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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

OSMAN A. AYALA,

) No. 5:26-cv-03092-BLF

Petitioner,

V.

RESPONDENTS' RETURN

SERGIO ALBARRAN, *et al.*,

Respondents,

RETURN
NO. 5:26-CV-03092-BLF

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1 **I. INTRODUCTION**

2 Respondents respectfully request that the Court dismiss Petitioner's petition for writ of habeas
3 corpus because Petitioner is subject to detention as Petitioner has a final order of removal, which was
4 reinstated by the Department of Homeland Security ("DHS") on October 21, 2025.

5 Petitioner is subject to regularly scheduled check-in appointments and missed their most recent
6 appointment on February 13, 2026. As a result, U.S. Immigration and Customs Enforcement ("ICE")
7 required Petitioner to appear at the San Francisco office on April 13, 2026. Petitioner was not told that
8 ICE intended to arrest them at this appointment, and they did not. They sought, and received, from this
9 Court a temporary restraining order ("TRO") and preliminary injunction to prevent their hypothetical
10 future custody. However, this exceeds the permissible scope of habeas relief and the petition should be
11 denied. If Petitioner is in fact detained at any future check-in and they claim that the arrest was
12 improper, they can file a petition at that time, and the Court can then evaluate the basis for any
13 detention.

14 Petitioner's habeas petition should be dismissed for lack of jurisdiction. Petitioner lacks Article
15 III standing because they have failed to allege any concrete, imminent injury. Additionally, this Court
16 lacks jurisdiction to entertain the habeas petition as the Petitioner has not alleged that they meet the "in
17 custody" requirement. Petitioner has not "clearly demonstrated" that ICE is likely to arrest Petitioner at
18 their future scheduled appointments. They have not shown they are deserving of habeas relief because
19 the circumstances of any future detention, if it does occur, are not known, and accordingly there can be
20 no determination at this juncture that any future detention would be unlawful. Petitioner has not shown
21 that immediate and irreparable harm is *likely*, as they must.

22 **II. FACTUAL BACKGROUND**

23 Petitioner Osmin Antonio Ayala ("Petitioner") is a native and citizen of El Salvador who first
24 entered the United States without inspection at or near Hidalgo, TX on March 28, 2019. Dkt. No. 13-1
25 ¶ 5. On the same day, U.S. Customs and Border Protection ("CBP") officers apprehended Petitioner. *Id.*
26 On April 4, 2019, CBP processed Petitioner for Expedited removal pursuant to section 235(b)(1) of the
27 Immigration and Nationality Act ("INA") [8 U.S.C. § 1225(b)(1)]. *Id.* ¶ 6; Dkt. No. 13-2 at 2. On May
28 2, 2019, U.S. Citizenship and Immigration Services ("USCIS"), after conducting a Credible Fear

1 interview and finding that Petitioner did not have a credible fear of persecution or torture in El Salvador,
2 referred Petitioner's case to an Immigration Judge ("IJ") for review. Dkts. No. 13-1 ¶ 7; 13-2 at 4. On
3 May 8, 2019, an IJ conducted a credible fear review, and affirmed USCIS's decision that Petitioner did
4 not have a credible fear of torture or persecution in El Salvador. Dkt. No. 13-1 ¶ 8. The IJ returned the
5 case to DHS for removal. Dkts. No. 13-1 ¶ 8; 13-2 at 7. On July 25, 2019, ICE removed Petitioner from
6 the United States from Laredo, TX, to El Salvador. Dkts. No. 13-1 ¶ 9; 13-2 at 9.

7 On July 17, 2021, Petitioner re-entered the United States. On the same date, CBP encountered
8 Petitioner in the Rio Grande Valley, Texas Border Patrol Sector and determined he had unlawfully
9 entered the United States. Dkt. No. 13-1 ¶ 10. CBP released Petitioner. *Id.* On or about November 24,
10 2021, ICE enrolled Petitioner in its Intensive Supervision Appearance Program ("ISAP"). *Id.* ¶ 11. On
11 June 25, 2025 ICE placed Petitioner on an Order of Supervision ("OSUP") pursuant to INA § 241(a)(3)
12 [8 U.S.C. § 1231(a)(3)]. *Id.* ¶ 12. On October 21, 2025, Petitioner reported to the San Francisco ERO
13 Field Office pursuant to his OSUP requirements. *Id.* ¶ 13. ERO reinstated Petitioner's prior removal
14 order pursuant to INA § 241(a)(5) [8 U.S.C. § 1231(a)(5)] and 8 C.F.R. § 241.8. Dkts. No. 13-1 ¶ 13;
15 13-2 at 11. On November 12, 2025, ERO was alerted by ISAP that Petitioner had left his GPS zone.
16 Petitioner told ISAP that he was making a delivery run to Nevada and had not informed his boss about
17 the GPS zone. Dkt. No. 13-1 ¶ 14. ISAP instructed Petitioner to report to the San Francisco ERO office
18 for a violation follow-up upon his return to the San Francisco area. *Id.* On November 13, 2025,
19 Petitioner reported to the San Francisco ERO office and was reminded that he needed to get permission
20 from ISAP prior to leaving the GPS zone, otherwise he would be taken into custody for non-compliance.
21 *Id.* ¶ 15. ERO told Petitioner to report back to the ERO office on February 13, 2026. *Id.* On February 13,
22 2026, Petitioner failed to appear for his required check-in with ERO. *Id.* ¶ 16. Petitioner has not been
23 detained since CBP released him in July 2021. *Id.* ¶ 17. Petitioner was scheduled for an ICE
24 appointment on April 13, 2026. Dkt. No. 1 ¶ 10. Petitioner believed ICE was using this appointment to
25 re-detain them. *Id.* ¶ 11.

