UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DIEGO ANÍBAL ALIAGA PEÑA Petitioner-Plaintiff, v. SIXTO MARRERO, *in his official capacity* as WARDEN, Imperial Regional Detention Facility; GREGORY J. ARCHEMBEAULT, *in his official capacity* as Field Office Director of the San Diego Immigration and Customs Enforcement Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity as* Acting Director, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security; MARKWAYNE MULLIN, i*n his official capacity* as Secretary, U.S. Department of Homeland Security: TODD BLANCHE, *in his official capacity* as Attorney General of the United States, Respondents - Defendants.	Case No. 26-cv-3279-JLS-MSB TRAVERSE AND RESPONSE TO RESPONDENT'S RETURN PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. The central claim in this case is that the Due Process Clause requires Respondents to afford Petitioner Diego Anibal Aliaga Pena a hearing prior to his re-detention before a neutral decisionmaker where Immigration and Customs Enforcement (ICE) is required to justify his re-detention. Respondents did not provide these required procedures upon re-detaining Mr. Pena in February, thus violating his due process rights, as several judges in this district have recognized, and as courts around the country have held. *See, e.g., E.A. T.-B. v. Wamsley*, --- F.

Supp. 3d ---- No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ----, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025). As a result, and as the cases above explain, Mr. Pena's immediate release is warranted.

2. Respondents' return focuses almost exclusively on an issue that was not raised in his habeas petition: the statutory basis for Mr. Pena's detention following his unlawful re-detention without a hearing. That question is neither here nor there: regardless of the basis for detention, due process required a hearing for Mr. Pena *prior* to his re-detention where ICE must prove by clear and convincing evidence that Mr. Pena violated his conditions of release and is now a flight risk or danger. Respondents do not meaningfully contest this point, which is dispositive of the habeas petition. Accordingly, the Court should grant the petition for a writ of habeas corpus and order Mr. Pena's release.

STATEMENT OF FACTS

3. The parties agree on critical facts in this case. In short, Mr. Pena entered the United States on November 4, 2023, and was released on his own recognizance. Dkt. 1-2. He was placed in removal proceedings when he was given an NTA on that same day. *Id.* Mr. Pena was later arrested and charged with first and second degree murder, along with inflicting injury on a cohabitant resulting in a traumatic condition. Dkt. 1-2 at 7-18. Respondent was arrested by immigration authorities on February 25, 2026 following his release from San Bernardino Sheriff's Department custody. Dkt. 7-1 at 11-13.

4. Mr. Pena remains scheduled for a July 1, 2026, individual calendar hearing. Exhibit 1. The only reason he faces that hearing in detention, rather than before a non-detained court where he has time to hire counsel and prepare, is because of Respondents' unlawful re-detention of him. Accordingly, this Court should immediately grant the habeas petition.

ARGUMENT

5. Mr. Pena's petition for writ of habeas corpus presents one claim: that he is currently being detained in violation of the Fifth Amendment's Due Process Clause because Respondents did not justify his re-detention before a neutral decisionmaker prior to his re-detention.Nevertheless, Respondents spend nearly their entire return arguing a statutory question of whether Mr. Pena is now detained under § 1225(b) or § 1226(a). That question is not presented in this petition: Mr. Pena did not raise it, and it is immaterial to the outcome of this case. The entire point of this petition is that prior to detaining him, the Due Process Clause required Respondents to provide notice and follow certain procedures. Notably, faced with a similar issue in a case involving a claim that due process requires a pre-deprivation hearing, Judge Evanson acknowledged that this same statutory question is inconsequential. As she explained, "Petitioner does not claim to be entitled to a hearing consistent with a particular statute: he argues that the Due Process Clause requires it." *E.A. T.-B., 2025 WL 2402130*, at *4. Thus, as in E.A. T.-B., the Court should therefore focus on the actual inquiry before it: whether the Due Process Clause requires Mr. Pena's release.

6. As court after court has recognized, it plainly does. In recent weeks and months, as ICE has begun to re-arrest persons who have been released on recognizance or parole for years, judges have resoundingly declared that due process requires Respondents to justify re-

detention before a neutral decisionmaker when re-detaining someone. *E.A. T.-B., 2025 WL 2402130* (W.D. Wash. case ordering release due to lack of pre-deprivation hearing); *Ramirez Tesara*, 2025 WL 2637663 (same); *Kumar*, 2025 WL 2677089 (same); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, --- F.Supp.3d ----, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (similar); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025). This case is no different, and accordingly, the Court should grant the habeas petition.

