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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION

RODRIGUEZ-PARDO, MATEO Petitioners, vs. Luis **ROSA**. Jr. Warden of Florence Service Processing Center, John **CANTU** Field Office Director of Enforcement and Removal Operations, ICE, Markwayne **MULLIN**, Secretary, U.S. Department of Homeland Security; Pamela **BONDI**, U.S. Attorney General; U.S. DEPARTMENT OF HOMELAND SECURITY; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW Respondents.	Case No.: PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner Mateo Rodriguez-Pardo, who is in the physical custody of Respondents' Immigration and Customs Enforcement ("ICE") at Florence Correctional Center. He is unlawfully detained pursuant to mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR).

2. Mr. Rodriguez-Pardo, a twenty-four year old Colombian citizen who has lived in the United States since July 31, 2021. Pursuant to a Notice to Bond Obligor on or around November 4, 2024, ICE re-detained Petitioner (Exhibit A) without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

3. On or about October 13, 2021 Petitioner was Ordered released on bond from an immigration judge. At the time of being re-detained, Petitioner's Bond Order was not revoked, there was no hearing on any potential revocation, nor did DHS file any new evidence that taken in the most favorable light possible would lead a person to reasonably conclude that the original finding that Petitioner is not a danger to the community and not a flight risk should be overturned.

4. In direct violation of the Ninth Circuit's holding in Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir) the government has not even attempted to prove to any court of competent jurisdiction why continued detention is necessary.

5. In fact, both DHS and the current immigration court keep dodging its duties to perform a substantive review and three times now have denied setting a custody redetermination hearing capriciously relying on the desires of the current Presidential administration and hiding behind the BIA ruling in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025).

6. Detained for 527 days and counting, every day Petitioner remains detained is a violation of his constitutional rights.

7. In 2024 at the time Petitioner was re-detained there was no final order of removal entered against him, which means there is no legitimate purpose for ICE or DHS to detain Petitioner.

8. Furthermore, in 2024, at the time of being re-detained, because there was no final order of removal entered against Petitioner, his 2021 Order Releasing Petitioner on Bond entered by the immigration Judge on or about October 13, 2021 is still in effect.

9. Without an order revoking said Bond Order, the re-detention of Petitioner is a violation of that Order.

10. In addition to these profound constitutional violations, it is important to note that Petitioner in 2021 was detained pursuant to DHS's authority under 8 U.S.C. § 1226(a) because Petitioner is the beneficiary of an Order granting release from custody, entered on October 13, 2021 by an Immigration Judge of competent jurisdiction; and because 8 U.S.C. § 1225(b)(2) is mandatory detention and does not have any mechanism to allow DHS to authorize the release of a detainee, if a person is released it means by default that person could only have been originally detained pursuant to 8 U.S.C. § 1226(a).

11. It is important to note that Petitioner is "not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined… as a result, "§ 1252(b)(9) does not present a jurisdictional bar." *See* Jennings, 583 U.S. at 292-95.

12. Petitioner's detention violates the plain language of the Immigration and Nationality Act (INA) when detention is based on § 1225(b)(2). The distinguishing factor being Petitioner is a person

who previously entered the United States and at time of Petitioner's arrest was residing in the United States making them subject to a different statute, § 1226(a).

13. In addition to the substantive arguments made in this habeas, Petitioner also urges this Court to adopt the ruling in *Rodriguez v. Robbins* 715 F.3d 1127 (9th Cir. 2013) whereby the court ruled that a detained individual is entitled to custody redetermination every 180 days where the government bears the burden of proving why continued detention is necessary by clear and convincing evidence.

14. Detained since November 4, 2024, **more than 527 days,** Petitioner has not had a substantive hearing on his custody redetermination. The immigration judges continue to hide behind Yajure Hurtado as reason to deny the setting of a custody redetermination hearing despite rulings in Rodriguez Robbins requiring an individual custody redetermination hearing every six months.

15. Petitioner has been denied a substantive custody redetermination hearing despite the fact DHS has zero evidence of any arrests or non-speculative evidence that Petitioner would be a flight risk.

16. Accordingly, Petitioner seeks a writ of habeas corpus with an order requiring DHS to immediately release. **The only reasonable outcome because of the egregious amount of days Petitioner has already been detained, 527 days**.

JURISDICTION

17. Petitioner is in the physical custody of Respondents. Petitioner is detained at Florence Correctional Center.

18. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. . § 1331 (federal question), and Article 1, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. This Court may grant relief pursuant to 28 U.S.C § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. and the All Writs Act, 28 U.S.C. § 1651.

VENUE

20. Venue lies in the United States District Court for the District of Arizona, Phoenix Division because it is the judicial district where Petitioner is currently detained. *See* Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973).

21. Additionally, venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States and because substantial part of the events giving rise to Petitioner's claims occurred in the Central District of California.

PARTIES

22. Petitioner Mateo Rodriguez-Pardo (A# [redacted]) was arrested by ICE on November 4, 2024, and has been detained at the Florence Correctional Center.

23. Respondent Luis Rosa, Jr. is acting as Warden of the Florence Correctional Center where Petitioner are detained. He has the immediate physical custody of Petitioners. He is sued in his official capacity.

24. Respondent John Cantu is the Director of the Field Office of ICE's Enforcement and Removal Operations division, which area includes the Florence Correctional Center. As such, Mr. Cantu is Petitioners' immediate custodian and is responsible for his detention and removal. He is sued in his official capacity.

25. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioners' detention. Mr. Mullin has the ultimate custodial authority over Petitioner's and is sued in his official capacity.

26. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. She is sued in her official capacity.

27. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

28. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

REQUIREMENT OF 28 U.S.C. § 2243

29. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

30. Habeas corpus is "perhaps the most important writ known to the constitutional law… affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it receives prompt action from him [or her] within the four corners of the application." *Yong v. I.N.S.,* 208 F.3d 1116, 1120 (9th Cir. 2000) (citations omitted).

