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Civil Action 1:26-cv-00429-RP

A. PETITIONER'S RESPONSE TO RESPONDENTS' ANSWER:

On March 5, 2026, the Court ordered Respondents to submit a response to and serve it on Petitioner no later than March 9, 2026. Respondents failed to do so until March 10, 2026.

The Petitioner filed his habeas petition on February 19, 2026, and the Amended habeas petition on March 4, 2026. The Respondents late filed their return opposing the grant of the amended petition on March 10, 2026. As a preliminary matter, Petitioner urges the Court to exclude the Respondents' answer as untimely and treat the Amended Petition as unopposed. In the alternative, Petitioner urges this Court to overrule the Respondents' argument and grant his writ for habeas corpus.

The Respondents primary argument is that Petitioner is an "arriving alien" who is ineligible for bond from an immigration judge by both statute and regulation. That the plain language of the statute supports their reading requiring mandatory detention of Petitioner, and that persuasive decisions of a district judge in the district of California support their reading as the Judge denied the habeas petition to an arriving alien.

The government mentions the *Maldonado Bautista* class action in a footnote on page 8 indicating the Respondents' position is that the declaratory judgment is void as it applies to Petitioner because he is outside the Central District of California. Respondents argue that *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) which the BIA published on September 5, 2025, should be followed. But Respondents ignore that this Court has rejected *Yajure-Hurtado's* reading, see *Fuentes v. Lyons*, 5:25-CV-00153 *10 (S.D.Tex., 2025) ("Nearly every district court to address the statutory question 'has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.' *Rodriguez*, 2025 WL 2782499, at *1 n.3. Having

read the sound analysis of this issue by many other districts, the Court adopts the position of the majority of courts which holds that applicable detention authority for noncitizens who have been physically present in the United States like Petitioner, is 8 U.S.C. § 1226(a).”); *see also Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Gutierrez v. Thompson*, 2025 WL 3187521, at *8 (S.D. Tex., 2025); *Espinoza Andres v Noem*, et al., H-25-5128, 2025 WL 3458893, at *1 (S.D. Tex., 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025). *See also Chogllo Chafila v. Scott*, 2025 WL 2688541, at *8 (D.Me., 2025) (“The BIA’s decision in *Yajure Hurtado* also is at odds with decades of DHS’s own practices, which the opinion acknowledges.”); *J.U. v. Maldonado*, 2025 WL 2772765, at *7 (E.D.N.Y., 2025) (“[T]his Court finds that the historical practice – under which § 1225(b)(2)(A) would not have applied to Petitioner – is consistent with the text, structure, and statutory scheme. As noted above, § 1225(a) defines an applicant for admission as “[a]n alien present in the United States who has not been admitted or who arrives in the United States” and in turn, § 1225(b)(2)(A) states that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.”). Respondents argue that *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) which the BIA published on September 5, 2025, should be followed. But Respondents ignore that this Court has rejected *Yajure-Hurtado*’s reading, *see Fuentes v. Lyons*, 5:25-CV-00153 *10 (S.D. Tex., 2025) (“Nearly every district court to address the statutory question ‘has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.’ *Rodriguez*, 2025 WL 2782499, at *1 n.3. Having read the sound analysis of this issue by many other districts, the Court adopts the position of the majority of courts which holds that applicable detention authority for

noncitizens who have been physically present in the United States like Petitioner, is 8 U.S.C. § 1226(a).”); *see also Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Gutierrez v. Thompson*, 2025 WL 3187521, at *8 (S.D. Tex., 2025); *Espinoza Andres v Noem*, et al., H-25-5128, 2025 WL 3458893, at *1 (S.D. Tex., 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025). *See also Chogllo Chafila v. Scott*, 2025 WL 2688541, at *8 (D.Me., 2025) (“The BIA’s decision in *Yajure Hurtado* also is at odds with decades of DHS’s own practices, which the opinion acknowledges.”); *J.U. v. Maldonado*, 2025 WL 2772765, at *7 (E.D.N.Y., 2025) (“[T]his Court finds that the historical practice – under which § 1225(b)(2)(A) would not have applied to Petitioner – is consistent with the text, structure, and statutory scheme....”)

Respondents point to a recent case from the same judge within this district that is in their favor, namely, *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) and cases from other districts that are in their favor, namely *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); and *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025).

