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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

YHOAN ALEXANDER MELENDEZ-  
BELLO  
(A-Number: 249 228 004),

Petitioner,

v.

CHRISTOPHER CHESTNUT, *et al.*,

Respondents.

Case No. 1:26-cv-02053-JLT-CDB (HC)

FINDINGS AND RECOMMENDATIONS TO  
GRANT PETITION FOR WRIT OF HABEAS  
CORPUS

(Doc. 1)

**7-Day Objection Period**

Petitioner Yhoan Alexander Melendez-Bello, a federal immigration detainee proceeding by counsel, initiated this action on March 13, 2026, with the filing of a petition for writ of habeas corpus under 28 U.S.C. § 2241. (Doc. 1). Petitioner is in custody the of Immigration and Customs Enforcement (“ICE”) at the California City Correctional Center. *Id.* ¶ 1. Respondents are: Christopher Chestnut, Warden of the California City Correctional Center; Markwayne Mullin, Secretary of the Department of Homeland Security (“DHS”); Todd Blanche, Acting Attorney General of the United States; Todd M. Lyons, Acting ICE Director; and Sergio Albarran, ICE Field Office Director, San Francisco Field Office.<sup>1</sup> *See id.*

At the Court’s direction, Respondents filed a response to the petition on April 14, 2026.

<sup>1</sup> Todd Blanche is automatically substituted for Pamela Bondi, former United States Attorney General, and Markwayne Mullin for Kristi Noem, former Secretary of DHS. *See* Fed. R. Civ. P. 25(d).

1 (Doc. 8). Petitioner filed a traverse on April 16, 2026. (Doc. 9). For the reasons set forth herein,  
2 the undersigned recommends that Petitioner’s petition for writ of habeas corpus be granted.

3 **I. Relevant Background**

4 The relevant facts are drawn from the parties’ filings. *See* (Docs. 1, 8, 9). Petitioner is a  
5 native and citizen of Venezuela who unlawfully entered the United States on or about December  
6 12, 2023, and was apprehended by Border Patrol; he was issued a Notice to Appear and released  
7 on recognizance on December 15, 2023. (Doc. 1 ¶¶ 28-31; Doc. 8-2). Petitioner later filed an  
8 application for asylum, withholding of removal, and protection under the United Nations  
9 Convention Against Torture. (Doc. 1 ¶ 32). During the approximately two-year period of his  
10 release from the custody of immigration authorities, Petitioner was never charged with a crime,  
11 established ties to the community, and maintained lawful employment. *Id.* at ¶¶ 44, 64. On  
12 December 13, 2025, his vehicle was pulled over by police in Salt Lake City, Utah, and Petitioner  
13 taken into custody. *Id.* ¶ 33; (Doc. 8-1 at 2). He was charged with “Open Container/Drinking  
14 Alcohol in a vehicle”; the charges remain pending. (Doc. 8-1 at 2; Doc. 9 ¶ 4). He was  
15 subsequently encountered at the Salt Lake City Metro Jail on December 15, 2025, detained by ICE,  
16 and returned to immigration detention. (Doc. 1 ¶ 33; Doc. 8-1 at 2).

17 The Court also takes judicial notice that Petitioner has a master hearing scheduled for June  
18 12, 2026.<sup>2</sup>

19 **II. Governing Authority**

20 **A. The Writ of Habeas Corpus**

21 Writ of habeas corpus relief extends to a person in custody under the authority of the United  
22 States. *See* 28 U.S.C. § 2241. A district court considering an application for a writ of habeas corpus  
23 shall “award the writ or issue an order directing the respondent to show cause why the writ should  
24 not be granted, unless it appears from the application that the applicant or person detained is not

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25 <sup>2</sup> *See* <https://acis.eoir.justice.gov/en/caseInformation> (last visited May 28, 2026, using Petitioner’s  
26 A-Number and nationality); *Daniels-Hall v. National Edu. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (“It  
27 is appropriate to take judicial notice of this information, as it was made publicly available by government  
28 entities ... and neither party disputes the authenticity of the web sites or the accuracy of the information  
displayed [ ] therein.”); *Argueta v. Walgreens Co.*, 760 F. Supp. 3d 1028, 1034 (E.D. Cal. 2024) (taking  
judicial notice of information on federal government agency’s website).

1 entitled thereto.” 28 U.S.C. § 2243.

2 Relevant here, “in cases that do not involve a final order of removal, federal habeas corpus  
3 jurisdiction remains in the district court” pursuant to 28 U.S.C. § 2241 where the petitioner  
4 “challenges his confinement on statutory and constitutional grounds.” *Nadaraja v. Gonzales*, 443  
5 F.3d 1069, 1075-76 (9th Cir. 2006); accord *Flores-Torres v. Mukasey*, 548 F.3d 708, 713 (9th Cir.  
6 2008) (holding “the district court has jurisdiction over Torres’s habeas petition challenging his  
7 detention” in ICE custody).