8. U.S.C § 1252(b)(9) and (g) DO NOT CREATE A JURISDICTIONAL BAR FOR THIS COURT TO GRANT PETITIONER'S REQUESTED RELIEF

31. Section 1252(b)(9) provides:

"Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision…" *See* 8. U.S.C § 1252(b)(9)

32. Section 1252(g) provides:

"Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter*." *See* 8. U.S.C § 1252(g)

33. DHS takes the position that this Court does not have jurisdiction to hear Petitioners' habeas because the decision to detain Petitioner arises from DHS's decision to commence removal proceedings, which falls within the scope of Section 1252(b)(9)[1]. *See 25-cv-02304-CAS-BFM, doc 11* Mosqueda et al v. Kristi Noem et al.

34. In the Mosqueda response, DHS "argues that section 1252(g) bars judicial review of petitioner's bond denial claims because those claims stem from their detention, which arises from the decision to commence removal proceedings against them." Id.

[1] DHS Attorney's filed responses to Habeas Corpuses seeking the same relief as Petitioner; a bond hearing to be set in the immigration court, in two other matters in California: in the Central District the case cited above and in the Southern District of California 25-cv-02180-DMS-MMP Julian Garcia et al v. Krisit Noem et al. Both Courts cited Jennings as defining the relief sought in the habeas fall outside the purview of § 1252(b)(9) and are not jurisdictionally barred. See also Nielsen v. Preap, 586 U.S. 392 (2019); Gonzalez v. U.S. Immigr. & Customs Enf't, 975 F.3d 788 (9th Cir. 2020) citing J.E.F.M. v. Lynch, 837 F.3d 1026, 1032 (9th Cir 2016. **"Claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process"**

35. The same conclusion this Court made in Mosqueda et al v. Krisit Noem et al is the same reasoning to apply in this case. Petitioners are not challenging any part of the removability process or the decision to be detained; therefore, the jurisdictional bar in 8. U.S.C § 1252(b)(9) does not apply.

36. Furthermore, the 9th Circuit made it clear in its Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998) 8. U.S.C § 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders…[s]pecifically, § 1252(g) does not bar due process claims."[2]

37. The 9th Circuit reads § 1252(g) narrowly to apply only to three discrete actions that the Attorney General may take: "decision or action" to 'commence proceedings, adjudicate cases, or execute removal orders.'" Ibarra-Perez v. United States, No. 24-631, at 6, 14-15 (9th Cir. Aug 27, 2025).

LEGAL FRAMWORK

A. ICE and DHS statutory authority to detain aliens

38. INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ)[3]. Individuals in § 1226(a) detention are generally entitled to bond hearings at the outset of detention. See *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1)).[4]

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[2] Walters v. Reno, 145 F.3d 1032, 1052 "the plaintiffs objective was not to obtain judicial review of the merits of their… proceedings, but rather to enforce their constitutional rights to due process in the context of those proceedings."

[3] See 8. U.S.C. § 1229(a).

[4] See also Rodriguez Diaz v. Garland, 53 F.4th 1189, 1202 (9th Cir. 2022) "Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including … an initial bond hearing before a neutral decisionmaker.)

40. Noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8. U.S.C. § 1226(c).

41. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

42. Last, the INA also provides for detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231 (a)-(b).

43. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).[5]

B. How ICE, DHS, and EOIR interpreted 8 U.S.C. § 1225 and U.S.C. § 1226 pior to July 8, 2025 new policy "Interim Guidance Regarding Detention Authority for Applicants for Admission

44. For nearly thirty years (30), most people who entered the United States without admission or parole were considered detained under § 1226(a) and put in standard removal proceedings; and unless ineligible due to criminal history, received bond hearings before immigration judges.[6]

C. Why ICE, DHS, and EOIR are incorrect in their new statutory interpretation

45. July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy rejecting the long-standing and ubiquitous statutory interpretation. Without a congressional change to the law nor citing any kind of new legal reasoning, ICE reversed decades of practice in order to usurp

[5] The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996; § 1226(a) was most recently amended earlier this year by the Laken Riley Act. IIRIRA of 1996, Pub. L. No. 104-20, Div. C §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Laken Riley Act Pub. L. No. 199-1, 139 Stat. 3 (2025)

[6] This practice was consistent with many prior decades in which noncitizens who were not deemed "arriving" were entitled to custody hearing before an IJ. See also Hasan WL 2682255 "[T]he federal respondent's theory contradicts how the Supreme Court has traditionally construed the relationship between §§ 1225(b) and 1226(a). In Jennings, the Court explained that §1225(b) governs 'aliens seeking admission into the country' whereas §1226(a) governs 'aliens already in the country' who are subject to removal proceedings.

the immigration court's jurisdiction in order to keep the majority of aliens under ICE exclusive jurisdiction of § 1225(b)(2) and surreptitiously put aliens in expedited removal. [7]

46. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore subject to mandatory detention under § 1225(b)(2)(A).

47. This policy applies to all persons regardless of when they are apprehended; it affects those who have resided in the United States for months, years, and even decades.

48. On September 5, 2025, the BIA adopted the new ICE, DHS, EOIR position in Matter of Yajure Hurtado, holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings. *See* Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

49. Since the BIA Hurtado opinion, dozens of Federal Courts in many of the circuits have rejected this position and have ordered either the immediate release of petitioners or forced immigration judges to set and conduct substantive bond custody redetermination hearings.