26 Petitioner filed a petition for writ of habeas corpus on April 10, 2026, along with an *ex parte*
27 motion for a temporary restraining order ("TRO"), seeking to enjoin Respondents from detaining
28 Petitioner unless they provide a pre-deprivation hearing before a neutral adjudicator at which they show

1 that there has been a material change in circumstances such that Petitioner is a danger or a flight risk.
2 Dkt. No. 1 at 13. The request for TRO was more limiting, and Petitioner request that Respondents be
3 enjoyed from detaining Petitioner pending further order of this court. Dkt. Nos. 2 at 2; 2-2 at 11. After
4 briefing and a hearing, on April 30, 2026, this Court issued an order converting the TRO into a
5 preliminary injunction and enjoining Respondents from “re-detaining Mr. Ayala without notice and a
6 pre-deprivation hearing before a neutral decisionmaker.” Dkt. No. 21 at 9.

7 **III. LEGAL STANDARD**

8 **A. Detention of Noncitizens Under 8 U.S.C. § 1231(a).**

9 Congress enacted a multi-layered statute that provides for the civil detention of aliens pending
10 removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls
11 within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of
12 review process available. *Id.* at 1057. ICE’s authority to detain noncitizens while removal proceedings
13 are pending is generally governed by 8 U.S.C. § 1226. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).
14 The default rule, Section 1226(a), “authorizes the Attorney General to arrest and detain an alien
15 ‘pending a decision on whether the alien is to be removed from the United States.’” *Id.* at 306 (quoting
16 Section 1226(a)).

17 While Section 1226 governs the detention of a noncitizen whose removal proceedings are
18 pending, this case concerns a different detention authority: 8 U.S.C. § 1231(a). Section 1231(a) governs
19 the detention of a noncitizen who has been ordered removed from the country—an individual subject to
20 a “final order of removal.” *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022); *Johnson v.*
21 *Guzman Chavez*, 594 U.S. 523, 533 (2021). Section 1231(a)(2) provides that the government “shall
22 detain” the noncitizen for a 90-day “removal period,” the commencement of which can be triggered by
23 various events in the noncitizen’s proceedings. *See* 8 U.S.C. § 1231(a)(1)(B). Thereafter (the “post-
24 removal period”), the noncitizen “may be detained beyond the [90-day] removal period” if, among other
25 things, he is “inadmissible” (for example, because he reentered the country unlawfully, *see* 8 U.S.C. §
26 1182(a)(9)(C)), or removable on certain specified grounds, or if the government determines that he is “a
27 risk to the community or unlikely to comply with the order of removal.” *Id.* § 1231(a)(6); *Arteaga-*
28 *Martinez*, 596 U.S. at 579; *Zadvydas v. Davis*, 533 U.S. 678, 688–89 (2001). A noncitizen detained

1 beyond the removal period under Section 1231(a)(6) shall, if released, “be subject to [certain] terms of
2 supervision.” *Arteaga-Martinez*, 596 U.S. at 579.

3 However, Section 1231(a) does not permit indefinite detention; rather, the Supreme Court has
4 held the government can detain noncitizens under Section 1231(a) only for “a period reasonably
5 necessary to bring about that alien’s removal from the United States”—presumptively six months.
6 *Zadvydas*, 533 U.S. at 689. “After this 6-month period, once the alien provides good reason to believe
7 that there is no significant likelihood of removal in the reasonably foreseeable future, the Government
8 must respond with evidence sufficient to rebut that showing.” *Id.* at 701; *see also* 8 C.F.R. § 241.13.
9 Section 1231(a)(6) continues to authorize detention “until it has been determined that there is no
10 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 at 701.

11 When removal is not reasonably foreseeable, continued detention is no longer authorized, but
12 “the alien’s release may and should be conditioned on any of the various forms of supervised release
13 that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a
14 violation of those conditions.” *Id.* at 700 (citing 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5). Continued
15 detention and release during the post-removal period is governed by Post Order Custody Review
16 (“POCR”) Regulations. 8 C.F.R. § 241.4. The POCR regulations provide for periodic custody reviews
17 by ICE, at which the noncitizen is afforded certain protections, “including the rights to receive written
18 notice of the review, to submit information in writing to support release and to be assisted by any
19 individual of his or her choosing in preparing or submitting information in response to the notice.” *Diouf*
20 *v. Napolitano*, 634 F.3d 1081, 1089–90 (2011) (“*Diouf II*”); 8 C.F.R. §§ 241.4(h), (k). In addition, as
21 often as once every three months between annual reviews, the detainee may submit a written request for
22 release consideration based on a showing of material change. 8 C.F.R. § 241.4(k)(2)(iii).

