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18 UNITED STATES DISTRICT COURT
19 DISTRICT OF NEVADA

20 Gilberto Gonzalez-Diaz,
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22 Petitioner,
23
24 v.
25 Pamela Bondi, *et al.*,
26
27 Respondents.

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

**Reply in Support of First Amended
Petition Under 28 U.S.C. § 2241**

[ECF NO. 7]

INTRODUCTION AND RELEVANT FACTS

Gilberto Gonzalez-Diaz is a Cuban citizen who applied for asylum in December 2022 because he fears persecution and torture if removed back to Cuba. ECF No. 13-2 at 7. Mr. Gonzalez-Diaz has lived in this country for the last four years, and although he was originally detained by United States Border Patrol in Del Rio, Texas, he was eventually released after USCIS confirmed an I-130 Petition for Alien Relative had been approved for Mr. Gonzalez-Diaz through his citizen brother back in 2016. *See id.*

Since filing the Amended Petition and Reply in Support of the TRO, undersigned counsel has since received a copy of Mr. Gonzalez-Diaz's March 2022

1 Order of Release on Recognizance, confirming that Mr. Gonzalez-Diaz has been
2 living in the country, at liberty, for the last four years. *See* Exhibit 1.

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

13 On October 10, 2025, an Immigration Judge denied Mr. Gonzalez-Diaz’s
14 asylum petition and ordered him removed to Cuba. ECF No. 13-3 at 4. On October
15 13, 2025, Mr. Gonzalez-Diaz appealed the Immigration Judge’s denial. *See* ECF No.
16 13-3 at 6. In the appeal, Mr. Gonzalez-Diaz reiterated his fear of persecution and
17 torture if returned to Cuba, and his brother, Ernesta Geralda, expressed his need to
18 have his brother, Mr. Gonzalez-Diaz, help care for him. *Id.* at 8, 12.

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

22 Mr. Gonzalez-Diaz has no criminal history—the charge for which he was
23 originally arrested in July 2025 in Las Vegas was denied for prosecution—and his
24 immigration records show no active wants or warrants, no gang affiliations, and no
25 “other adverse information.” ECF Nos. 7-1, 12-2 at 8. Mr. Gonzalez-Diaz has been
26 in this country for the last four years and is fighting to remain. His brother, Ernesto
27 Geralda, is a United States citizen who is suffering from a serious and advanced

1 form of throat cancer, and Mr. Gonzalez-Diaz is fighting to be with his brother
2 during his last stage of life.

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

9 Accordingly, Mr. Gonzalez-Diaz urges the Court to follow and adopt the
10 reasoning in *Escobar Salgado v. Mattos*, 809 F. Supp. 3d 1123 (D. Nev. 2025) and
11 find that Mr. Gonzalez-Diaz's prolonged detention without a bond hearing violates
12 the INA as well as his due process rights under the Fifth Amendment of the United
13 States Constitution. Mr. Gonzalez-Diaz asks the Court to order his release, as
14 release is the appropriate remedy for his unlawful detention that has now spanned
15 over eight months. At minimum, Mr. Gonzalez-Diaz asks the Court to order that he
16 be granted a constitutionally adequate bond hearing.

17 ARGUMENT

18 I. Mr. Gonzalez-Diaz is being held under an illegal application of the 19 mandatory detention provision in 8 U.S.C. § 1225(b), violating his 20 Fifth Amendment due process rights.

21 Mr. Gonzalez-Diaz challenges his prolonged detention—specifically, eight
22 months in ICE custody—without first having a substantive bond hearing to
23 determine if detention is appropriate. Notably, Respondents do not contest that Mr.
24 Gonzalez-Diaz was arrested in Las Vegas, Nevada, on drug charges that have since
25 been denied, and that he came into immigration custody following his release from
26 Clark County Detention Center. Instead, they claim Mr. Gonzalez-Diaz “falls neatly
27 into the detention authority pursuant to . . . the holding in *Matter of Q. Li*. [29 I&N
Dec. 66 (BIA 2025)].” ECF No. 13 at 2. Respondents further argue Mr. Gonzalez-