50. Most recently on December 18, 2025 the U.S. District Court for the Central District of California issued a final judgment in the federal class action suit, *Maldanado Bautista v. DHS* certifying persons who entered without inspection and not subject to other mandatory detention requirements are bond eligible, who were previously held by the BIA opinion in *Hurtado* to be subject to mandatory detention. See *Maldonado Bautista v. Santacruz*, No. :25-CV-01873-SSS-BFM - F.Supp 3.d-, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).[8]

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[7] This new interpretation is in direct contradiction to how the Supreme Court views the relationship between the two clauses. See Barrajas, 2025 WL 2717650 (S.D. Iowa Sep. 23, 2025)

[8] The Maldanado court certified the following Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended

51. In this District the majority reasoning adopted by Federal Judges is consistent with the traditional understanding of the statutory scheme of §§ 1226(a), 1225(b)(2) finding that those aliens who are present in the United States and later apprehended are detained under § 1226(a) and entitled to bond hearings. [9]

D. When § 1226(a) applies and when § 1225(b) applies

52. Subsection 1226(a) applies by default to all people pending a removal decision; these removal hearings are held under § 1229(a) to "decide the inadmissibility or deportability of a noncitizen."

53. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E).

54. The Court in Rodriguez v. Bostock, 779 F.Supp 3d at 1257[10] explained "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves" that absent those exceptions, the statute generally applies.[11]

55. Following this statutory construction it leaves zero doubt that section 1226 applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

56. By contract, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. See 8 U.S.C. § 1225(b)(2)(A). [12]

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upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1) or 1231 at the time DHS makes an initial custody determination. The 9th Circuit issued an administrative stay pausing the district court's nationwide bond eligibility and vacating of the Hurtado order on March 6, 2026.

[9] Eschevarria v. Bondi, 2:25-cv-03252-DWL-ESW (D. Ariz Oct. 3, 2025)f; Francisco v. Rosa 2:26-cv-02378 (D.Ariz. April 7, 2026); Vega-Jimenez v. Mullin 2:26-cv-02283 (D.Ariz. April 3, 2026); Reyes v. Noem 2:26-cv-01911 (D. Ariz. March 20, 2026);

[10] Citing Shady Grove Orthopedic Assocs. P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010).

[11] Rodriguez has shown that the text of Section 1226, canons of interpretation, legislative history, and longstanding agency practice indicate that [petitioner] is governed under Section 1226(a)'s 'default' rule for discretionary detention.

[12] The Supreme Court explained this mandatory detention scheme in Jennings v. Rodriguez, 583 U.S. 281, 287 holding "section 1225(b)(2)(A) applies at the Nation's borders and ports of entry, where the Government must determine whether

57. For many noncitizens who crossed the border without inspection and were not arrested shortly after arriving and released; and now have been residing in the United States for years, § 1225(b)(2)(A) does not and cannot apply to them and if detained in the future, they are detained under § 1226(a) and bond eligible.

58. In its' opinion the Maldonado court specifically held that (1) class members are entitled to bond consideration, if not released by ICE, before an immigration judge, (2) it vacated in its entirety DHS's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" under APA as unlawful.

59. Applying this holding to the facts of this case, discussed in further detail below, DHS and ICE reasoning for detaining Petitioner no longer has a legal basis and Petitioners' are definitively entitled to immediate release or a bond hearing in front of an immigration judge.

E. The Ninth Circuit Requires Bond Hearings every 180 days an Alien is Detained

60. The panel in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) held that "prolonged detention under mandatory detention statutes §§ 1225(b) and 1226(c) are entitled to bond hearings, and that subclass members subject to discretionary detention under § 1226(a) are entitled to automatic bond hearings after six months of detention.

61. To the extent this Court may find that detention was authorized under INA § 241, indefinite detention without a realistic prospect of removal violates the limits set by *Zadvydas v. Davis*, 533 U.S. 678 (2001) and its progeny.

F. Detention authority is established at the time an alien is first detained and the government is estopped from recharacterizing its authority

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a noncitizen seeking to enter the country is admissible. See also Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025) to understand when an arriving alien who was detained and released may be re-detained and put in expedited removal and denied a bond hearing.

62. Any attempt by DHS to recharacterize its detention authority after a prior judicial determination is unlawful. This finding aligns with broader administrative law principles that prohibit agencies from using new interpretations to override or evade previously established legal standards, especially when those standards have been affirmed by courts. See Benitez-Cornejo v. Cantu, et. al 2:25-cv-03672 (Arizona District Court Oct. 3 2025). [13]

G. Protected Liberty Interest under the 5th Amendment Due Process Clause of the United States Constitution.

63. The Court wrote in Azarte v. Andrews, 2025 U.S. Dist. LEXIS 149743, United States District Court for the Eastern District of California:

"A protected liberty interest may arise from a conditional release from physical restraint. Young v. Harper, 520 U.S. 143, 147-49, 117 S. Ct. 1148, 137 L.Ed.2d 270 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. See id. (Due Process requires 2025 U.S. Dist LEXIS *10) pre-deprivation hearing before revocation of preparele); Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S.Ct. 1756, 36 L.Ed. 2d 656 (1973)(same, in probation context); Morrissey v. Brewer, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed 2d 484 (1972).

64. In Morrisey, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons' who have never been in custody or convicted of any crime, including to live at home, work, and 'be with family and friends and to form the other enduring attachments to normal life.' *Morrisey*, 408 U.S. at 482. 'Though the [government] properly subjects [the parolee] to

[13] See also Beltran Barrera v. Tindall, 3:25-cv-00541 (W.D. Ky. Sept. 19, 2025) (holding DHS cannot retroactively recharacterize his detention authority after the fact); Ibrahima Bah v. Warden, et al. No. 1:25-cv-02137-DAE (finding the fact that Petitioner allegedly 'entered without inspection or parole' and 'remains an applicant for admission' does not negate the fact that DHS affirmatively authorized Petitioner's conditional release in 2023… once DHS exercises its authority to release an individual under 8 U.S.C. § 1226(a), it cannot retroactively recharacterize that detention as mandatory pursuant to 8 U.S.C. § 1225 (b)(2).

many restrictions not applicable to other citizens,' such as monitoring and seeking authorization to work and travel, 'his condition is very different from that of confinement in a prison.' Id. 'The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.' Id. at 481-84.

