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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JUAN DIEGO FELIPE, *Petitioner,* v. CHRISTOPHER LAROSE, Facility senior warden at the Otay Mesa Detention Facility, GREGORY J. ARCHAMBEAULT, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, and PAM BONDI, U.S. Attorney General.	**CIVIL CASE NO.: 26-CV-3290-CAB** **TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

1. Mr. Felipe possesses a protected liberty interest in remaining out of custody.

In its Return to Petition, Respondents agree that Petitioner "appears to be a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santa* Cruz, 813 F. Supp. 3d 1084 (C.D. Cal. 2025)." Dkt. No. 4. Thus, Respondents do not oppose an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. §1226(a). *Id.*

Mr. Felipe agrees that he should not be subject to mandatory custody. However, this Court should order his immediate release rather than ordering a bond hearing before the immigration court. As an individual who has been at liberty in the United States with the knowledge of the immigration authorities since 2012, he has a constitutionally protected liberty interest in remaining free from detention. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *see also Sanchez v. LaRose*, No. 25-cv-2396-JES-MMP, 2025 WL 2770629, at * 3 (S.D. Cal. Sept. 26, 2025). Mr. Felipe's liberty interest is like the interest of individuals who are paroled into the United States and released to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

The same liberty interest should also apply here because Mr. Felipe applied for Deferred Action for Childhood Arrivals (DACA) in 2012, provided his home address, and appeared for a biometrics appointment with the United States Citizenship and Immigration Services (USCIS). His application was denied in 2013, because USCIS concluded that he had not established that he had continuously resided in the U.S. since 2007. However, he continued to live at the same address he provided in his application, and he was allowed to remain at liberty in the United States since that time. This Court should thus order the immediate release of Mr. Felipe.

Because Mr. Felipe had previously been at liberty within the United States with the knowledge of the immigration authorities, Due Process Requires notice and a hearing prior to his re-detention. "[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 v. Davis*, 533 U.S. 678 (2001). Accordingly, "[i]t is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (internal quotation marks omitted) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Due process "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

Traditionally, to determine what protections due process demands in a given situation, courts consider the three *Mathews* factors: (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 of additional safeguards; and (3) the government's interest, including the function involved and that burdens that would be imposed by additional process. *See Mathews v. Eldridge*, 424 U.S. at 335 (1976). In applying these factors specifically to the context of a person challenging immigration detention, courts assess: (1) the petitioner's liberty interest in remaining out of custody; (2) the risk of erroneous deprivation of that interest in remaining out of custody; and (3) the government's interest in detaining the petitioner without affording pre-deprivation notice, reasoning, and a hearing. *Ramirez-Bibiano v. LaRose*, No. 25-CV-3429 JLS (SBC), 2025 WL 3632748 at *4–5 (S.D. Cal. Dec. 15, 2025).

Consistent with the traditional *Mathews* three-factor test, district courts in the Ninth Circuit have formulated a bright-line Due Process rule: if a noncitizen has been paroled into the U.S., the government may not revoke their parole or re-detain them without first affording pre-deprivation notice and a hearing establishing that the person is now a danger or flight risk—failure to provide this is a violation of the person's Fifth Amendment Due Process rights requiring immediate habeas relief. *See, e.g.*, *Ramirez-Bibiano*, 2025 WL 3632748 (ordering

immediate habeas relief; holding the government's summary revocation of parole and re-detention without pre-deprivation notice or a hearing establishing present risk of danger or flight violates Fifth Amendment Due Process); *see also Noori v. LaRose,* 807 F. Supp. 3d. 1146 (S.D. Cal. 2025)(granting immediate habeas release; holding the government's summary revocation of parole and re-detention without pre-deprivation notice, reasons, and a hearing establishing present danger or flight risk violated due process under *Mathews*); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130 1135–39 (W.D. Wash. 2025) (granting TRO and ordering immediate release; applying *Mathews* to hold that even though petitioner's parole had expired, because he had previously been paroled, his re-detention without a pre-deprivation hearing establishing a justification for re-detention violated due process under *Mathews*); *Fernandez Lopez v. Wofford*, No. 1:25-CV-01226-KES-SKO (HC), 2025 WL 2959319, at *6 (E.D. Cal. Oct. 17, 2025) (ordering immediate habeas release; canvassing seven cases establishing the principle that re-detention of a previously paroled noncitizen without a pre-deprivation hearing establishing a change in the person's risk of danger or flight violates Due Process and requires immediate habeas relief).