1 Diaz is an applicant for admission, and therefore subject to mandatory detention
2 under § 1225(b)(2)(A), because Mr. Gonzalez-Diaz entered the United States in 2022
3 “without any admission or parole” and was “apprehended by Customs and Border
4 Patrol agents in close proximity to the international border.” *Id.*

5 However, Respondents’ position regarding mandatory detention under
6 §1225(b)(2)(A) —which the government newly adopted last year, after decades of
7 contrary practice—is incorrect. As discussed in the Amended Petition, several
8 courts have already rejected Respondents’ position in substantially similar cases.
9 ECF No. 7 at 5-6. This Court should also reject Respondents’ arguments,
10 notwithstanding the Fifth Circuit’s unpersuasive decision in *Buenrostro-Mendez v.*
11 *Bondi*, 166 F.4th 494 (5th Cir. 2026). *See, e.g., Perez v. Bondi*, No. 2:26-cv-00315,
12 2026 WL 509441 (D. Nev. Feb. 24, 2026).

13 **A. The statutory text demonstrates Section 1225 is a border**
14 **detention statute that is inapplicable here.**

15 8 U.S.C. § 1225(b)(2)(A) requires mandatory detention for certain noncitizens
16 seeking admission at or near the border. 8 U.S.C. § 1226(a) authorizes discretionary
17 detention for other noncitizens arrested in the interior. The government’s contrary
18 argument—Section 1225 covers noncitizens in the interior—disrespects the
19 statutory text.

20 When conducting statutory interpretation, courts start with the text.
21 *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999). Section 1225(a)(1)
22 defines the term “applicant for admission” as a noncitizen “who arrives in the
23 United States” or “who has not been admitted.” Under Section 1225(b)(2)(A), “in the
24 case of [a noncitizen] who is an applicant for admission, if the examining
25 immigration officer determines that a [noncitizen] seeking admission is not clearly
26 and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a
27 [removal] proceeding.” Although this statute mandates detention for certain

1 noncitizens who are seeking admission at or near the border, the statute doesn't
 2 extend to noncitizens arrested in the interior. There are multiple textual
 3 considerations that confirm this conclusion.

4 **1. Interior noncitizens aren't "seeking admission."**

5 The statute mandates detention of applications for admission who are
 6 "seeking admission." "Admission" means "the lawful entry of the [noncitizen] into
 7 the United States after inspection and authorization by an immigration officer."
 8 8 U.S.C. § 1101(a)(13)(A). "Seek" means, among other things, "to try to acquire or
 9 gain." *Seek*, Merriam-Webster, [https://www.merriam-webster.com/](https://www.merriam-webster.com/dictionary/seeking)
 10 dictionary/seeking; *see also Buenrostro-Mendez*, 166 F.4th at 511 (Douglas, J.,
 11 dissenting) (quoting this definition). Put together, "seeking admission" means "to
 12 try to acquire or gain lawful entry into the United States after inspection and
 13 authorization by an immigration officer." This phrase "entails some type of
 14 affirmative action taken to obtain entry." *Escobar Salgado*, 2025 WL 3205356, at
 15 *15; *see also Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020) (explaining
 16 the "use of the present progressive, like use of the present participle, denotes an
 17 ongoing process").¹

18 Interior noncitizens are not seeking admission. The process of seeking
 19 admission involves attempting to acquire lawful entry through inspection and
 20 authorization. Unlike an arriving noncitizen, a noncitizen arrested and detained in
 21 the interior U.S. is not attempting that process. *See Francisco T. v. Bondi*, No. 25-

23 ¹ *See also Aguilar v. Doe*, No. 1:25-CV-01742-KES-HBK (HC), 2026 WL
 24 323241, at *4 (E.D. Cal. Feb. 6, 2026) ("Courts considering the plain language of
 25 this statute have almost universally found that the phrase 'seeking admission'
 26 necessarily entails some type of action taken to obtain entry. "); *Lopez-Campos v.*
 27 *Raycraft*, 797 F. Supp. 3d 771, 781 (E.D. Mich. Aug. 29, 2025) ("Respondents
 completely ignore the term 'seeking' when attempting to broaden what 'seeking
 admission' means. This implies action – something that is currently occurring, and
 in this instance, would most logically occur at the border upon inspection.").