23 While Section 1231(a)(6) contemplates release pursuant to an order of supervision in appropriate
24 cases, the POCR Regulations also authorize ICE to return to custody a noncitizen “who has been
25 released under an order of supervision or other conditions of release who violates the conditions of
26 release.” 8 C.F.R. § 241.4(l)(1). Those regulations also require ICE to follow certain procedures when it
27 seeks to revoke release. *See generally* 8 C.F.R. § 241.4(l). First, “the alien will be notified of the reasons
28 for revocation of his or her release or parole,” and “will be afforded an initial informal interview

1 promptly after his or her return to Service custody to afford the alien an opportunity to respond to the
2 reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1). If the noncitizen is not released
3 following the informal interview, the revocation determination is subject to a review process by the
4 Headquarters Post-Order Detention Unit (“HQPDU”) that includes a records review, an interview, “a
5 final evaluation of any contested facts relevant to the revocation and a determination whether the facts as
6 determined warrant revocation and further denial of release.” 8 C.F.R. § 241.4(l)(3). This process is
7 ordinarily expected to commence within approximately three months after release is revoked, with
8 annual custody reviews thereafter. *Id.*

9 As noted above, detention during the 90-day removal period is mandatory; there is no
10 entitlement to a bond hearing or discretionary relief. Nor does Section 1231(a) provide for a bond
11 hearing for the noncitizen to challenge his detention during the post-removal period. *See Guzman*
12 *Chavez*, 594 U.S. at 526; *Arteaga-Martinez*, 596 U.S. at 581. Noncitizens detained in the Ninth Circuit
13 were, until recently, were subject to a preliminary injunction imposed by the Court in *Aleman Gonzalez*
14 *v. Barr*, 955 F.3d 762, 766 (9th Cir. 2020), *rev’d and remanded on other grounds sub nom. Garland v.*
15 *Aleman Gonzalez*, 596 U.S. 543, (2022), which required individualized bond hearings before an
16 immigration judge at which the government bears the burden of establishing that the noncitizen is a
17 flight risk or will be a danger to the community for all noncitizens facing prolonged detention under
18 section 1231(a)(6)—detention lasting six months and expecting to continue “more than minimally
19 beyond six months.” *See Diouf II*, 634 F.3d at 1086, 1092 n.13. The Supreme Court has since clarified
20 that such periodic bond hearings are not statutorily required, *Arteaga-Martinez*, 596 U.S. at 581, and the
21 injunction in *Aleman Gonzalez* has been vacated. *See Aleman Gonzalez, et al, v. Bondi, et al.*, 3:18-cv-
22 1869, Dkt. No. 155. (N.D. Cal. Mar. 27, 2018).

23 IV. ARGUMENT

24 A. Petitioner’s Claim is Not Ripe.

25 Federal courts may only adjudicate actual “Cases” and “Controversies.” U.S. Const. art. III, § 2,
26 cl. 1. Article III gives rise to four justiciability doctrines: ripeness, standing, mootness, and political
27 question. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Both standing and ripeness are
28 lacking here.

1 Petitioner must establish Article III standing to maintain an action in federal court. *See Spokeo,*
2 *Inc. v. Robins*, 578 U.S. 330, 337–38 (2016). That means they must show a future injury that is
3 “imminent, not conjectural or hypothetical.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).
4 Petitioner cannot make that showing.

5 Petitioner lacks standing because they have suffered no injury in fact but instead seek relief for
6 conjectural or hypothetical injuries that they believe may occur at some point in the future. Petitioner’s
7 claims are not ripe because the events of which they complain have not occurred and may not occur as
8 they anticipate or at all. Both standing and ripeness are required for the Court to adjudicate Petitioner’s
9 claims.

10 An injury in fact requires “‘an invasion of a legally protected interest’ that is ‘concrete and
11 particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc.*, 578 U.S. at 339
12 (2016) (quoting *Lujan*, 504 U.S. at 560); *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972); *see also*
13 *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) (“For standing purposes, a loss of even a
14 small amount of money is ordinarily an ‘injury.’”).

15 Since this Court issued the preliminary injunction, another Court in this district, when presented
16 with the same facts, found that the petitioner lacked standing for his habeas petition. *See Thai v. Lyons*,
17 No. 25-cv-6293, 2026 WL 1303056, at *3 (N.D. Cal. May 12, 2026). In *Thai*, the petitioner was seeking
18 a writ of habeas corpus due to a fear that he would be re-detained at a scheduled future check-in. *Id.* at
19 *1. The Court found “that Thai’s request for habeas, declaratory, and injunctive relief is not ripe for
20 review, depriving the Court of subject matter jurisdiction.” *Id.* at *3 (citing *Principal Life Ins. Co. v.*
21 *Robinson*, 394 F.3d 665, 669 (9th Cir. 2005)). Like Petitioner here, “Thai was not detained at that
22 appointment or subsequently. Thai has also made no showing that ICE is likely to detain him at any
23 point in the future.” *Id.* As such, the Court found that this “conjecture alone is insufficient to show that
24 Thai has pleaded an imminent or actual injury” and dismissed the habeas petition. *Id.* at *3–4.

25 In light of the facts that Petitioner has presented, therefore, they cannot establish that any future
26 injury is imminent and reasonably certain. *See J.P. v. Santacruz*, No. 25-cv-1640, 2025 WL 2998305, at
27 *4 (C.D. Cal. Oct. 24, 2025) (dismissing petitioner’s challenge to “his future detention and/or arrest at
28 another physical appointment” because petitioner “fails to present sufficient allegations or evidence of

1 the threat of future injury to confer Article III standing”). Because the “alleged threat of future injury is
2 too speculative and unripe,” *id.*, at *4, Petitioner does not have standing before this Court.