65. Therefore, when the government grants an alien release, it creates a liberty interest intimately tied to the freedom from imprisonment. See *Alegria Palma v. LaRose*, 25-cv-1942 (S.D. Cal. Aug 11, 2025) (finding that "continued freedom after release on own recognizance" was a core liberty interest))[14]

66. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

67. In determining whether civil detention violates a detainee's due process rights, a three factor test is applied under the holding in *Mathews v. Eldridge,* 96 S.Ct. 893 (1976). Those factors are: (1) "the private interest that will be affected by the official action," (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

1. Private Interest

68. When noncitizens, regardless of citizenship status, have spent time living, working, or supporting a family in the interior of the United States Federal courts in Texas have held that

[14] In Palma v. LaRose the court pointed out the fact that DHS can arrest a person with a protected liberty interest "only after a 'material' change in circumstances." Id. at *4-5. See also in Palma at *2 "[b]ecause no immigration judge made a bond determination in this case, Sugay is cited here solely to illustrate the broader principle that DHS's revocation authority has been understood to require a change of circumstances."

noncitizens have a protected liberty interest in their freedom. See Garcia v. Andrews, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025)(citing Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989)). *See also Lopez Miranda v. Flores*, No. EP-25-cv584-KC, 2025 WL 3901908 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec 16, 2025) (finding noncitizen has protectable liberty interest because he was "living in the United States for over four years and attends his local church); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 ("Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.")

69. The court in Martinez v. Noem most persuasively espouses this point when it held "[t]he interest in being free from physical detention is the 'the most elemental of liberty interests." Martinez v. Noem 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025)(quoting Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004)). Applying these holdings to the instant case, Petitioner has been living in the United States working grossing more than $10,000 monthly, paying taxes and providing for himself and his U.S. citizen girlfriend, who is his proposed bond sponsor, he no doubt has a private interest under the Mathews test.

2. Risk of Erroneous Deprivation

70. Continual refusal to provide bond hearings creates extreme high risk of erroneous deprivation because in the continued denial of the bond hearings, in function, it erases "the process afforded in removal proceedings does 'not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed. Bond hearings are the check and balance against this risk because they are the "precise type of proceeding that would give [a noncitizen] an opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond." See Rojas v. Noem, 2025 WL 3038262 at *3-4.

71. More support is found in re: *Doe,* 787 F.Supp. at 1094 where the Court wrote "given that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions about the timing and reliability of the new information, the risk of erroneous deprivation remains high.")[15]

3. Government's Interest

72. "[T]he Fifth Amendment entitles aliens to due process of law in the context of removal Proceedings. A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025). Petitioner concedes that the Government has a compelling interest in enforcing its interpretation of immigration detention statutes but a petitioner's constitutional interest in his or her liberty trumps that compelling interest and exists separate from the INA. See *Rojas*, WL 3038262 citing *A.A.R.P. v. Trump.* Furthermore, any interest held by the government with respect to noncitizens appearing for their removal hearings and ensuring they are not a danger to the community "would be squarely addressed through a bond hearing." Martinez v. Noem, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025.)

73. The government's interest in detaining Petitioner without a bond hearing is low. *Doe* 787 F. Supp. 3d at 1094; see *Ortega v. Bonnar*, 415 F.Supp. 3d 963, 970 (N.D. Cal. 2019)); see also *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) ("And, like other Courts in this district, the Court concludes that the government's interest in re-detaining Petitioner - [] without a hearing is low, particularly in light of the fact that Petitioner has long complied with his reporting requirements")

74. The effort and cost to provide Petitioner with [a bond hearing] is minimal. *Doe* 787 F. Supp. 3d at 1094.

[15] See also A.E., 2025 WL 1424382 at *5; Ramazan, 2025 WL 3145562, at *6 - this factor almost always weighs in favor of granting a bond hearing.

H. Accardi Doctrine required DHS to set and argue at a hearing on what substantively changed in order to re-detain and override the existing 2021 Bond Order granting release.

75. Under the Accardi doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings).[16]

76. Accardi is not "limited to rules attaining the status of formal regulations." Montilla v. INS, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. See Morton v. Ruiz, 415 U.S. 235 (affirming reversal of agency denials of public assistance made in violation of internal agency manual)

I. Violation of 5th Amendment to the U.S. Constitution Right to Unreasonable Seizures by the Government.

77. The Supreme Court has recognized only two legitimate objectives of immigration detention outside of mandatory detention requirements: (1) preventing danger to the community, and/or (2) preventing flight prior to removal. See Zadvydas v. Davis, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention.)

78. Once ICE releases a noncitizen on supervised release, "ICE's ability to re-detain that noncitizen is constrained by its own regulations."

PETITIONER MATEO RODRIGUEZ-PARDO FACTS

[16] See also Morton v. Ruiz, 415 U.S. 199, 235 (1974) ("where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures… even where the internal procedures are possibly more rigorous than otherwise would be required.")

79. Mateo Rodriguez is currently a 23 year old national and citizen of Colombia. He entered the United States without inspection on July 31, 2021, with his mother and younger brother E[redacted] They were detained by U.S. Customs and Border Patrol ("CBP").

80. The Petitioner was 19 at the time of entry, and his younger brother was 12. They fled Colombia to [redacted]

81. Subsequently, his mother and brother were released on their own recognizance. DHS/ICE placed them in removal proceedings shortly thereafter. Petitioner and his younger brother were listed as derivative beneficiaries on their mother's asylum application because they were under 21.

82. Mateo was held at the Imperial, CA Regional Detention Facility until he was ordered released on October 21, 2021 on a $2000.00 bond by the presiding immigration judge.

83 Previous counsel for Mateo failed to inform the Immigration Court of his age change to 21 on [redacted], significantly prejudicing Petitioner's case.

