez-Diaz’s individual circumstances, and Respondents fail to raise a single
22 fact to suggest Mr. Gonzalez-Diaz is a flight risk or a danger; and (3) the
23 administrative and fiscal burden of conducting a bond hearing is not significant and
24 neither is the government’s interest in detaining Mr. Gonzalez-Diaz without a bond
25 hearing, and Respondents have failed to raise any argument to the contrary.

26 Based on the arguments above and the fact that Respondents have failed to
27 provide any specific arguments to address Mr. Gonzalez-Diaz’s individual

1 circumstances, this Court should find Mr. Gonzalez-Diaz's prolonged, eight-month
2 detention without a bond hearing is likely to successfully establish a due process
3 violation.

4 **CONCLUSION**

5 Accordingly, this Court should grant Mr. Gonzalez-Diaz's Motion for TRO,
6 temporarily enjoin Respondents from continuing to detain Mr. Gonzalez-Diaz, and
7 order Respondents release Mr. Gonzalez-Diaz.

8 Dated March 19, 2026.

9 Respectfully submitted,

10 Rene L. Valladares
11 Federal Public Defender

12 /s/ Katherine A. Tanaka
13 Katherine A. Tanaka
14 Assistant Federal Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on March 19, 2026. I personally served a true and correct copy of the foregoing Motion for Temporary Restraining Order by CM/ECF to the following individuals:

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I further certify that some of the participants in the case are not registered electronic filing system users. The foregoing document will be mailed by First-Class Mail, postage pre-paid, or dispatched to a third party commercial carrier for delivery within three calendar days, to the following people:

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An Employee of the
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