However, Petitioner argues that his reading is compelled by the text of Section 1225 itself, *see, e.g., Tumba Huamani v. Francis et al*, 2025 WL 3079014 at *5 (S.D.N.Y. Nov. 4, 2025) ([A] noncitizen who has entered the country, even illegally, and is apprehended by CBP after entry is not subject to the mandatory detention provision of Section 1225 and is instead subject to the discretionary detention provision of Section 1226. This construction of the INA is hardly novel in the context of the United States’ immigration law more broadly. [O]ur immigration laws have long made a distinction between those aliens who come to our shores seeking admission ... and those who are within the United States after entry, irrespective of its legality.” *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“[O]nce an alien enters the country, the legal circumstance

changes.”)). Petitioner also argues that his reading of Section 1225 is compelled by context and “overall statutory scheme,” *e.g.*, *see also*. *J.G.O. v Francis*, 25-CV-7233, 2025 WL 3040142, at *3-4 (S.D.N.Y. Oct. 28, 2025), by the amendment history of Section 1226, including an amendment enacted just months ago, *see, e.g., id.* (citing the Laken Riley Act, Pub. L. No. 119-1); and (until this year) the Executive Branch's own long-term understanding of the statutory scheme, *see, e.g.; Rodriguez Vasquez v. Bostock*, 2025 WL 2782499 at *24. (W.D. WA Sept. 30, 2025) (The legislative history behind section 1226 also tends to support the [] argument that it governs noncitizens like them who reside in the United States but previously entered without inspection.).

Lastly, Respondents failed to address Petitioner's Administrative Procedure Act claims, as do his Constitutional claims. Dkt. 1 . He asserts here that he is confined in violation of the Administrative Procedure Act because he has resided in the U.S. since 2023, and DHS previously released him on an Humanitarian parole on May 2023. Despite there being no change in circumstances but for the change in administrative policy, ICE arrested him summarily when he was with his father as a passenger on January 31, 2026. Respondents have continued to deny him bond, because they promulgated a Notice (“Lyons Memorandum”) binding all their employees without using notice-and-comment procedures. Dkt. 1 *See* 5 U.S.C. § 553. *See* 5 U.S.C. § 553(b). Their novel reading of the bond statutes would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period.

As to his Constitutional claims, Petitioner has shown he has a vested liberty interest in liberty because he is eligible for asylum relief, and is entitled to pursue that relief outside of detention by showing he is neither a danger to the community nor a flight risk. Dkt. 1

Indeed, the Respondents do not address the weight of case law, much of it recent, on this very issue, finding that noncitizens like Petitioner here who have lived in the United States, and are apprehended within the interior, are entitled to due process under the Fifth Amendment of the

Constitution. See, e.g., *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)) (the distinction is one of place—not status: “[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely ‘on the threshold of initial entry.’”) Respondents believe this Court should defer to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), yet they have not addressed Petitioner’s arguments that this Court owes no deference, in light of the Supreme Court’s ruling in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), to Respondents’ interpretation of the INA and regulations. Dkt 1

The continued detention of Petitioner separates him from his family, prohibits his removal defense in many ways, including by inhibiting his access to computers, to any counsel’s office to prepare evidence, to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. His detention makes it difficult for them to access counsel and prepare for the ongoing removal proceedings. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (U.S., 2003). A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

Petitioner’s detention is improper because he has been deprived of his substantive Due Process rights. The Fifth Amendment guarantees that no person shall be deprived 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 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances ‘where a special justification ... outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). The discretionary bond framework under Section 1226(a) requires a bond hearing to make an individualized custody determination – a hearing that here the IJ did not conduct. Therefore, without first evaluating Petitioner’s risk of flight or dangerousness, his detention is a violation of his due process rights.

The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)); see *Arreola*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

Turning to the first *Mathews* factor, petitioner has a substantial private interest in remaining free from detention. “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). Petitioner resided at liberty within the U.S. for over three years, and during that time, he established ties and life in the community. His detention denies him that freedom.

Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is “nonpunitive in purpose and effect[,]” is justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enft.*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). Petitioner has no criminal convictions. The government does not dispute this and did not present evidence that petitioner was a flight risk or danger to community. Nonetheless, ICE detained him, and the government has not given any reason why it did so, other than arguing that he is subject to mandatory detention based on the government’s decision pursuant to a nation-wide policy involving a novel interpretation of the INA. Petitioner has not been provided any procedural safeguards to determine whether his detention is justified, and his request for a custody redetermination will be likely denied due to the current trend of “sham bond hearings” conducted recently by immigration judges. Given the absence of any procedural safeguards, “the probable value of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5.

Third, the government’s interest in detaining petitioner without a hearing is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Noem*, No. 2:25-cv-01103-DAD-AC 2025 WL 691664 at *6 (E.D. Cal. Apr 17, 2025). In immigration court, custody hearings are routine and impose a “minimal” cost. *Doe*, 2025 WL 691664, at *6. The government’s interest is further diminished where a person “has consistently appeared for [his] immigration hearings ... and [] does not have a criminal record,” *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763 at *2 (N.D. Cal. July 4, 2025), as is the case here.