84. In January 2024, the Immigration Court denied his mother's asylum application, withholding of removal, and CAT relief: an appeal to the Board of Immigration Appeals ("BIA") was subsequently filed.

85. On July 1, 2024, the BIA denied their appeal, stating:

> "The respondents in this case include the lead respondent, A[redacted] who is the principal applicant for asylum, and her children, A[redacted] and A[redacted] who are derivatives on her asylum application. The rider respondents cannot assert a derivative claim for withholding of removal under the INA or CAT protection. See Matter of A-K, 24 I&N Dec. 275, 279 (BIA 2007)... The respondents have not identified any clear error of fact in the Immigration Judge's decision, and we observe none.

86. On October 2, 2024, DHS/ICE issued a Notice to Obligor regarding Mateo's bond, requesting that the alien be either delivered or appear at ICE ERO, San Bernardino, CA on November 4, 2024 at 9:00 AM for the purpose of his removal.

87. On November 4, 2024, the [Petitioner] appeared before ICE/ERO and was detained and transferred to an ICE detention facility in Arizona, where he has been detained since November 4, 2024.

88. On November 13, 2024, [Petitioner] requested an Emergency Stay of Removal from U.S. Court of Appeals for the Ninth Circuit, which was granted.

89. On January 31, 2025, Petitioner filed a *Lozada* Motion with the BIA, alleging prejudice caused by ineffective assistance of counsel during his removal proceedings. The motion outlined the prejudice Petitioner faced primarily being treated as a derivative of his mother's asylum, which prevented him from seeking relief for withholding of removal or CAT, even though he turned 21 before the Immigration Court issued a final order on January 29, 2024. Because of his derivative treatment he was denied a full and fair hearing on his application for asylum, withholding of removal, or CAT relief.

90. Compounding this mistake is the fact that Petitioner's counsel, at his individual hearing, withdrew Petitioner's asylum claim based on a well-founded fear of persecution in his home country, Colombia, due to his actual or imputed political opinion, which had been previously reviewed by an Immigration Judge at Imperial California, Immigration Court, where the Judge in his Bond Order granting release, entered September 24, 2021, stated: *"This immigration court did take testimony regarding the alien's background and the alien's fear of returning to his country of origin. After consideration of the evidence, the court finds that the alien (speaking about Mateo) has established a significant possibility that the alien would be persecuted on account of a protected ground."* The

effect of this mistake was an abandonment of his political opinion claim that an Immigration Judge already determined had merit.

91. On July 21, 2025, the BIA denied Petitioner's Lozada Motion in a perplexing decision, stating:

> "As an initial matter, we acknowledge that our July 1, 2024, decision dismissing the respondent's appeal **contains an error**. Specifically, whereas our July 1, 2024, decision stated that the respondent was solely listed as a derivative beneficiary of his mother's Application for Asylum and for Withholding of Removal (Form 1-589), the record unambiguously reveals that he was not only a derivative beneficiary of his mother's application, but he also filed a separate Form I-589 which allowed him to pursue claims for withholding or removal under the INA and protection under CAT (IJ at 3, Tr. At 201; Exbs2-3, 5B) **Consequently, we will sua sponte reconsider the respondent's appeal from the immigration judge's January 29, 2024, decision, vacate our prior decision only insofar as we erroneously stated that he was not eligible to pursue withholding of removal and CAT protection and reinstate the respondent's appeal."**

92. On September 23, 2025, Judge Victoria Levin from Florence Immigration Court denied Mateo's requested custody redetermination entering the following order:

> "The Respondent has not met his burden of demonstrating that the Immigration Judge has jurisdiction to grant the Respondent a bond. The Respondent's application was denied by the Immigration Judge and the denial was affirmed by the Board of Immigration Appeals. Pursuant to Jennings v. Rodriguez, 138 S.Ct. 830 (2018), the Respondent is no longer entitled to a bond under Casas-Castrillon v. Dep't of Homeland Security, 535 F.3d 942 (9th Cir. 2008) while his Petition for Review is pending with the Ninth Circuit Court of Appeals. Pursuant to

Avilez v. Garland, 69 F.4th 525 (9th Cir. 2023), and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), the Respondent remains properly detained."

93. On September 24, 2025, the Ninth Circuit entered its Order Dismissing Mateo's Petition for Review stating that "Petitioner seeks review of the Board of Immigration Appeals ("BIA") July 1, 2024, order. **Because the BIA vacated that order, petitioner has not identified a final order of removal that we have jurisdiction to review.** See 8 U.S.C. §1252(a)(1); Lopez-Ruiz v. Ashcroft, 298 F.3d 886, 887 (9th Cir. 2002)("This court only reviews final orders of removal."). The Ninth Circuit also denied Petitioner's stay of removal and lifted the temporary emergency stay or removal.

94. Petitioner's single offense is that he was illegally present in the United States through the actions of his legal guardians, his parents who brought him to the United States seeking asylum in 2021.

LEGAL ANALYSIS OF THE LAW AND FACTS TO THIS CASE

a. Mateo Rodriguez-Pardo is detained pursuant to § 1226(a) and unequivocally eligible for a bond custody re-determination hearing.

95. Petitioner Mateo Rodriguez-Pardo entered the United States without inspection in July of 2021 but immediately informed border agents that he was seeking asylum.

96. Petitioner was detained until released on bond for $2000.00 pursuant to an immigration judge's order on or around October 2021.

97. Petitioner was listed as a derivative beneficiary on his mother's Form I-589 Application for Asylum.

98. In Petitioner's mother's removal proceedings, Petitioner's previous counsel failed to inform the Immigration Court of his age change to twenty-one on or about [redacted] as a result,

when the immigration court denied his mother's application in January 2024, Petitioner incurred a removal order.

99. On or about November 4, 2024 ICE/ERO re-detained Petitioner because it believed that it was effectuating a removal order and that was its authority to detain Petitioner.