7. Courts analyzing this question have employed the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and Respondents do not meaningfully contest this point.[1] Accordingly, Mr. Pena addresses each Mathews factor below.

I. Mr. Pena has a weighty private interest.

8. Mr. Pena has an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of his liberty. Indeed, his "interest in not being detained is 'the most elemental of liberty interests[.]'" *E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in

[1] Respondents note that the Supreme Court has not applied Mathews to an immigration detention challenge. Dkt 8 at 13–14. However, they offer no authority stating the test does not apply, nor can they, as nearly all the decisions in this context apply Mathews. Moreover, the Ninth Circuit has in fact applied Mathews to address what process is due a noncitizen in the immigration detention context. See, e.g., Hernandez v. Sessions, 872 F.3d 976, 993 (9th Cir. 2017).

original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); see also *Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner "has an exceptionally strong interest in freedom from physical confinement"); *Kumar*, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) ("Petitioner has a very strong interest in not being detained."). "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez*, 872 F.3d at 990 (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. See, e.g., *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

9. This principle applies with significant force given Mr. Pena's initial release from detention on his own recognizance. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process

before he is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). As the Hurd court explains, this includes cases of "pre-parole conditional supervision," id. (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," id. (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and "parole," id. (citing *Morrissey*, 408 U.S. at 482).

10. These principles apply with even more force here, where civil immigration detention is concerned, than in cases involving renewed incarceration in the criminal context. As one court has explained, "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees in Morrissey." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Parolees and probationers have a diminished liberty interest because of their underlying convictions. See, e.g., *United States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible punishments . . . ." (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled . . . ." (citation modified)). Nonetheless, even in the criminal parole and supervised release context, courts have held that parolees cannot be re-arrested without a due process hearing affording them the opportunity to contest the legality of their re-incarceration. See, e.g., *Hurd*, 864 F.3d at 684.

11. Critically, in recent months and years, courts—including this one—have repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases involving re-detention. As Judge Evanson explained in *E.A. T.-B.*, a person re-detained after a prior release from ICE custody is "undoubtedly deprive[d] . . . of an established interest in his

liberty." 2025 WL 2402130, at *3. Other courts have reached the same conclusion. See, e.g., *Ramirez Tesara*, 2025 WL 2637663, at *3 ("When he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause."); *Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [the petitioner] to build a life outside detention, albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody, which would allow him to continue in these life activities, including supporting his family."); *Pinchi*, 2025 WL 2084921, at *4 ("[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church."); *Maklad*, 2025 WL 2299376, at *8 (similar).

12. As in these cases, Mr. Pena has a strong interest in his liberty. Prior to his re-detention, Mr. Pena had lived in this country for almost three years, working and developing ties to it. He developed a community here, and complied with all the conditions required of him, including attending his court proceedings. These facts demonstrate that Mr. Pena had a significant due process interest in not being re-detained without notice and a hearing, and that he is in fact entitled to freedom from confinement, other than attending complying with his immigration proceedings and his previous conditions of release.

13. As Mr. Pena explains below, that government interest is not some sweeping power to detain any noncitizen. Instead, the true government interest here is whether someone like Mr. Pena may be detained without a pre-deprivation hearing that determines if detention is necessary. That interest is a minimal one.

II. The risk of erroneous deprivation is high absent additional safeguards.

14. Second, "the risk of erroneous deprivation of [Mr. Pena's] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B.*, 2025 WL 2402130, at *4. "That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Id.* His re-detention must still "bear[] [a] reasonable relation" to a valid government purpose—here, preventing flight or protecting the community against dangerous individuals. *Zadvydas*, 533 U.S. at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified and that Mr. Pena poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only the "government enforcement agent" has made any decision about the propriety of detention, *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), a far cry from the hearing before a neutral decisionmaker that due process requires, see, e.g., *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."); see also *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar).

15. Notably, Mr. Pena did not (and has not) even received notice of the basis for his re-detention, much less any opportunity to respond to any allegations purporting to justify his re-detention or a hearing before a neutral decisionmaker. In fact, Respondents' filing never even explains on what basis Mr. Pena was re-detained. Dkt. 7-1 at 9-13. This simply underscores the arbitrary and unlawful nature of Mr. Pena's re-detention.