3 **B. This Court Lacks Jurisdiction to Entertain Petitioner’s Habeas Petition**

4 Federal courts have the statutory authority to grant writs of habeas corpus to individuals “in
5 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c) (3).
6 “[A] plaintiff must plausibly allege all jurisdictional elements” for the Court to have subject-matter
7 jurisdiction over a claim. *Brownback v. King*, 592 U.S. 209, 217 (2021). It is a jurisdictional requirement
8 that “the habeas petitioner be ‘in custody’ under the conviction or sentence under attack at the time his
9 petition is filed.” *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). The Courts are assigned the role of
10 neutral arbiters to decide the arguments presented to them by the parties, not to craft arguments on a
11 party’s behalf. *See U.S. v. Sineneng-Smith*, 590 U.S. 371, 376 (2020).

12 Here, Petitioner makes no allegations that they meet the “in custody” requirement for this Court
13 to entertain the habeas petition. *See* 28 U.S.C. § 2241(c)(3). As such, “it appears from the application
14 that the applicant or person detained is not entitled” to issuance of a writ of habeas corpus. 28 U.S.C.
15 § 2243.

16 Additionally, Petitioner’s challenge of ICE’s Notice of Reinstatement is both meritless and
17 outside the scope of habeas. *See* Dkt. No. 1 ¶ 12. Contrary to Petitioner’s assertion, nothing in the
18 regulations requires DHS to serve the prior removal order on a noncitizen subject to reinstatement. *See* 8
19 C.F.R. § 241.8. Section 241.8(a)(1) requires an immigration officer to determine “[w]hether the alien
20 has been subject to a prior order of removal. The immigration officer must obtain the prior order of
21 exclusion, deportation, or removal relating to the alien.” 8 C.F.R. § 241.8(a)(1). If the officer determines
22 that the noncitizen is subject to an order of removal, then “he or she shall provide the alien with written
23 notice of his or her determination.” 8 C.F.R. § 241(b). Additionally, this Court lacks jurisdiction to hear
24 challenges to Petitioner’s reinstatement of his expedited removal order. *See Garcia de Rincon v. Dep’t of*
25 *Homeland Sec.*, 539 F.3d 1133, 1139 (9th Cir. 2008). While the Court “does retain some limited
26 jurisdiction to adjudicate a collateral attack on an underlying expedited removal order that has been
27 reinstated”, that jurisdiction is expressly limited “to habeas petitions alleging that the petitioner is not an
28 alien or was never subject to an expedited removal order.” *Id.* (citing 8 U.S.C. §§ 1252(a)(2)(A),

1 1252(e).

2 Here, ICE determined Petitioner was subject to a prior order of removal and obtained it. *See* Der.
3 Decl., Ex. 1. ICE then served the Notice of Intent/Decision to Reinstate Prior Order on Petitioner on
4 October 21, 2025. *Id.*, Ex. 5. As such, all the requirements of 8 C.F.R. § 241.8 were met regarding
5 Petitioner’s reinstated removal order. Additionally, Petitioner is not alleging that he is not an alien nor
6 subject to an expedited removal order, so this Court lacks jurisdiction to hear Petitioner’s challenge to
7 the reinstatement.

8 **C. Habeas Relief Is Both Inappropriate and Premature Because Petitioner Is**
9 **Challenging Their Hypothetical Future Detention.**

10 Habeas relief is an appropriate request when an individual is detained and requesting release
11 from that detention. U.S. Const. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) (“The writ of habeas corpus shall
12 not extend to a prisoner unless [h]e is in custody”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S.
13 103, 117–18 (2020) (“[T]he essence of habeas corpus is an attack by a person in custody upon the
14 legality of that custody, and [] the traditional function of the writ is to secure release from illegal
15 custody.”). An individual does not need to be in actual physical custody to seek habeas relief; the “in
16 custody” requirement may be satisfied where an individual’s release from detention is subject to specific
17 conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993)
18 (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted
19 “custody” for habeas purposes). The Supreme Court has “interpreted ‘custody’ to encompass
20 circumstances in which the state has imposed ‘significant restraints on [a] petitioner’s liberty.’” *Munoz v.*
21 *Smith*, 17 F.4th 1237, 1241 (9th Cir. 2021) (quoting *Jones v. Cunningham*, 371 U.S. 236, 242 (1963)).

22 Courts in this Circuit are generally split as to whether release conditions imposed by ICE, such
23 as enrollment in ISAP and the requirement to wear an ankle monitor, meet the requirements of
24 “custody” for purposes of habeas relief. *See Harrington v. Albarran, et al.*, No. 26-cv-1889, 2026 WL
25 800113, at *4 (N.D. Cal. Mar. 23, 2026) (finding such conditions satisfy the definition of “custody”);
26 *A.B.D. v. Wamsley*, No. 6:25-cv-2014, 2026 WL 178306, at *8 (D. Or. Jan. 22, 2026) (finding the
27 “intensive supervision” measures constitute custody from which petitioners may be granted habeas
28 relief); *but see Ba v. Lyons*, No. 3:25-cv-2871, 2026 WL 218936, at *1 (S.D. Cal. Jan. 27, 2026)

1 (holding that requirements to “wear a GPS monitoring ankle bracelet, attend frequent in person office
2 visits, and not travel outside 75 miles without permission” did not constitute custody).