On balance, the *Mathews* factors show that Petitioner is entitled to a bond hearing, which

should have been provided before petitioner was detained. “[T]he root requirement’ of the Due Process Clause” is “‘that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)); see *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (“Applying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty ”). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their parole finally revoked. See *Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

Given the absence of “evidence of urgent concerns,” this Court should conclude that “a pre-deprivation hearing is required to satisfy due process.” *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677 at *9 (N.D. Cal. July 17, 2025). Numerous district courts have reached a similar conclusion. See, e.g., *id.*; *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 at *5 (E.D. Cal. July 14, 2025); *Pinchi*, 2025 WL 1853763, at *3–4; *Ortega*, 415 F. Supp. 3d at 970; *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679 at *6 (E.D. Cal. July 11, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207 at *1 (N.D. Cal. Sept. 5, 2025).

The Court Should Order Petitioner's Immediate Release Without First Requiring a Bond Hearing.

Because Mr. Benitez Pena's detention was unlawful *ab initio*, a bond hearing pursuant to 8 U.S.C. § 1226(a) is also not the appropriate or just remedy and no prudential exhaustion requirement should be imposed, irrespective of the remedy ordered in *Maldonado Bautista*. As a district judge explained recently, "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). Where "ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a) [] a bond hearing for a post-deprivation review is wholly inadequate to remedy that unlawful detention." *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025). "Such a hearing is no substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *7 (S.D.N.Y. Oct. 19, 2025) (citing *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Id.*

As Petitioner noted in his petition, many courts have ultimately decided that when Section 1225(a)(2) is applied unlawfully, as it undisputedly was here, release is the most appropriate remedy—

without first ordering a bond hearing. *See Montoya v. Bondi, et al.*, No. 25-CV-06363 (JMA), 2025 WL 3280762, at *1 (E.D.N.Y. Nov. 25, 2025); *Montoya, et al.*, 2025 WL 3280762, at *1; *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 at *16 (E.D.N.Y. Oct. 6, 2025); *J.U.*, 2025 WL 2772765, at *10; *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *4 (E.D.N.Y. Oct. 5, 2025) (“Petitioner’s allegations of his detention by ICE raise a substantial constitutional question that cannot be properly adjudicated administratively”). This was true even prior to Respondents’ turn away from 30 years of precedent and sudden invocation of Section 1225(a)(2) detention to justify the detention of individuals who entered the U.S. without inspection, as courts had already ordered numerous petitioners released following unlawful re-detention—even though Respondents’ agreed in those cases that petitioners’ detention was under § 1226(a). *See Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025). The Court should do the same here and not require administrative exhaustion or a bond hearing.

Administrative Exhaustion Is Not Required.

Exhaustion is not required and, as a prudential matter, it is not appropriate, even after *Maldonado Bautista*. “Exhaustion of administrative remedies may not be required when: (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (citations omitted). Here, all four of these exceptions continue to apply.

First, despite *Maldonado Bautista*, exhaustion is futile. *See Howell*, 72 F.3d at 291. The *Maldonado Bautista* decision does not enjoin Respondents to provide bond hearings and judges have been instructed not to hold bond hearings pursuant to that decision, since its relief is only

declaratory.

Next, as many courts have concluded, detention in violation of the right to due process raises a substantial constitutional question and inflicts irreparable harm, two exceptions to the exhaustion requirement. *See, e.g., J.U.*, 2025 WL 2772765, at *4 (“waiver of the exhaustion requirement is warranted because Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief in this Court”); *Artiga*, 2025 WL 2829434, at *4. Should the Court impose an administrative exhaustion requirement, Respondents would prevail in claiming “that § 1226(a) grants practically limitless, unreviewable power to detain individuals for weeks or even months, even if the detention is patently unconstitutional.” *Ozturk v. Trump*, No. 2:25-CV-374, 2025 WL 1145250, at *14–15 (D. Vt. Apr. 18, 2025), *amended on other grounds sub nom, Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025). Finally, a bond hearing would not remedy the violations Petitioner challenges. “In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.” *Rodriguez-Acurio*, 2025 WL 3314420, at *31.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Benitez Pena’s petition and order his immediate release.

Respectfully submitted on this 12th day of March, 2026.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWER AND OPPOSITION TO SUMMARY JUDGEMENT in the case of Fabricio Javier Benitez Pena v. Pamela Bondi, et al., Civil Action 26-00429, was sent to Assistant United States Attorney Alexander McDonough via the CM/ECF Pacer system.

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 12th day of March, 2026



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