1 cv-3219, 2025 WL 3490809, at *5 (D. Minn. Sept. 5, 2025) (finding the statute
2 “applies to noncitizens attempting or intending to gain lawful entry into the United
3 States” and “[n]othing suggests [petitioner] was attempting or requesting to gain
4 lawful entry into the United States when he was detained”). Interior noncitizens
5 therefore fall outside the scope of Section 1225(b)(2)(A).

6 The government’s analysis appears to assume that “applying for admission”
7 and “seeking admission” are synonymous. The Fifth Circuit majority made a similar
8 argument. *Buenrostro-Mendez*, 166 F.4th at 502 (“When a person applies for
9 something, they are necessarily seeking it.”). “Applicant for admission,’ however, is
10 a specifically defined statutory term of art.” *Id.* at 511 (Douglas, J., dissenting). The
11 term is a hybrid concept; its label suggests people who have applied for admission in
12 the conventional sense, and its definition includes such people, but its definition
13 also includes people who did not apply for admission in the conventional sense. It
14 therefore reflects an unusual usage: a label with two definitions, one consistent with
15 the label, one inconsistent. It makes no sense to say that if a unique statutory term
16 of art includes a verb in its label, then anytime the statute uses a synonym of that
17 verb, the statute is necessarily incorporating by reference the entire statutory term
18 of art, regardless of the breadth of the term’s definition.

19 The meaningful variation canon supports this conclusion. “[W]here [a]
20 document has used one term in one place, and a materially different term in
21 another, the presumption is that the different term denotes a different idea.” A.
22 Scalia & B. Garner, *Reading Law* 170 (2012); see *SW Airlines Co. v. Saxon*, 596 U.S.
23 450, 457-58 (2022) (citing this canon). In Section 1225(b)(2)(A), Congress used the
24 statutory term of art “applicant for admission” and the term “seeking admission” a
25 mere ten words apart. In this setting, “Congress is presumed to have acted
26 intentionally in choosing different words in a statute, such that different words and
27

phrases should be accorded different meanings.” *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025).

The canon against surplusage points in the same direction. “It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (cleaned up); *see also Escobar Salgado*, 2025 WL 3205356, at *11. The government’s interpretation “would render § 1225(b)(2)(A)’s use of the phrase ‘seeking admission’ superfluous.” *Castanon-Nava v. DHS.*, 161 F.4th 1048, 1061 (7th Cir. 2025). This creates a serious surplusage problem.

Accordingly, applying multiple canons of statutory interpretation, it is clear Respondents position—that Mr. Gonzalez-Diaz, a noncitizen arrested in the interior of the United States, is an applicant for admission subject to mandatory detention under § 1225(b)(2)(A)—is not supported by the statutory text.

2. The Fifth Circuit’s textual arguments in *Buenrostro-Mendez* are flawed, and thus, the Court should decline to adopt the *Buenrostro-Mendez* analysis.

The government cites to the recent Fifth Circuit decision in *Buenrostro-Mendez* “as persuasive authority that squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)[.]” ECF No. 13 at 11. However, this Court should not consider the *Buenrostro-Mendez* analysis because the majority rely on four textual arguments to support its conclusion that interior noncitizens are considered applicants for admission—none of which are convincing.

First, the Fifth Circuit rely on Section 1225(a)(3), which states all noncitizens “who are applicants for admission or otherwise seeking admission or readmission to . . . the United States shall be inspected by immigration officers.” In the Fifth Circuit majority’s view, “[t]he use of ‘or otherwise’ suggests that ‘applicants for

admission’ are a subset of those ‘seeking admission.’” *Buenrostro-Mendez*, 166 F.4th at 503. But “‘or otherwise’ is used to refer to something that is different from something already mentioned”—not to imply that one category is a subset of another. *J.G.O. v. Francis*, No. 25-cv-7233, 2025 WL 3040142, at *3 (S.D.N.Y. 2025) (cleaned up). Unsurprisingly, “other statutes . . . use ‘or otherwise’ without signaling a category-subset relationship.” *Buenrostro-Mendez*, 166 F.4th at 518 n.17 (Douglas, J., dissenting).