3 If the Court were to construe Petitioner’s facts as to present the argument that he is currently “in
4 custody” for purposes of habeas relief, his Petition still fails. This habeas petition does not purport to
5 challenge that custodial arrangement or secure their release from any present “custody.” Petitioner is not
6 in physical custody and is not challenging whatever restraints ICE has currently imposed. Rather,
7 Petitioner seeks an injunction to prevent their hypothetical future arrest and the possibility of future
8 detention. *See Maleng*, 490 U.S. at 490–91 (“the habeas petitioner be ‘in custody’ under the conviction
9 or sentence *under attack* at the time his petition is filed.”) (emphasis added). The habeas relief that they
10 seek is not connected to the immigration custody on which they base their petition. Thus, Petitioner does
11 not seek a remedy that sounds in habeas. *See J.P. v. Santacruz, et al.*, No. 25-cv-1640, 2025 WL
12 2633198 (C.D. Cal. Aug. 27, 2025). In *J.P.*, the court held that even assuming that ICE’s order of
13 supervision (“OSUP”) satisfied the “in custody” requirement, “Petitioner fails to adequately demonstrate
14 he is challenging his confinement.” *Id.* at *3. The court specifically noted that challenges to *future*
15 detention did not fall within habeas jurisdiction:

16 Here, Petitioner does not challenge the lawfulness of his alleged custody. . . . Rather, Petitioner
17 challenges his *potential* confinement absent a pre-deprivation hearing before a neutral
18 adjudicator. . . . Petitioner’s concern about re-detention stems from Respondents indication that
19 they *may possibly* re-detain Petitioner at a future in-person appointment that the ISAP scheduled.
... Based on the record in this case, the court would not find that Petitioner adequately
demonstrates a challenge to his custody.

20 *Id.* Petitioner’s claim here similarly challenges his hypothetical future confinement, not their present
21 “custody,” and therefore habeas jurisdiction is inappropriate.

22 Petitioner here does not know if they will be detained at their upcoming appointments. They are
23 apparently unaware of any precipitating event that would cause ICE to re-detain them. *Cf. Guillermo M.*
24 *R. v. Kaiser*, 791 F. Supp. 3d 1021, 1028 (N.D. Cal. 2025) (habeas petition filed after petitioner was
25 instructed to go in for a “case review” with ICE, where he was advised that he would be detained).

26 This does not provide the basis for the extraordinary remedy of habeas relief. Without any
27 knowledge that their arrest is likely or imminent, Petitioner is seeking an insurance policy from the
28 Court to guarantee that they will not be detained. That is not the purpose of a habeas petition. Thousands

1 of individuals are subject to orders of supervision and are required to report to ICE on a periodic basis as
2 part of those orders. If each such individual were entitled to bring a habeas petition in advance of every
3 such appointment and secure a temporary restraining order to prevent ICE from undertaking
4 hypothetical future actions, this would expand the Court's habeas jurisdiction into virtually unlimited
5 territory and impose unreasonable burdens on both the Court and Respondents. The implicit requirement
6 that ICE must in all instances inform individuals in advance of their check-in appointments what will
7 transpire at those appointments, on penalty of being enjoined from undertaking hypothetical
8 enforcement actions, is unwarranted, and would unduly interfere with ICE's enforcement mission. The
9 sheer volume of check-ins every day, combined with the potential risk to officer safety, risk of flight of
10 certain individuals, and need to maintain enforcement discretion and secrecy in some instances, makes
11 any advance disclosure requirement both unreasonable and potentially dangerous.

12 In sum, this petition is premature. If Petitioner is in fact detained at some hypothetical future
13 appointment and they believe that the detention is unwarranted, they can file a petition and TRO motion
14 at that time. If the Court agrees that the standard for a TRO has been met, based on the actual facts
15 presented by the arrest, it can issue an appropriate TRO.

16 **D. Petitioner Was Lawfully Detained Pursuant to 8 U.S.C. § 1231.**

17 ICE has explicit statutory authority to re-detain Petitioner for the purposes of effectuating his
18 removal. The statute governing detention in this case, 8 U.S.C. § 1231, expressly permits an alien like
19 Petitioner, who is subject to a reinstated removal order, to be detained *See* 8 U.S.C. § 1231(a)(6). The
20 constitutional limit to this detention is set forth in *Zadvydas*. *See also Guzman Chavez*, 594 U.S. at 535.

21 The Supreme Court has made clear that “there is no plausible construction of the text of section
22 1231(a)(6) that requires the Government to provide bond hearings before immigration judges after six
23 months of detention, with the Government bearing the burden of providing by clear and convincing
24 evidence” that a detained noncitizen poses a flight risk and a danger to the community. *Johnson v.*
25 *Arteaga-Martinez*, 596 U.S. 573, 581 (2022). What applies to immigration judges certainly applies no
26 less to district court judges.

27 Just as § 1231(a)(6) “does not address or even hint at the requirements,” for a bond hearing
28 following the six-month mark of immigration detention, *id.* at 580–81 (quotation omitted), it similarly

1 does not require a hearing before immigration authorities can re-detain an alien who was previously on
 2 an order of supervision pending removal. *See* 8 U.S.C. § 1231(a)(6). Such an order would contradict the
 3 plain language of 8 C.F.R. § 241.8, which governs reinstatement of removal orders, and would deprive
 4 immigration authorities of their operational discretion and regulatory authority to take the actions
 5 necessary to effectuate the deportation of aliens illegally in the United States.