16. As this Court explained in *Ramirez Tesara*, "[o]nce established, Petitioner's interest in liberty is a constitutional right which may only be revoked through methods that comport with due process, such as a hearing in front of a neutral party to determine whether Petitioner's re-detainment is warranted." 2025 WL 2637663, at *3 (citing *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). Notably, at the time he was initially arrested, Mr. Pena was not the subject of a statute requiring mandatory detention, as Respondents released him on his own recognizance pursuant to 8 U.S.C. § 1226(a). But even if he was, the importance of a hearing before a neutral decisionmaker remains. This is because, as this Court explained in *E.A. T.-B.*, "Petitioner does not claim to be entitled to a hearing consistent with a particular statute: he argues that the Due Process Clause requires it." *2025 WL 2402130*, at *4. And due process requires such a hearing because "Petitioner's circumstances have changed materially" since his release in April 2022. *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). Apart from his core interest in being free from imprisonment, Mr. Pena's ties to this country have deepened over the three years he has resided here. "These facts show that a[] pre-deprivation] hearing provide[s] additional safeguards under these circumstances." *Id.*; see also, e.g., *Jorge M.F.*, 534 F. Supp. 3d at 1055 ("In any pre-detention hearing, the IJ would be required to consider any additional evidence from the eight-plus months since Petitioner was released."); *Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [Petitioner] to build a life outside detention.").

17. Respondents do not contest this factor whatsoever. Respondents simply detained Mr. Pena without notice, without a hearing, and without a chance to require ICE to prove his detention is now justified before a neutral decisionmaker. By contrast, the additional safeguards that

due process would require Respondents to provide would ensure that his detention remains tethered to some lawful purpose. Here, the record "does not paint the picture of a flight risk," as Mr. Pena timely attended his immigration proceedings, timely filed for asylum, as the Immigration and Nationality Act (INA) expressly permits as per 8 U.S.C. § 1158 and is awaiting his individual hearing in immigration court. *Ramirez Tesara*, 2025 WL 2637663, at *4. Accordingly, this factor also overwhelmingly favors Mr. Pena.

III. The government's interest is minimal.

18. Finally, "the government's interest in detaining [Petitioner] or re-detaining [him] without a hearing is slight." *Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970 ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). "[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing . . . before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *E.A. T.-B.*, 2025 WL 2402130, at *5.

19. Any claimed "enforcement" amounts to punishing and deterring people like Mr. Pena from asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.

20. In addition, the government's interest is not limited to enforcement of the law; instead, it also encompasses the interest of the "public," including the administrative or financial burdens additional process requires. *Mathews*, 424 U.S. at 348. Here, any cost in holding a hearing prior to re-detention, should the government choose to do so, is minimal. Moreover, any

financial burden is outweighed by the costs of detaining Mr. Pena during such proceedings. In addition, "[s]ociety's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required." *Lopez v. Heckler,* 713 F.2d 1432, 1437 (9th Cir. 1983); see also *Morrissey*, 408 U.S. at 484 ("Society . . . has an interest in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole, given the breach of parole conditions."). This consideration also "cuts strongly in favor" of Mr. Pena because when "[w]hen the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time, as in this case, it separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).

21. In sum, Mr. Pena is able to demonstrate that he "has a protected liberty interest in his continuing release from custody, and that due process requires that [he must] receive a hearing before an immigration judge before he can be re-detained." *E.A. T.-B.*, 2025 WL 2402130, at *5.

IV. Immediate release is warranted.

22. As in *Ramirez Tesara*, *E.A. T.-B.*, and *Kumar,* this Court should order Mr. Pena's immediate release. "[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A. T.-B.*, 2025 WL 2402130, at *6; see also *Kumar*, 2025 WL 2677089 ("[R]elease following post-deprivation procedures is insufficient to remedy the alleged harm because the alleged harm, i.e., a potentially erroneous detention, has happened and is continuing to occur."). Consistent

with these decisions, Mr. Pena's unlawful detention without a pre-deprivation hearing is already occurring, and only immediate release remedies that issue.

CONCLUSION

23. For all the foregoing reasons, due process requires Respondents to afford Mr. Pena a hearing before a neutral decisionmaker where ICE must justify re-detention by clear and convincing evidence before re-detaining him. Because Respondents have not provided that constitutionally-required process, immediate release is warranted, and the Court should grant the habeas petition. In so ordering, the Court should specify that Mr. Pena must be released on the same conditions of release that Respondents had imposed upon him prior to his re-arrest in February.

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Respectfully Submitted,

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