8 **B. Statutory Immigration Framework (8 U.S.C. § 1225 and § 1226)**

9 Two statutes govern the detention and removal of inadmissible noncitizens from the United  
10 States: 8 U.S.C. § 1226 and § 1225. Relevant here is the legal background presented by the district  
11 court in *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503 (N.D. Cal. Sept 12,  
12 2025), which the undersigned adopts herein:

13 **1. Full Removal Proceedings and Discretionary Detention**  
14 **(§ 1226)**

15 The “usual removal process” involves an evidentiary hearing before  
16 an immigration judge. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591  
17 U.S. 103, 108 (2020). Proceedings are initiated under 8 U.S.C.  
18 § 1229(a), also known as “full removal,” by filing a Notice to Appear  
19 with the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N.  
20 Dec. 520, 520 (BIA 2011). Section § 1226 provides that while  
21 removal proceedings are pending, a noncitizen “may be arrested and  
22 detained” and that the government “may release the alien on ...  
23 conditional parole.” § 1226(a)(2); accord *Thuraissigiam*, 591 U.S. at  
24 108 (during removal proceedings, applicant may either be “detained”  
25 or “allowed to reside in this country”). When a person is apprehended  
26 under § 1226(a), an ICE officer makes the initial custody  
27 determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022)  
28 (citing 8 C.F.R. § 236.1(c)(8)). A noncitizen will be released if he or  
she “demonstrate[s] to the satisfaction of the officer that such release  
would not pose a danger to property or persons, and that the alien is  
likely to appear for any future proceeding.” *Id.* (citing 8 C.F.R.  
§ 236.1(c)(8)).

“Federal regulations provide that aliens detained under § 1226(a)  
receive bond hearings at the outset of detention.” *Jennings v.*  
*Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)).  
If, at this hearing, the detainee demonstrates by the preponderance of  
the evidence that he or she is not “a threat to national security, a  
danger to the community at large, likely to abscond, or otherwise a  
poor bail risk,” the IJ will order his or his release. *Diaz*, 53 F.4th at  
1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)).

1 Once released, the noncitizen’s bond is subject to revocation. Under  
2 8 U.S.C. § 1226(b), “the DHS has authority to revoke a noncitizen’s  
3 bond or parole ‘at any time,’ even if that individual has previously  
4 been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D.  
5 Cal. 2019). However, if an immigration judge has determined the  
6 noncitizen should be released, the DHS may not re-arrest that  
7 noncitizen absent a change in circumstance. *See Panosyan v.*  
8 *Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021). Where the release  
9 decision was made by a DHS officer, not an immigration judge, the  
10 Government’s practice has been to require a showing of changed  
11 circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp.  
12 3d 1168, 1197 (N.D. Cal. 2017).

## 2. Expedited Removal and Mandatory Detention (§ 1225)

3 While “§ 1226 applies to aliens already present in the United States,”  
4 U.S. immigration law also “authorizes the Government to detain  
5 certain aliens seeking admission into the country under  
6 §§ 1225(b)(1) and (b)(2),” a process that provides for expedited  
7 removal. *Jennings*, 583 U.S. at 303 (2018). Under § 1225, a  
8 noncitizen “who has not been admitted or who arrives in the United  
9 States” is considered “an applicant for admission.” 8 U.S.C.  
10 § 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225  
11 authorizes “expedited removal.” § 1225(b)(1). § 1225(b)(1) provides  
12 that:

13 “If an immigration officer determines that an alien  
14 (other than an alien described in subparagraph (F))  
15 who is arriving in the United States or is described in  
16 clause (iii) is inadmissible under section  
17 212(a)(6)(C) or 212(a)(7) [8 U.S.C. § 1182(a)(6)(C)  
18 or 1182(a)(7)], the officer shall order the alien  
19 removed from the United States without further  
20 hearing or review unless the alien indicates either an  
21 intention to apply for asylum under section 208 [8  
22 USCS § 1158] or a fear of persecution.”

23 Sections 8 U.S.C. § 1182(a)(6)(C) and 1182(a)(7) respectively refer  
24 to noncitizens who are inadmissible due to misrepresentation or  
25 failure to meet document requirements. Clause (iii) of § 1225(b)(1)  
26 allows the Attorney General (who has since delegated the  
27 responsibility to the Department of Homeland Security Secretary) to  
28 designate for expedited removal noncitizens “who ha[ve] not been  
admitted or paroled into the United States, and who ha[ve] not  
affirmatively shown, to the satisfaction of an immigration officer,  
that the alien has been physically present in the United States  
continuously for the 2-year period immediately prior to the date of  
the determination of inadmissibility under this subparagraph.”  
§ 1225(b)(1)(A)(iii)(II).

To summarize, under § 1225(b)(1), two groups of noncitizens are  
subject to expedited removal. First, there are “arriving” noncitizens  
who are inadmissible due to misrepresentation or failure to meet  
document requirements. The implementing agency regulations

1 define “arriving alien” as applicants for admission “coming or  
2 attempting to come into the United States at a port-of-entry.” 8  
3 C.F.R. § 1.2. The second group –designated noncitizens –includes  
4 noncitizens who meet all of the following criteria: (1) they are  
5 inadmissible due to lack of a valid entry document or  
6 misrepresentation; (2) they have not “been physically present in the  
7 United States continuously for the 2-year period immediately prior  
8 to the date of the determination of inadmissibility”; and (3) they are  
9 among those whom the Secretary of Homeland Security has  
10 designated for expedited removal. *Thuraissigiam*, 591 U.S. at 109; §  
11 1225(b)(1).