Notably, Section 1226(a)(3) itself uses “or otherwise” to distinguish two categories without suggesting one is a subset of the other. This provision allows the Attorney General to release a noncitizen and provide work authorization if the noncitizen “is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.” In other words, work authorization is appropriate if the noncitizen is a lawful permanent resident, or if the noncitizen would be provided work authorization but for the removal proceedings. Under the Fifth Circuit majority’s logic, individuals who are in the first category (lawful permanent residents) are necessarily a subset of individuals in the second category (who would otherwise be provided work authorization). But lawful permanent residents don’t need work authorization in the first place. *See* 8 U.S.C. § 1324a(h)(3) (a noncitizen “lawfully admitted for permanent residence” is work-eligible and doesn’t need to be “authorized to be . . . employed”). Thus, the two categories in Section 1226(a)(3) (lawful permanent residents and other individuals who would be eligible for work authorization) don’t form a category-subset relationship. The Fifth Circuit majority’s logic doesn’t track for Section 1226(a)(3), nor does it for Section 1225(a)(3).

Second, the Fifth Circuit majority relies on Section 1225(a)(5). The subsection provides that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions

1 of the applicant in seeking admission to the United States.” According to the
2 majority, this “language strongly suggests that those who are applicants for
3 admission are ‘seeking admission.’” *Buenrostro-Mendez*, 166 F.4th at 503. But the
4 language just means that some applicants for admission will be seeking admission
5 upon entry; it doesn’t suggest *all* individuals who satisfy the statutory definition for
6 “applicant for admission” are necessarily seeking admission. *See id.* at 519 n.20
7 (Douglas, J., dissenting).

8 Third, the Fifth Circuit majority questioned why Congress would’ve defined
9 “applicant for admission” broadly in Section 1225(a)(1) if the term was coextensive
10 with arriving noncitizens. *Buenrostro-Mendez*, 166 F.4th at 504. The answer is that
11 Section 1225(a)(1) defines the term “applicant for admission” for the entire
12 “chapter,” not just the section. Chapter 8 uses the term “applicant for admission” in
13 various other places, including in Section 1182(d)(5)(A) (regarding humanitarian
14 parole) and Section 1229a(c)(2)(A) (regarding the burden of proof in a removal
15 proceeding). *See Buenrostro-Mendez*, 166 F.4th at 519 n.21 (Douglas, J., dissenting).
16 The Fifth Circuit majority questioned why, in that event, Congress placed the
17 definitional phrase in Section 1225, not another location. *Id.* at 504 n.10. But the
18 majority’s analysis has a similar problem. In response to a surplusage argument
19 regarding Section 1226(c)(1), it interprets various subsections of Section 1226(c)(1)
20 as having nothing to do with Section 1226(a) detention but instead as supposed
21 restrictions on the availability of humanitarian parole under Section 1182(d)(5)(A).
22 *Id.* at 505. Perhaps Congress placed a definitional phrase in Section 1225 that
23 would’ve fit better somewhere else. But that’s no greater a textual problem than
24 Congress placing a limitation on humanitarian parole in Section 1226 that would’ve
25 fit better in Section 1182.

26 Fourth, the Fifth Circuit majority questioned why Congress would use the
27 term “seeking admission” in Section 1225(b)(2)(A) rather than “arriving