100. On September 23, 2025 the Immigration Judge in Florence, Arizona denied Petitioner a bond custody re-determination hearing for three procedural reasons:

a. The BIA denied Petitioner's appeal rendering the immigration court without jurisdiction pursuant *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018).

b. While an appeal is pending with the Ninth Circuit, Petitioner is not entitled to a bond under *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942 (9th Cir. 2008).

c. The immigration court lacks jurisdiction under *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025)

101. The Florence Immigration courts' reasoning is at best the ruling of an overwhelmed staff doing its best to uphold current case law with respect to its understanding of the directives of the current administration.

102. At worst, it is the utter disregard of the law and failure to review the facts of the case and give Petitioner a fair ruling under the law, both statutorily and case precedent, to prevent injustice, discrimination, and constitutional violations.

103. The first gross mischaracterization of the law is the fact that the immigration court ruled Petitioner is no longer entitled to bond hearings because the BIA denied Petitioner's appeal.

104. It is well settled law under *Zadvydas v. Davis*, 533 U.S. 678 (2001) that prolonged detention past the reasonable removal period, defined as the initial ninety (90) day period plus another ninety

(90) days, must be proven necessary by clear and convincing evidence with the burden of proof falling on the government.

105. On September 23, 2025, at the time of issuing its Order, Petitioner did not have a final order of removal because on or about July 21, 2025, the BIA vacated Order denying Petitioner's appeal and reinstated part of Petitioner's appeal claims.

106. However, arguendo, if a final order of removal existed at the time of the September 23, 2025 Bond Custody Redetermination Hearing Order denying its setting, the final removal order was entered January 24, 2024 making the reasonable six month removal period expired on July 22, 2024; as a result, on September 23, 2025 Petitioner was absolutely entitled to a meaningful hearing on whether or not his continued detention was necessary by clear and convincing evidence.

107. The fact that Petitioner was denied even a setting of hearing is a definitive violation of due process afforded to him under the Constitution of the United States of America.

108. On September 24, 2025 - one (1) day after denying the setting of custody redetermination hearing, the Ninth Circuit issued an order dismissing Petitioner's appeal stating that Petitioner did not have a final removal order based on the BIA's July 21, 2025 Order vacating its July 1, 2025 Order denying Petitioner's appeal and sua sponte reinstating partial claims.

109. The Ninth Circuit opinion has sweeping impact because it means that as of September 24, 2025 Petitioner is in an active removal proceeding and detention is no longer authorized for the purposes of removal and arguably reinstates the October 2021 Order releasing Petitioner from Custody.

110. If Petitioner does not have a final Order of Removal it means Petitioner's detention is pursuant to §1226(a) and he is entitled to a bond hearing.

111. In fact, the government could not contend this detention characterization because Petitioner in 2021 had a bond custody redetermination hearing which was granted. Since §1225(b)(2) does not have a mechanism allowing for release of a respondent because it requires mandatory detention, there is no other conclusion to reach in this case with respect to Mateo.

112. As discussed above, in the Ninth Circuit, courts have held that because detention is determined at the time of apprehension, recharacterization of detention is estopped. Which is why it is a blatant violation when the Florence Immigration judge ordered its futile catchall reason for denying the custody redetermination hearing citing it lacked jurisdiction due to Hurtado. Hurtado detains noncitizens pursuant to §1225(b)(2); and Mateo clearly was detained pursuant to §1226(a) because he already had a custody redetermination hearing, for which he won, in October 2021.

113. Applying the on point case law to this situation, it is clear the Florence immigration judge is simply evading previously established legal standards in a cowardly attempt to please the unlawful wishes of the current administration. At best it is weak, at worst it is unethical.. See *Benitez-Cornejo v. Cantu* 25-cv-03672 (Arizona Dist. Oct. 3, 2025).

114. The client has been detained for more than 530 calendar days and does not have a final removal order; the burden is on the government to prove why continued detention is necessary.

115. It is clear Petitioner will never receive fair and meaningful hearings in the Florence Immigration Court which is why the only acceptable remedy is immediate release.

116. Without any other recourse, Petitioner has no clear understanding of how long his detention may be; as a result, every day he is detained is further violation of his constitutional rights.

117. Filing this habeas corpus petition is Petitioner's only viable option to force ICE, DHS, and EOIR to comply with the law as it has been held to mean for thirty plus years and affirmed time and time again by the Supreme Court of the United States.

118. Again, Petitioner is not challenging any of the substantive reasons behind his detention or reasons why Petitioner is in removal proceedings.

119. Petitioner is challenging the denial of a procedural right he is afforded by statute during those removal proceedings - his right to request a redetermination of his custody from the immigration judge.

120. Petitioner asks this Court to uphold that right.

b. The Government has not been required to nor has proven by clear and convincing evidence that Mateo is a danger to the community and a flight risk making continued detention necessary violating his rights vested by the Ninth Circuit opinion in Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir. 2013).

121. The Ninth Circuit in its Model Civil Jury Instruction defines clear and convincing evidence as follows:

"When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt. [17]

122. Colorado v. New Mexico, 467 U.S. 310 (1984) is the most widely cited case in defining "highly probable" stating "[i]n contract to the ordinary civil case, which typically is judged by a 'preponderance of the evidence' standard, we thought a diversion of interstate water should be allowed only if Colorado could place in the ultimate factfinder an abiding conviction that the truth of the factual contentions are "highly probable." In layman's terms the court was stating that the

[17] See also Sophanthavong v. Palmateer, 378 F.3d 859, 866 (9th Cir. 2004).

factfinder must believe that a diversion of interstate would would occur as a high degree of certainty, not just a reasonable belief that it could which would be more in line with a preponderance of the evidence standard.

123. In the immigration context as it pertains to bond custody redeterminations when the Government contends to an immigration judge that a particular detainee is a danger to the community the evidence offered must make the immigration judge that is highly probable that if released the detainee would continue to make such acts that would cause harm to the community.

