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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARIO REBELLON LONDONO
(A-Number: [redacted]
Petitioner,

vs.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
PATRICK DIVVER, San Diego Field Office Director, ICE;
WARDEN, OTAY MESA DETENTION CENTER; and
TODD BLANCHE, Attorney General of the United States
Respondents.

Case No. 3:26-cv-04053-JES-SBC

Agency No. [redacted]

PETITIONER'S REPLY TO REPONDENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Mario Rebellon Londono, by and through undersigned counsel, respectfully submits this Reply to Respondents' Response to Petition for Writ of Habeas Corpus (ECF No. 4).

I. PETITIONER ACCEPTS RESPONDENTS' CONCESSION ON THE MERITS

Petitioner accepts Respondents' explicit concession that under binding Southern District of California precedent—including *Martinez Lopez v. LaRose*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025) and *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025)—Petitioner's civil detention is governed strictly by 8 U.S.C. § 1226(a), rendering his mandatory detention under 8 U.S.C. § 1225(b)(2) unlawful.

Because Respondents affirmatively state that they "do not oppose the petition and defer to the Court on the appropriate relief" (ECF No. 4 at 3), the Petition must be **GRANTED** without delay.

II. CONSTITUTIONAL GROUNDS MANDATING IMMEDIATE RELEASE OR AN EXPEDITED 7-DAY BOND HEARING

Respondents suggest in Footnote 1 that this Court should decline to reach Petitioner's constitutional arguments, and in Footnote 2 seek a 14-day delay while asserting that Petitioner bears the burden of proof. Petitioner firmly rebuts these positions on constitutional grounds:

A. Fifth Amendment Procedural and Substantive Due Process Mandates Immediate Release

1. **Unconstitutional Deprivation of Liberty:** Freedom from physical restraint is the paramount liberty interest protected by the Fifth Amendment's Due Process Clause (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).
2. **Arbitrary Re-Detention After Prior Release:** As Respondents explicitly acknowledge, Petitioner was previously released from immigration custody on conditional parole / recognizance under 8 U.S.C. § 1226(a). Re-detaining Petitioner four years later without prior notice, a change in circumstances, or a pre-deprivation hearing violates procedural and substantive Due Process.
3. **Appropriate Remedy:** Where civil detention is constitutionally infirm from its inception, immediate release under his prior terms of release on recognizance is the primary, constitutionally required remedy to restore the *status quo ante*.

B. The Eighth Amendment Excessive Bail Clause and Substantive Due Process Prohibit a 14-Day Delay

1. **Eighth Amendment Protection:** Under the Eighth Amendment's Excessive Bail Clause, civil detention imposed without prompt, individualized judicial review is unconstitutional (*Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780 (9th Cir. 2014) (en banc)). Every additional day Petitioner spends in unlawful mandatory detention inflicts ongoing, irreparable constitutional harm.
2. **Medical Urgency Under Due Process:** Petitioner suffers from **severe asthma** requiring a daily rescue inhaler. Forcing a medically vulnerable noncitizen to endure prolonged, unconstitutional confinement in a detention center violates substantive due process protections against arbitrary administrative hardship.
3. **7 Calendar Days Maximum:** If the Court orders a bond hearing rather than immediate release, EOIR must be ordered to conduct the hearing within **seven (7) calendar days**. Respondents' request for 14 days (ECF No. 4 at 3 n.2) unnecessarily prolongs an admitted constitutional deprivation.

C. The Fifth Amendment Assigns the Burden of Proof to the Government by Clear and Convincing Evidence

1. **Constitutional Allocation of Burden:** Under the Fifth Amendment's Due Process Clause, whenever the government seeks to deprive an individual of physical liberty in civil proceedings, the **government must bear the burden of proof by clear and convincing evidence** (*Addington v. Texas*, 441 U.S. 418, 432 (1979); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)).
2. **Satisfaction Under Any Standard:** While Petitioner reserves all constitutional objections to placing the burden on the detainee under *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), Petitioner overwhelmingly satisfies any standard of proof:
    - **Zero Criminal Record:** As documented in DHS's own records, Petitioner has a **spotless, "NEGATIVE" criminal history** with no arrests, convictions, or warrants.
    - **Approved Visa Petition:** Petitioner is married to a U.S. citizen, Esmeralda Garcia, and possesses an **approved Form I-130 Immigrant Visa Petition.**
    - **Active Regulatory Compliance:** Petitioner fully paid his National Visa Center (NVC) fees and proactively filed a **Form I-601A Provisional Unlawful Presence Waiver** with biometrics captured prior to his apprehension.

III. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court issue an Order:

1. **GRANTING** the Petition for Writ of Habeas Corpus;
2. Ordering Respondents to **IMMEDIATELY RELEASE** Petitioner from custody under his prior conditions of release on recognizance; **OR, IN THE ALTERNATIVE,**

3. Directing Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within **seven (7) calendar days** of this Court's Order, where the government bears the burden of proof by clear and convincing evidence; and
4. Enjoining Respondents from re-detaining Petitioner without advance written notice and a pre-deprivation hearing.

Dated: 7/21/2026

Respectfully submitted,

/s/Hernando De Cima
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CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/21/2026, I filed the foregoing with the Clerk of the Court via CM/ECF and will serve the Respondents and the U.S. Attorney's Office for the Southern District of California.

Dated: 7/21/2026

Respectfully submitted,

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