[noncitizen].” *Buenrostro-Mendez*, 166 F.4th at 504. One answer is that Section 1225(b)(2)(A) may apply to recently arriving noncitizens found near the border but not at a port of entry. Those individuals might not qualify as “arriving noncitizens,” but they could nevertheless be deemed to be “seeking admission” by virtue of their inspection near the border. *See Carbajal v. Wimmer*, No. 2:26-cv-93, 2026 WL 353510, at *3 (D. Utah Feb. 9, 2026) (“If § 1225(b)(2) were restricted to ‘arriving [noncitizen]’ rather than ‘applicants for admission,’ then [the government] might not be able to establish that certain noncitizens, even if they were encountered near the border, qualified as ‘arriving [noncitizens].’”); *see also United States v. Gambino-Ruiz*, 91 F.4th 981, 986, 990 (9th Cir. 2024) (explaining the government narrowly defines the term “arriving [noncitizen]”). Or perhaps Congress used the phrase “seeking admission” as a synonym for “arriving noncitizen.” The government and the Fifth Circuit majority present similar synonym-based arguments, but their interpretation creates substantial surplusage problems, while no such problem exist under this synonym-based interpretation.

Ultimately, the Fifth Circuit has not identified a compelling textual argument for its interpretation, and thus, the Court should decline to follow the Fifth Circuit’s analysis and holding in *Buenrostro-Mendez*.

B. Both Mr. Gonzalez-Diaz’s initial detention without an individualized custody determination, as well as his continued detention under an illegal application of § 1225(b), violate his due process rights, and thus, the appropriate remedy is release.

“The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e] any ‘person . . . of . . . liberty . . . without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (alteration in original). “Arbitrary civil detention is not a

1 feature of our American government. “[L]iberty is the norm, and detention prior to
2 trial or without trial is the carefully limited exception.” *Rodriguez v. Marin*, 909
3 F.3d 252, 256–57 (9th Cir. 2018) (quoting *United States v. Salerno*, 481 U.S. 739,
4 755 (1987)).

5 Here, Mr. Gonzalez-Diaz was subjected to arbitrary detention because he was
6 unlawfully detained under the mandatory detention provision of § 1225(b).
7 Additionally, as confirmed by Mr. Gonzalez-Diaz’s March 2022 order of release on
8 his own recognizance, Mr. Gonzalez-Diaz retained a protected liberty interest to
9 remain free from *re-detention* without a constitutionally adequate hearing. *See*
10 *Bekler v. Noem*, No. 1:25-CV-01974-CDB (HC), 2026 WL 234949, at *9 (E.D. Cal.
11 Jan. 29, 2026) (“The undersigned agrees with other courts and other judges of this
12 Court that noncitizens released from immigration custody on general orders of
13 supervision or on their own recognizance . . . have a liberty interest in their freedom
14 that implicates protections under principles of procedural due process.”); *Guillermo*
15 *M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal. 2025) (“The fact that
16 Petitioner is subject to discretionary conditions of release likewise does not mean he
17 lacks a protectable liberty interest and can be re-detained without process.”); *see id.*
18 (“[E]ven if immigration detainees must wait months before a periodic re-review of
19 their detention, those already released on immigration bond possess an interest in
20 their continued liberty, which grows over time, and a due process right to a hearing
21 before being re-detained.”).

22 There is no evidence presented by Respondents to suggest that Mr. Gonzalez-
23 Diaz ever violated any of his conditions of release to justify his re-detention. In fact,
24 his “Personal Report Record” appears to show he met his reporting conditions up
25 until his arrest in July 2025—an arrest for charges that have since been denied for
26 prosecution. *See* Exhibit 1.

1 Even if Respondents wanted to detain Mr. Gonzalez-Diaz pursuant to their
2 discretionary detention authority under § 1226(a), there is absolutely no evidence in
3 the record to establish Mr. Gonzalez-Diaz is a flight risk or danger to the
4 community such that detention would be warranted.

5 As an initial matter, immigration officials already determined back in 2022
6 that Mr. Gonzalez-Diaz was not a danger or a flight risk when they determined he
7 was eligible to be released on his own recognizance. *See* Exhibit 1; *Babuzdze, v.*
8 *Chestnut, et al.*, No. 1:26-CV-01499-KES-CDB (HC), 2026 WL 797926, at *8 (E.D.
9 Cal. Mar. 23, 2026) (“By releasing Petitioner in their discretion, immigration
10 officials necessarily determined that Petitioner did not present a risk of flight or
11 danger to the community.”). There is no new evidence in the record to suggest that
12 finding should change.