6 ICE's POCR regulations similarly provide that a noncitizen may be returned to custody if he
 7 violates the conditions of release. 8 C.F.R. § 241.4(l).¹ In these circumstances, Petitioner's re-detention
 8 would be warranted under Section 1231(a), as interpreted by the Supreme Court in *Zadvydas*, and by the
 9 POCR regulations. Neither the statute nor the regulations contemplate a pre-detention hearing for a
 10 noncitizen who has violated a term of his conditions of release. "The law does not require a hearing
 11 before arrest" under an immigration detention statute where a noncitizen previously released from ICE
 12 custody was rearrested by ICE following a criminal arrest for a gang-related assault. *U.S. v. Cisneros*,
 13 No. 19-cr-280, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021).

14 A noncitizen seeking to challenge ICE's determination is not without procedural protections.
 15 ICE's POCR regulations set forth detailed procedures that ICE must follow when it seeks to return a
 16 noncitizen to custody for violation of the conditions of release. 8 C.F.R. § 241.4(l). Specifically:

- 17 • "Upon revocation, the alien will be notified of the reasons for revocation of
 18 his or her release or parole." 8 C.F.R. § 241.4(l)(1)
- 19 • "The alien will be afforded an initial informal interview promptly after his or
 20 her return to Service custody to afford the alien an opportunity to respond to
 21 the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1).
- 22 • The revocation will be subject to a review process commencing "with
 23 notification to the alien of a records review and scheduling of an interview,
 24 which will ordinarily be expected to occur within approximately three months
 25 after release is revoked. That custody review will include a final evaluation of
 26 any contested facts relevant to the revocation and a determination whether the
 27 facts as determined warrant revocation and further denial of release." 8 C.F.R.
 28 § 241.4(l)(3).

Justice Sotomayor, in her Statement Respecting the Disposition of the Application in *Noem v. Abrego Garcia*, specifically identified 8 C.F.R. § 241.4(l) as part of the "[f]ederal law governing detention and

removal of immigration” that continues to be binding on ICE. *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Statement of Sotomayor, J.). Describing these requirements, Justice Sotomayor wrote that “in order to revoke conditional release, the Government must provide adequate notice and ‘promptly’ arrange an ‘initial informal interview . . . to afford the alien an opportunity to respond to the reasons for the revocation stated in the notification.” *Id.*

But significantly, these procedures do not require any pre-revocation hearing. And logically so: detention in these circumstances is a resumption of post-removal-period detention under Section 1231(a), which is constitutionally permitted without a pre-detention hearing. For this Court to find in favor of Petitioner on the merits, it would need to conclude that the procedural protections to which Petitioner would be entitled under 8 C.F.R. §241.4(l) are constitutionally insufficient—essentially a finding that the regulation is facially unconstitutional. In failing to discuss or even acknowledge this regulation in his habeas petition, Petitioner has certainly not established as much. Respondents are aware of no case, in this District or elsewhere, so holding. *See Va. v. Albarran*, 3:26-cv-05142-JD at Dkt. No. 19 (N.D. Cal. Jun. 6, 2026) (“The Carrasco declaration, Dkt. No. 18, establishes that the government fulfilled its obligations under 8 CFR Section 241.13(i)(3) to notify Va of ‘the reasons for revocation of his or her release’ and provide an ‘opportunity to respond to the reasons for revocation.’ § 241.13(i)(3). A question of fairness could be raised about the government's failure to provide the detainee's travel document when he was initially seized, see Dkt. No. 18 at ¶ 6, but the record does not indicate Section 241.13 was violated. Va is unlikely to prevail under *Zadvydas v. Davis* because the travel document to Cambodia signals a ‘significant likelihood of removal in the reasonably foreseeable future.’); *McSweeney v. Warden of Otay Mesa Det. Facility*, No. 3:25-cv-2488, 2025 WL 2998376, at *7 (S.D. Cal. Oct. 24, 2025) (“Both [8 C.F.R.] § 241.4 and § 241.13 were intended ‘to provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release.’”) (quoting *Orellana v. Baker*, Civil Action No. 25-1788, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025)); *Alva v. Kaiser*, No. 25-cv-6676, 2025 WL 2419262, at *3–5 (N.D. Cal. Aug. 21, 2025) (holding that when a noncitizen released on OSUP is re-detained years later, the noncitizen is entitled to a pre-deprivation hearing prior to detention due to an accrued liberty interest, but failing to address due process implications of 8 C.F.R. § 241.4); *cf.*

1 *Tiraturian v. Bondi*, No. 5-25-cv-3239, 2025 WL 4061563, at *2 (C.D. Cal. Dec. 19, 2025) (holding
2 revocation of OSUP in violation of the regulatory safeguards amounts to a Fifth Amendment due
3 process violation); *Rokhfirooz v. Larose*, No. 25-cv-2053, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15,
4 2025) (granting a habeas petition and ordering the petitioner's release where the Government failed to
5 comply with 8 C.F.R. § 241.13); *but see Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1034 (N.D.
6 Cal. 2025) (finding extra protections needed over 8 C.F.R. § 241.4 when Petitioner was previously
7 released on an *Aleman Gonzalez* bond by an IJ).