Courts have applied this same rationale to individuals who are released on their own recognizance. *See Maceo-Aguilera v. LaRose*, 26-CV-532-LL-MSB, 2026 WL 381633 (S.D. Cal. Feb. 11, 2026); *Escamilla Alvarado v. Casey,* No. 26-

cv-2593-JO-BJW (S.D. Cal. May 7, 2026), Dkt. No. 6; *Magana-Hernandez v. Casey,* No. 26-cv-2952-JLS (MSB) (S.D. Cal. May 18, 2026), Dkt. No. 5; *Diaz v. Casey,* No. 26-cv-3306-RSH-BJW (S.D. Cal. June 4, 2026), Dkt. No. 5. Similarly here, the decision by the immigration authorities to allow Mr. Felipe to remain at liberty and not subject him to ICE custody "reflected a determination by the government that [he] was neither a flight risk nor a danger to the community, and [Petitioner] has a strong interest in remaining at liberty unless [he] no longer meets those criteria." *Pinchi v. Noem*, 792 F. Supp. 3d. 1025, 1034 (N.D. Cal. 2025).

While the government has discretion to revoke his liberty, it may not do so in a manner that violates Mr. Felipe's constitutional rights. Because Mr. Felipe previously applied for DACA in 2012 and had been at liberty in the United States living at the same address since then, due process requires that he be provided with a pre-deprivation bond hearing prior to his re-detention. *See Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737, *4 (S.D.N.Y. 2025).

2. Petitioner was not afforded notice and a hearing before the government revoked his liberty.

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. To determine which procedures are constitutionally sufficient to

satisfy the Due Process Clause, the Court applies the three-part test established in *Mathews,* 424 U.S. 319. The Court must consider: (1) "the private interest that will be affected by the official action;" (2) the "risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (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.

Here, all three factors support a finding that Respondents' revocation of Petitioner's release without notice and an opportunity to be heard deprived Petitioner of his due process rights. First, Petitioner has a significant liberty interest in remaining out of custody. "Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Pinchi*, 792 F. Supp. 3d at 1032.

"Second, the risk of an erroneous deprivation of such interest is high as Petitioner's [liberty] was revoked without . . . giving [him] an opportunity to be heard." *Gonzalez Salazar v. Casey*, Case No.: 25-CV-2784 JLS, 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-CV-00801-KES, 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where, as here, Petitioner "has not received any bond or custody redetermination hearing," the "risk of an erroneous deprivation of liberty is high"). "Civil immigration

detention is permissible only to prevent flight or protect against danger to the community." *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690). Here, there is no evidence that Petitioner's detention would serve either purpose. He had been at liberty in the United States since 2012, living with his family at the same address he had provided to USCIS where he has lived since 2008. He has no criminal record. He is thus not a flight risk nor a danger to the community.

Third, Respondents' interest in detaining Petitioner without a hearing is low. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("If the government wishes to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."); *Pinchi*, 792 F. Supp. 3d at 1036 ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest."). "Therefore, because Respondents detained Petitioner by revoking [his release] in violation of the Due Process Clause, [his] detention is unlawful." *Gonzalez Salazar*, 2025 WL 3063629, at *5.

For the foregoing reasons, this Court should grant Mr. Felipe's habeas petition and order his immediate release. If the government wishes to detain Petitioner, the government must provide Petitioner with notice of the reasons for

the revocation of his liberty and an opportunity to be heard before a neutral decision maker.

Respectfully submitted,

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