13 A “Treasury Enforcement Communications System records check” shows Mr.
14 Gonzalez-Diaz has no criminal history, wants, or warrants. ECF No. 13-1 at 7.
15 “Database checks” also conclude there is “no evidence of gang affiliation or other
16 adverse information.” *Id.* at 8. Additionally, Mr. Gonzalez-Diaz has lived in this
17 country since his arrival in March 2022. He regularly checked in as was required
18 under his 2022 release order. *See* Exhibit 1. Further, Mr. Gonzalez-Diaz has
19 expressed fear of persecution and torture if he is removed back to Cuba, ECF No.
20 13-1 at 8, and he is continuing to fight the denial of his asylum claim via appeal
21 that is still pending, *see* ECF No. 12-3. Lastly, Mr. Gonzalez-Diaz is determined to
22 stay in this country so that he may help and support his brother who is suffering
23 from a very serious form of throat cancer. *See id.* at 8, 12.

24 The facts do not support a finding of dangerousness or flight risk in his case.
25 Accordingly, release, not simply a bond hearing, is the remedy fit to the harm in
26 this case. *See Dominguez Izaguirre v. Christopher Mason, et al.*, No. 2:26-CV-00121,
27 2026 WL 561235, at *3 (S.D.W. Va. Feb. 27, 2026) (finding “continued custody

1 cannot stand” where “there is no evidence in the record that Petitioner is a danger
2 to the community or a flight risk” and “where detention has been found unlawful
3 and no constitutionally adequate bond hearing has been provided”).

4 As another court in this District recently found, “merely ordering a new bond
5 hearing would not remedy the significant harm” where the petitioner had been
6 detained for nearly ten months as the result of an unconstitutional bond hearing.
7 *Quintana Chagolla v. Mattos*, No. 2:25CV02435-MMD-EJY, 2026 WL 524228, at *3
8 (D. Nev. Feb. 25, 2026). The same reasoning applies here; Respondents have
9 unlawfully detained Mr. Gonzalez-Diaz for eight months and have denied him the
10 individualized custody determination he is entitled to. He should be released. If this
11 Court is not inclined to grant release, Mr. Gonzalez-Diaz at a minimum should
12 receive a constitutionally adequate bond hearing in immigration court.

13 **II. Mr. Gonzalez-Diaz’s prolonged mandatory detention without a bond**
14 **hearing violates his Fifth Amendment due process rights.²**

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

22 Respondents argue “Congress made a legislative judgment to detain aliens
23 who have not been admitted during removal proceedings . . . that is the prerogative
24 of the legislative branch serving the interest of the government and the United
25 States.” ECF No. 13 at 13. However, Respondents ignore that “the government’s

26
27 ² Mr. Gonzalez-Diaz incorporates the same arguments he raised in his Reply
in Support of the Motion for Temporary Restraining Order below. ECF No. 14.

1 discretion to incarcerate non-citizens is always constrained by the requirements of
2 due process.” *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). And, “[i]t is
3 well established that the Fifth Amendment entitles [noncitizens] to due process of
4 law in the context of removal proceedings.” *Trump v. J. G. G.*, 604 U.S. 670, 673
5 (2025) (internal quotation marks and citation omitted).

6 Respondents cite to *Demore v. Kim*, 538 U.S. 510, 513 (2003), to argue that
7 “Congress’s interest in dealing with illegal immigration by keeping specified
8 [noncitizens] in detention pending the removal period” under 8 U.S.C. § 1226(c)
9 justified “dispens[ing] of any Due Process concerns without engaging in the
10 ‘*Mathews v. Eldridge*’ test.” ECF No. 13 at 14. *Demore* is distinguishable for many
11 reasons, the most important being that Mr. Gonzalez-Diaz is not subject to
12 mandatory detention under 8 U.S.C. § 1226(c). In *Demore*, the Court found
13 mandatory detention under §1226(c) “necessarily serves the purpose of preventing
14 deportable criminal aliens from fleeing prior to or during their removal proceedings”
15 based on evidence before Congress at the time of enactment demonstrating that
16 noncitizens convicted of certain crimes were statistically more likely to abscond
17 from removal proceedings. *Id.* at 526-27. “That interest is not implicated in the
18 continued detention of [Mr. Gonzalez-Diaz], who ha[s] no criminal convictions.”
19 *Escobar Salgado*, 809 F. Supp. 3d at 1159.

