Kirsten Zittlau (CA Bar No. 220809)
Zittlau Law
P.O. Box 161139
San Diego, California 92176
Tel: (619) 252-6888
zittlaulaw@gmail.com

Attorney for Petitioner

U.S. DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Castulo Angel MERLIN SEGUNDO,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents-Defendants.

Case No.: 26-cv-04032-RSH-MMP

PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully files his Traverse in response to the Government's Return as follows:

Respondents have not substantively addressed Petitioner's arguments in the Petition that the Petition should be granted under the Administrative Procedures Act (APA) and/or Due Process grounds, and any arguments in this regard have been waived by the Respondents. "Generally, a party waives argument when it fails to respond to an argument made to the court." United States v. Cabrera, 796 F. Supp. 3d 660, 664 (S.D. Cal. 2025) (citing United States v. Caceres-Olla, 738 F.3d 1051, 1053 n.1 (9th Cir. 2013)).

As discussed in the Petition, the Petitioner is a conditional parolee with due process rights and a strong liberty interest. See Morrissey v. Brewer, 408 U.S. 471, 482 (1972). The fact that the Petitioner was not necessarily issued conditional parole documents is not dispositive here – what is dispositive is whether the Petitioner is properly detained under Section 1225(b)(2) *and* whether he had/has a liberty interest under the due process clause of the Constitution and it has been violated. The Respondents fail to justify or provide any legal analysis as to why Section 1225(b)(2) would suddenly apply to someone who has been living in the U.S. and whom they have treated otherwise for 10 years. To the contrary, Petitioner has provided legal analysis and discussion of statutory interpretation and case law supporting the fact that Section 1225(b)(2) does not apply to the Petitioner. (See Docket 1, pp. 25-27).

Moreover, even if Section 1225 suddenly applied to Petitioner, this does not alleviate the requirement that any detention be done in compliance with the Due Process Clause of the U.S. Constitution. Turning then to the Petitioner's due process liberty interest, the Petitioner has a significant liberty interest and did when he was arrested by ICE earlier this month. First, the Petitioner was detained and released by ICE in 2016 and was required to attend

ISAP / ICE check-ins. (Docket 1, p. 4:1-3). As such, he was a "conditional parolee" with a liberty interest regardless of what paperwork he was or was not issued. Then the Petitioner was also issued and re-issued employment authorization documents in 2017 and 2019 authorizing him to be at liberty and work within the United States. (Docket 1, p. 4:3-7.) In April of 2020 when he was finally issued a Notice to Appear in immigration court (Docket 1, p. 4:7-16), he was allowed to do so in the non-detained setting – thus further strengthening his liberty interest. Ultimately those proceedings were administratively closed or terminated. Yet on July 2, 2026 of this year, the Petitioner was abruptly stripped of this liberty interest with no due process (e.g., pre-deprivation hearing or even notice of reasons for the revocation of his liberty).

Having established the Petitioner has a strong liberty interest which has been stripped in violation of his due process rights – and as discussed in the Petition, all three factors from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) fall in the Petitioner's favor (see Docket 1, pp. 19-24) – the Petitioner respectfully submits the constitutionally adequate remedy here is immediate release. This is especially the case in light of the fact that Respondents cannot point to any changed circumstances justifying his re-detention since his arrest and release 10 years ago.

A Section 1226(a) bond hearing here is not appropriate because that "misapprehend[s] the purpose of a pre-detention hearing: if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid." *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021); *see also E.A.T.B. v. Wamsley*, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such 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."); *Domingo v. Kaiser*, Case No. 25-cv-05893, 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

To comport with due process, a pre-deprivation hearing is required when seeking to re-detain a parolee. "[T]he root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985) (emphasis added). The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." Zinermon v. Burch, 494 U.S. 113, 127 (1990) (emphasis in original).

Only in a "special case" where post-deprivation remedies are the "only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. Zinermon v. Burch, 494 U.S. at 128. Further, only where "one of the variables in the *Matthews* equation – the value of pre-deprivation safeguards – is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossibly by providing pre-deprivation process," can the government avoid providing the pre-deprivation process. Id. As such, to remedy Respondents' violation, Petitioner must be released and prohibited from being re-detained by DHS without a pre-deprivation hearing before a neutral arbiter.

District courts applying the foregoing principles have repeatedly held that an ordinary post-detention bond hearing cannot cure the denial of constitutionally required pre-

deprivation process. See *Xiaoming Yang v. Field Office Director*, No. 5:26-cv-02334-AJR, slip op. at 10 n.2 (C.D. Cal. May 18, 2026) ("The fact that Petitioner could receive a post-deprivation bond hearing while in custody does not remedy the violation of Petitioner's procedural due process rights."); *Anderson v. Chestnut*, No. 1:26-cv-01960-DAD-CKD, slip op. at 4–5 (E.D. Cal. Mar. 24, 2026) (holding that a bond hearing provided two months after detention and only after the petitioner sought habeas relief did not cure the denial of pre-deprivation process); *Vazquez v. Mullin*, No. C26-2039-KKE, slip op. at 4 (W.D. Wash. July 2, 2026) (holding that a post-deprivation hearing is inadequate because it occurs after the fact and cannot prevent an erroneous deprivation of liberty); *Victoriano v. Mullin*, No. 2:26-cv-00886-RAJ, slip op. at 10–11 (W.D. Wash. May 1, 2026) (holding that detention imposed without pre-deprivation process was unlawful from its inception and that a post-detention bond hearing would be an inadequate procedural safeguard); *Soto v. Bondi*, No. 2:26-cv-00652-BAT, slip op. at 8 (W.D. Wash. Apr. 10, 2026) (concluding that although the petitioner could request a bond hearing, a post-deprivation hearing was inadequate because it would occur only after detention); *A.B.J.C. v. Hermosillo*, No. 2:26-cv-00185-JNW, slip op. at 5–6 (W.D. Wash. Feb. 23, 2026) (holding that post-deprivation proceedings cannot adequately safeguard against an erroneous deprivation because they occur after the fact); *Castellano v. Blanche*, No. 2:26-cv-00124-GMN-BNW, slip op. at 10–11 (D. Nev. May 20, 2026) (concluding that a later bond hearing would not adequately vindicate the right to pre-deprivation process); see also *Banol v. Warden*, No. 5:26-cv-00529-CAS-ACCV, slip op. at 11–12 (C.D. Cal. Mar. 19, 2026).

Finally, in addition to the due process violations inherent in the unlawful detention of Petitioner, Petitioner also seeks relief under the Administrative Procedures Act. Under the

APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C). Because the arrest of the Petitioner – a person with a strong liberty interest who was provided no due process prior to his arrest – was arbitrary and capricious, this unlawful agency action must be set aside and Petitioner should be immediately released. See e.g., *Loaiza Arias v. LaRose*, Case No. 3:25-cv-02595-BTM-MMP (S.D. Cal. November 25, 2025) (ordering release of re-detained humanitarian parolee on APA grounds).

As such, Petitioner respectfully requests the habeas petition be granted and that he be ordered immediately released.

Dated: July 22, 2026,

By: /s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner
Email: zittlaulaw@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the U.S. District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: July 22, 2026

/s/ Kirsten Zittlau
Kirsten Zittlau