8 And Justice Sotomayor's statement in *Abrego Garcia* signals just the opposite: her citation to 8
9 C.F.R. § 241.4(l) implies approval of these procedural protections since her description of the regulation
10 noticeably lacks any suggestion that these procedures are insufficient or that an extra-regulatory pre-
11 revocation hearing before an immigration judge would be constitutionally required.

12 In short, the Supreme Court has held that detention of noncitizens subject to a final order of
13 removal under 8 U.S.C. §1231(a)(6) is constitutional, without any pre-detention process. It has also
14 acknowledged that noncitizens who violate a condition of their release should be re-detained. And if ICE
15 were to return Petitioner to custody for having violated a condition of his release, the existing regulatory
16 process would provide him with a meaningful opportunity to be heard to prevent erroneous deprivation.
17 The absence of any additional process is a policy decision, not a constitutional defect. The Court should
18 decline Petitioner's invitation to write an additional procedural step into the existing process.

19 The Due Process Clause does not prohibit Petitioner's detention. *See Arteaga-Martinez*, 596 U.S.
20 at 583 (declining to decide whether a bond hearing is constitutionally required if detention is prolonged
21 under § 1231(a)(6)). . Although the Fifth Amendment entitles aliens to due process of law, the Ninth
22 Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the
23 process due aliens must account for the government's countervailing interests in immigration
24 enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th
25 1189, 1205-06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that
26 would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003). This is true
27 because "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in
28 regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of

1 government, which are core sovereign powers.” *Id.* To the extent that Petitioner asks this Court to apply
 2 Due Process rights afforded to incarcerated United States citizens to him, the Supreme Court has
 3 expressly stated that those precedents do not apply. *Rodriguez Diaz*, 53 F.4th at 1205-06.

4 **1. Under The Traditional *Mathews* Factors, No Additional Process Is**
 5 **Warranted Here**

6 *Zadvydas* establishes that detention under Section 1231(a)(6) without any pre- or post-custodial
 7 bond hearing is constitutionally permissible. The Court in *Arteaga-Martinez* reaffirmed this basic
 8 framework of Section 1231(a)(6) detention, roundly rejecting any attempt to engraft an extra-statutory
 9 bond requirement onto the clear statutory language. Although Petitioner urges this Court to evaluate this
 10 case under the traditional *Mathews* factors, there is no need to undertake a *Mathews* analysis here, where
 11 the Supreme Court’s jurisprudence and other case law make clear that no additional process is
 12 necessary. Indeed, the Supreme Court has *never* utilized the *Mathews* multi-factor “balancing test” in
 13 addressing due process claims raised by noncitizens held in civil immigration detention, despite multiple
 14 opportunities to do so since the Supreme Court’s *Mathews* decision in 1976. *See Rodriguez Diaz*, 53
 15 F.4th at 1206 (“[T]he Supreme Court when confronted with constitutional challenges to immigration
 16 detention has not resolved them through express application of *Mathews*.”) (citations omitted); *id.* at
 17 1214 (“In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the
 18 *Mathews* framework.”) (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews*
 19 multi-factor “balancing test.” Indeed, while leaving open the question of whether the *Mathews* test
 20 applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the
 21 Ninth Circuit instead has emphasized that “*Mathews* remains a flexible test that can and must account
 22 for the heightened governmental interest in the immigration detention context.” *Id.* at 1206.

23 In the event that the Court elects to analyze Petitioner’s claim under *Mathews*, the Court should
 24 find that the *Mathews* factors favor the Government. Under *Mathews*, the Court considers three factors
 25 in evaluating a procedural due process claim: the plaintiff’s private interest, the risk of erroneous
 26 deprivation without additional procedures, and the government’s interest. *Mathews v. Eldridge*, 424 U.S.
 27 319, 333 (1976). All three factors weigh against the additional process requested here.

(i) **Petitioner Has No Heightened Liberty Interest in His Conditional Release**

Respondents recognize the “weighty liberty interests implicated by the Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner’s interest in his liberty *generally* does not mean that he possesses a separate or heightened liberty interest in the continuation of his conditional release.

First, as a general matter, Petitioner’s liberty interest is reduced by the fact that he is a noncitizen subject to a final order of removal. “The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz*, 53 F.4th at 1206 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.” *Mathews*, 426 U.S. at 79-80. Indeed, the Supreme Court has repeatedly “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523.

Second, Petitioner’s conditional release was always subject to conditions of release, and he knew that he could be re-detained if he violated those conditions. The circumstances that could lead to the revocation of Petitioner’s release were both foreseeable and within his control. From the day he was released, therefore, there could be “no doubt” that Petitioner could be returned to custody in these circumstances. *See Zadvydas*, 533 U.S. at 700. Accordingly, Petitioner cannot claim that the government promised him ongoing freedom or that he reasonably believed he would remain at liberty even if he violated his conditions of release. *Cf. Uc Encarnacion v. Kaiser*, No. 22-cv-4369, 2022 WL 9496434, at *3 (N.D. Cal. Oct. 14, 2022) (holding released noncitizen had a reduced liberty interest where he “always knew that his release was subject to appellate review”). The government recognizes that any form of detention will implicate an individual’s liberty interests, and that Petitioner, like virtually everyone subject to detention, has personal reasons for wanting to remain out of custody. But the Constitution does not require the government to acquiesce to an individual’s unreasonable expectations.

(ii) The Existing Procedures Are Constitutionally Sufficient

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal. First, as a general rule, noncitizens have no right to a hearing before an immigration judge *before* they are detained under Section 1231(a)(6). The constitutionality of that provision—which, as interpreted by the Ninth Circuit, permits detention without any bond hearing for six months, is well established.