20 Respondents have failed to otherwise respond to the *Mathews* factors Mr.
21 Gonzalez-Diaz laid out in the Amended Petition. See ECF No. 7 at 9-14. As
22 addressed in the Amended Petition, the *Mathews* factors weigh in Mr. Gonzalez-
23 Diaz’s favor because (1) Mr. Gonzalez-Diaz’s interest in being free from prolonged
24 detention (over eight months) without a bond hearing is substantial, see *Singh v.*
25 *Hodler*, 638 F.3d 1196, 1208 (9th Cir. 2011); (2) there is a significant risk that Mr.
26 Gonzalez-Diaz is being erroneously deprived of his liberty since Respondents have
27 never had to establish that detention was warranted based on Mr. Gonzalez-Diaz’s

1 individual circumstances, and Respondents fail to raise a single fact their Response
2 to suggest Mr. Gonzalez-Diaz is a flight risk or a danger; and (3) the administrative
3 and fiscal burden of conducting a bond hearing is not significant and neither is the
4 government's interest in detaining Mr. Gonzalez-Diaz without a bond hearing, and
5 Respondents have failed to raise any argument to the contrary.

6 Based on the arguments above and the fact that Respondents have failed to
7 provide any specific arguments to Mr. Gonzalez-Diaz's individual circumstances,
8 this Court should find Mr. Gonzalez-Diaz's prolonged, eight-month detention
9 without a bond hearing violates his rights under the Due Process Clause of the
10 United States Constitution. Because the basis for his detention results from a
11 systematic legally erroneous detention policy instituted by immigration authorities,
12 and because the Immigration Judge has not provided him any avenue to seek
13 release, the Court should grant the petition and order his immediate release. *See*
14 *Meza*, 2026 WL 92102, at *12.

15 Alternatively, Mr. Gonzalez-Diaz must be given a constitutionally adequate
16 hearing in which he can seek release on bond, with the burden on the government
17 to prove that he should continue to be detained. *See Arechiga v. Archambeault*, No.
18 2:23-CV-00600-CDS-VCF, 2023 WL 5207589, at *1 (D. Nev. Aug. 11, 2023);
19 *Figueroa v. Mattos*, No. 2:26-CV-00184-RFB-MDC, 2026 WL 432582, at *1 (D. Nev.
20 Feb. 16, 2026). If Mr. Gonzalez-Diaz is not promptly granted a constitutionally
21 adequate bond hearing, this Court should order that he be released from his
22 unconstitutional detention. *See, e.g., Lopez Reyes*, 362 F. Supp. 3d at 778;
23 *Henriquez-Osorio v. Noem, et al.*, No. 2:26-CV-00234-RFB-BNW, 2026 WL 686843,
24 at *3 (D. Nev. Mar. 11, 2026).

25 CONCLUSION

26 Accordingly, Mr. Gonzalez-Diaz respectfully requests this Court grant his
27 petition and order that he be immediately discharged from his unconstitutional

1 confinement. Alternatively, this Court should order Mr. Gonzalez-Diaz's release
2 within 30 days unless Respondents schedule a bond hearing before an immigration
3 judge at which the judge must order the release of Mr. Gonzalez-Diaz unless ICE
4 can establish by clear and convincing evidence that he presents a risk of flight or
5 danger to the community.

6 Dated March 24, 2026.

7 Respectfully submitted,

8 Rene L. Valladares
9 Federal Public Defender

10 /s/ Katherine A. Tanaka

11 Katherine A. Tanaka
12 Assistant Federal Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on March 24, 2026. I personally served a true and correct copy of the foregoing Reply in Support of Amended Petition 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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4
5 /s/ Katherine Tanaka
6 An Employee of the
7 Federal Public Defender
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