124. When it comes to flight risk, the Government must offer evidence that makes an immigration judge believe that if released that particular detainee would flee the United States in an effort to avoid the requirements imposed upon him during the pendency of his or her immigration case. Not that it could be a likelihood but that it is closer to a certainty.

125. With respect to Mateo Rodriguez Pardo, not a single arrests in his past, all parties can agree that he is not a danger to the community and no evidence exists to even begin a discussion on a determination in favor of the government arguing danger to the community.

126. The government and ICE have repeatedly denied Mateo a custody review and have utterly failed in meeting the standards determined by the Ninth Circuit.

127. Hiding behind a blanketed finding of "flight risk" as the reason for continued detention is hardly meaningful and is a disgustingly misunderstanding of the law and mischaracterization of facts and gross wilful misapplication of the law.

128. First, an immigration judge in a court of equal competence and experience with a detained docket reviewed the facts of this case and ordered release of Mateo specifically finding him not to be a flight risk. This alone requires the government in any future detention to present ***new*** evidence of a material change in circumstance in order for a judge to find flight risk a high probability.

129. Considering that upon issuing a Notice to Obligor and Mateo self-reporting and presenting himself to ICE/ERO knowing detention is a possibility and still complying with the letter, not a court order, but a simple letter from ICE more than proves the likelihood that Mateo is not a flight risk and abides by rules and regulations.

130. In ICE's internal custody review the officer in its letter explaining why continued detention is necessary the officer wrote that because Mateo had an illegal re-entry he is a flight risk. ICE actions here prove a clear as crystal and as crisp as bacon that every opportunity to follow the law it will willfully disregard in furtherance of internal department pressure to continue to detain aliens at all costs.

131. Mateo never had an illegal re-entry. He entered the United States one time, presented himself at the border and asserted his legal right provided by this country to seek asylum. He timely filed his asylum application. **To state he is flight risk based on a false fact is neither a material change nor a fact that could create a firm conviction by an immigration judge that if released he would flee the country or fail to appear at scheduled hearings.**

132. After 530 days of detention, this Court, based on past behavior at all levels, ICE officer reviews, DHS attorney pleadings, and immigration judge's fact finding and rule application, Mateo will not be treated fairly and his rights ignored. The only plausible remedy at this juncture is ordering immediate release.

c. DHS and ICE and the Florence Immigration Court violated the Accardi Doctrine when it failed to schedule and conduct a hearing on the merits for a custody re-determination hearing.

133. It is a central tenant to administrative law that agencies must follow their own procedures, rules and instructions.

134. Enforcing the laws fairly under Due Process is a requirement imputed to all three agencies.

135. If the government can achieve its goals without incarceration, due process prohibits it.

136. Mateo, by September 23, 2025 had been detained for more than 323 days, unequivocally triggering the holding in Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir. 2013).

137. An internal review to determine if continued custody is necessary conducted by the officers currently detaining the alien is akin to asking a 10 year-old if they should eat dessert before vegetables.

138. DHS and the Florence Immigration Court should be embarrassed if it is argued that Mateo received substantive custody reviews in line with the Rodriguez v. Robbins holding on April 3, 2025 or after.

139. The Ninth Circuit left nothing ambiguous in its holding. There is no wiggle room in interpreting that every six months while an alien is detained, a hearing before a judge where the government must present evidence that is clear and convincing why continued detention is necessary.

140. DHS and the Immigration Court have not done this; and Mateo is suffering the consequence of such blatant disregard for the law.

141. There is no plausible remedy that can be reached other than immediate release is necessary.

d. Mateo Rodriguez-Pardo's 5th Amendment Procedural Due Process rights have been violated applying the Mathews Factor Test.

142. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'proprety' interests within the meaning of the Due Process Clause of the Fifth…Amendment" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

143. [F]reedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of that liberty the Clause protects." *Zadvydas*, 533 U.S. at 690.

144. With respect to the first factor under the Mathews test, the issue is whether Petitioner has shown a likelihood of success on the merits of his due process claim that he is entitled to immediate release and for enjoyment of further unlawful detention unless there is a material change in his removal proceedings or other circumstances that would justify his detention.

145. In analyzing this challenge, the court considers (1) "whether there exists a protected liberty interest under the Due Process clause, and [(2)] the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution." *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

146. Mateo, under procedural due process, has an underlying continuing liberty interest from re-detention. Previously being ordered released on bond in October 2021, considering the same factual circumstances and being found not a danger to the community and not a flight risk, it is affirmative proof Mateo holds a liberty interest against re-detention.

147. In the years following his release and being subject to conditions imposed by his bond supervision, Mateo has zero immigration infractions. He appeared at all required hearings, complied with all scheduling orders and fully participated in his immigration proceedings giving testimony and multiple hearings truthfully and honestly. Moreover, he has cemented family ties in his community, built friendships, garnered meaningful work opportunities and assimilated to life in the United States.[18]

148. The continued denial of custody redetermination hearings as required every six months in the Ninth Circuit only compounds Mateo asserted liberty interest.

149. Finding in favor of Petitioner with respect to this first factor is the proper conclusion.

[18] Considering in connection with petitioner's procedural due process claim that "[t]he lengthy duration of his conditional release as well as the meaningful connections Petitioner seems to have made with his community during during that time create a powerful interest for Petitioner and his continued liberty" Doe v. Becerra, 787 F.Supp. 3d 1083, 1099 (E.D. Cal. 2025)

150. As to the second factor, the risk of an erroneous deprivation of Petitioner's liberty interest is considerable here where he has not received any bond or custody redetermination.

151. Hiding behind blanketed reasoning of 'flight risk' and lack of jurisdiction under *Hurtado*, and the record showing zero evidence from ICE or DHS of material change in circumstance or new evidence, it is a high probability that erroneous deprivation will continue.