Second, as described above, Petitioner will have an opportunity to respond to the reasons for the revocation at an initial informal interview, which will be held “promptly” after his return to custody, and a second interview, together with a custody review that will include a final evaluation of any contested facts relevant to the revocation, approximately three months after release is revoked. 8 C.F.R. §241.4(l). This procedure provides both a timeline for the review of Petitioner's detention and an opportunity for Petitioner to challenge his detention in the near future.

Third, Petitioner would be entitled to a 90-day and 180-day custody review. 8 C.F.R. § 241.4(k). In connection with the review, a detainee would have the right “to receive written notice of the review, to submit information in writing to support release and to be assisted by any individual of his or her choosing in preparing or submitting information in response to the notice.” *Diouf II*, 634 F.3d at 189 (citing 8 C.F.R. § 241.4(h)(1)–(2)). Thereafter, Petitioner would be entitled to annual custody reviews, and may additionally request custody review as often as once every three months upon a showing of material change in circumstances. 8 C.F.R. § 241.4(k)(2)(iii).

Fourth, if Petitioner remains detained for a prolonged period of time, he would be able to file an individual habeas petition at that point if he believes that his continued detention without a hearing is constitutionally infirm.

In *Diouf II*, the Ninth Circuit considered whether the 90-day and 180-day custody review provide sufficient procedures to protect the liberty interests of individuals detained under Section 1231(a)(6). Recognizing that “[d]etention during [the first 180 days of confinement] certainly affects aliens’ interests in freedom from confinement, and requires that adequate procedural safeguards be in place,” the Court held that the process afforded by the initial 90-day review was sufficient to address any constitutional concerns under a *Mathews* analysis “given the relatively limited period of detention

involved.” *Diouf II*, 634 F.3d at 1091. Through the first 180 days, therefore, the Court concluded that “the process afforded by the DHS regulations is adequate.” *Id.*

Diouf II recognized that a short period of detention under Section 1231(a)(6) without a bond hearing is not constitutionally problematic. The additional review that Petitioner would receive here under 8 C.F.R. § 241.4(l), as a noncitizen subject to re-detention for violating the conditions of his release, only bolsters this conclusion. The Constitution does not require the extra-regulatory level of review that Petitioner seeks here to avoid the possibility of an erroneous deprivation of liberty; “the Due Process Clause does not mandate procedures that reduce the risk of erroneous deprivation to zero.” *Rodriguez Diaz*, 53 F.4th at 1213.

In addition, the specific additional procedures Petitioner requests—that the government would have the burden of proof, by clear and convincing evidence “that there has been a material change in circumstances”—are especially problematic. *See* Dkt. No. 1 at 13. First the only “changed circumstance” that is relevant is the fact that Petitioner has violated a condition of his release. The government need not otherwise establish that Petitioner is a flight risk or danger. *See Zadvydas*, 533 U.S. at 700; 8 C.F.R. § 241.4(l). Second, there is no basis to conclude that placing the burden of proof on the government “is constitutionally necessary to minimize the risk of error.” *Rodriguez Diaz*, 53 F.4th at 1212. as the Ninth Circuit observed recently, “[w]e are aware of no Supreme Court case placing the burden on the government to justify the continued detention of an alien, much less through an elevated ‘clear and convincing’ showing.” *Id.* at 1211.

(iii) **The Government Has a Strong Interest In Returning To Custody Noncitizens Who Violate Conditions Of Release**

Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test “must account for the heightened government interest in the immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Id.* at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. “The

1 government has an obvious interest in ‘protecting the public from dangerous criminal aliens,’” and
 2 “[t]hrough detention, the government likewise seeks to ‘increas[e] the chance that, if ordered removed,
 3 the aliens will be successfully removed.’” *Id.* (quoting *Demore*, 538 U.S. at 515 and 528). “Indeed, the
 4 Supreme Court has specifically recognized Congress’s determination that the government has been
 5 unable to remove deportable criminal aliens because of its initial failure to detain them.” *Id.* at 1209.
 6 “For all these reasons, the government’s interests in this case are significant.” *Id.*

7 Moreover, Petitioner’s request for an additional level of review would impose administrative and
 8 resource burdens on the government that would frustrate its ability to make congressionally authorized
 9 detention decisions and interfere with the ability of the immigration courts to undertake its other
 10 important duties. *See, e.g.,* Cong. Res. Serv., *U.S. Immigration Courts and the Pending Cases Backlog*
 11 1, 17-18 (Apr. 25, 2022), *available at* <https://crsreports.congress.gov/product/pdf/R/R47077> (“As a
 12 result of this [pending cases] backlog, some individuals must wait years to have their cases
 13 adjudicated.”) Every extra hearing before an IJ adds further congestion to an already backlogged
 14 immigration court system. It drains limited Executive Branch resources. The government has a
 15 significant interest in avoiding these extra-regulatory burdens.

16 In short, the three *Mathews* factors weigh decidedly against granting Petitioner the additional,
 17 pre-detention hearing he now requests.

18 V. CONCLUSION

19 For the foregoing reasons, the government respectfully requests that the Court should dismiss
 20 Petitioner’s petition for writ of habeas corpus.

21
 22 DATED: June 19, 2026

Respectfully submitted,

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