152. Because continued custody redetermination is determined by internal ICE custody reviews, there are no procedural safeguards and the fact that DHS, ICE, and the Immigration court have already proven a disregard for the law when it continues to ignore the Ninth Circuit Robbins ruling, the risk of erroneous deprivation remains high. [19]

153. The second factor weighs heavy in favor of granting immediate release or in the very least a substantive bond hearing.

154. In discussing the third factor, the government's interest in detaining Petitioner without a bond hearing is low. Doe, 787 F.Supp.3d at 1094[20]

155. Similar to the Court's finding in Diaz v. Kaiser, 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal June 14, 2025) "the Court concluded that the government's interest in re-detaining Petitioner without a hearing is 'low' particularly in light of the fact that Petitioner has long complied with his reporting requirements." Here the facts are the same. Mateo has long complied with the immigration requirements imposed upon him during this process and under his bond release order from 2021.

156. "The effort and cost to provide Petitioner with [a bond hearing] is minimal." *Doe* at 1094. Even if it can be called a burden, any additional burden imposed upon the government to conduct a

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[19] See Doe, 787 F.Supp at 1094 ("[G]iven that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions about the timing and reliability of the new information, the risk of erroneous deprivation remains high."

[20] See also Ortega v. Bonnar, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019)

substantive bond hearing to determine if continued detention is necessary by clear and convincing evidence does not outweigh Mateo's liberty interest and the risk of further erroneous deprivation that has already occurred.

157. In sum, it is clear, under Mathews, Petitioner demonstrates a likelihood of success on the merits of his claims asserting violations of his procedural due process rights.

e. Mateo Rodriguez-Pardo's 4th Amendment Rights have been violated by his prolonged unlawful detention by ICE and DHS.

158. ICE and DHS have not and cannot provide evidence that is new and material that proves clear and convincingly that continued detention is necessary.

159. The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community and preventing flight prior to removal.[21]

160. Mateo has previously demonstrated he is not a flight risk nor a danger to the community.

161. The Ninth Circuit has opined that final order of removal does not exist.

162. Continued detention is only authorized with new evidence of a material change, proven by clear and convincing evidence. DHS and ICE have failed to meet this burden.

163. There is no likelihood for the removal of Petitioner in the reasonably foreseeable future.

164. Respondents have repeatedly failed to follow their own regulations with respect to custody redetermination. Petitioner committed zero immigration violations regarding his 2021 Bond Order.

165. Respondents do not have probable cause to detain Petitioner and his continued detention is a violation of the Fourth Amendment to the U.S. Constitution.

[21] *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention.)

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

166. Petitioner incorporate by reference the allegations of the fact set forth in the preceding paragraphs.

167. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

168. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates the INA.

COUNT II

Request for Relief Pursuant to Declaratory Relief

169. Petitioner incorporate by reference the allegations of the fact set forth in the preceding paragraphs 1-165 as if fully set forth herein.

170. Declare the application of § 1225(b)(2) to Petitioners unlawfully mandates his continued detention and violates the INA.

171. Declare ICE, DHS, and EOIR are prohibited from considering Petitioner detained under that section and must consider Petitioner subject to detention under § 1225(a).

COUNT III

Violation of Fifth Amendment Procedural Due Process

172. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in paragraphs 1-165 as if fully set forth herein.

173. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution. Amend. V. "Freedom from imprisonment – from government, custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

174. In determining whether civil detention violates a detainee's due process rights, a three factor test is applied under the holding in *Mathews v. Eldridge,* 96 S.Ct. 893 (1976). Those factors are: (1) "the private interest that will be affected by the official action," (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

175. Petitioner has a fundamental interest in liberty and being free from official restraint.

176. The government's detention of Petitioner without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates his right to due process.

COUNT IV

Violation of Fourth Amendment

177. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in paragraphs 1-165 as if fully set forth herein.

178. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution. Amend. V. "Freedom from imprisonment – from government, custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

179. The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. See Zadvydas v. Davis, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention.) Petitioner has demonstrated he is not a flight risk nor a danger to the community.

180. ICE may re-detain a noncitizen released "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. §241.13(i)(2).

181. In the Ninth Circuit, continued detention must be proved by the government to be necessary by clear and convincing evidence.

182. DHS and ICE have not met their burden and there is no likelihood of for the removal of Petitioner in the reasonably foreseeable future.

183. Respondents do not have probable cause to detain Petitioner and his continued detention is a violation of the Fourth Amendment to the U.S. Constitution.

COUNT V

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(C)
in Excess of Statutory Authority

184. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in paragraphs 1-165 as if fully set forth herein.

185. Under the APA, a court shall "hold unlawful and set aside agency action…found to be … in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

186. "An agency…literally has no power to act-including under its regulations-unless and until Congress authorizes it to do so by statute." FEC v. Cruz, 596 U.S. 289, 301 (2022).

187. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or who removal order is on certain grounds specified in the statute. Even then if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [8 U.S.C. § 1231(a)(6)]. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances…"*Zadvydas v. Davis*, 533 U.S. 678, 699-700.

188. Respondent's internal custody redeterminations whereby ICE officers falsely stated Petitioner is a flight risk due to illegal re-entry and failure to set substantive and meaningful review hearings before an immigration judge to present new evidence justifying continued detention was in excess of statutory authority and should be held unlawful and set aside.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner prays this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner;

c. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition. Enjoin Respondents from removing him to a third

country without travel documents, acceptance from that country, notice, and opportunity to contest and from pursuing removal under any punitive banishment policy or practice.

d. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the INA and implementing regulations, the APA, and the Accardi doctrine;

e. **Order Petitioner's immediate release**;

f. Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Order that Petitioner's status quo be restored and that Petitioner be placed under the original Custody Redetermination Bond release ordered October 2021;

f. Grant any other and further relief that this Court deems just and proper.

Respectfully Submitted,

DATED: April 23, 2026

/s/Jonathan Aftalion

Jonathan Aftalion (SBOCA: 317235)
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