12 “Initially, DHS’s predecessor agency did not make any designation  
13 [under (3)], thereby limiting expedited removal only to ‘arriving  
14 aliens,’” that is, noncitizens encountered at ports of entry. *Make the*  
15 *Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 U.S. Dist. LEXIS  
16 169432, at \*14 (D.D.C. Aug. 29, 2025). In the following years, DHS  
17 extended by designation expedited removal to noncitizens who arrive  
18 by sea and who have been present for fewer than two years, and to  
19 noncitizens apprehended within 100 air miles of any U.S.  
20 international land border who entered within the last 14 days. *Id.* This  
21 was the status quo until January 2025, when the Department of  
22 Homeland Security revised its § 1225 designation to “apply  
23 expedited removal to the fullest extent authorized by statute.”  
24 Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan.  
25 24, 2025). Under this designation, expedited removal applies to  
26 noncitizens encountered *anywhere* within the United States, who  
27 have been in the United States for less than two years and are  
28 inadmissible for lack of valid documentation or misrepresentation. In  
short, expedited removal was expanded to apply for the first time to  
vast numbers of noncitizens present in the interior of the United  
States.

Under the expedited removal statute § 1225(b)(1), if an applicant  
“indicates either an intention to apply for asylum” or “a fear of  
persecution,” the immigration officer “shall refer the alien for an  
interview by an asylum officer.” §§ 1225(b)(1)(A)(i)–(ii). If the  
asylum officer determines that the applicant has a “credible fear,” the  
applicant “receive[s] ‘full consideration’ of his asylum claim in a  
standard removal hearing.” *Thuraissigiam*, 591 U.S. at 110. If the  
officer determines there is no “credible fear,” the officer “shall order  
the alien removed from the United States without further hearing or  
review.” § 1225(b)(1)(B)(iii). However, the officer’s decision may  
be appealed by the applicant to an immigration judge, who must  
conduct the review “to the maximum extent practicable within 24  
hours, but in no case later than 7 days after the date of the  
determination.” *Id.* Detention under § 1225(b)(1) is “mandatory”  
“pending a final determination of credible fear of persecution and if  
found not to have such a fear, until removed.” *Id.* (citing  
§ 1225(b)(1)(B)(iii)(IV) (“Any alien subject to the procedures under  
this clause shall be detained pending a final determination of credible  
fear of persecution and, if found not to have such a fear, until  
removed.”))

[Section] 1225 also contains a provision that applies to applicants for

1 admission not covered by § 1225(b)(1). *Jennings*, 583 U.S. at 287.  
2 This provision, 1225(b)(2), states that, subject to statutory  
3 exceptions, “in the case of an alien who is an applicant for admission,  
4 if the examining immigration officer determines that an alien seeking  
5 admission is not clearly and beyond a doubt entitled to be admitted,  
6 the alien shall be detained for a proceeding under section 1229a [full  
7 removal proceedings] of this title.” § 1225(b)(2). In other words,  
8 noncitizens subject to 1225(b)(2) are not eligible for expedited  
9 removal but are subject to mandatory detention while their full  
10 removal proceedings are pending. This is in contrast to the default  
11 detention regime under § 1226(a), which allows for discretionary  
12 release and review of detention through a bond hearing.

### 3. The Government’s Recent Change in Position

8 Until this year, the DHS has applied § 1226(a) and its discretionary  
9 release and review of detention to the vast majority of noncitizens  
10 allegedly in this country without valid documentation. This practice  
11 was codified by regulation. The regulations implementing the Illegal  
12 Immigration Reform and Immigrant Responsibility Act of 1996  
13 (“IIRIRA”) state that “Despite being applicants for admission, aliens  
14 who are present without having been admitted or paroled (formerly  
15 referred to as aliens who entered without inspection) will be eligible  
16 for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323  
(Mar. 6, 1997). In fact, the government has conceded in other  
17 contexts that “DHS’s long-standing interpretation has been that  
18 1226(a) [discretionary detention] applies to those who have crossed  
19 the border between ports of entry and are shortly thereafter  
20 apprehended.” Dkt. No. 17 (citing Solicitor General, Transcript of  
21 Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785  
22 (2022) (No. 21-954)) . . .

23 In 2025, however, the Government’s policy changed dramatically.  
24 The DHS revised its § 1225 designation to “apply expedited removal  
25 to the fullest extent authorized by statute.” Designating Aliens for  
26 Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025) (emphasis  
27 added). The Secretary of Homeland Security memorandum directed  
28 federal immigration officers to “consider ... whether to apply  
expedited removal” to “any alien DHS is aware of who is amenable  
to expedited removal but to whom expedited removal has not been  
applied.” Dkt. No. 1 at ¶ 33. Officers are encouraged to “take steps  
to terminate any ongoing removal proceeding and/or any active  
parole status.” *Id.* The memorandum states that DHS shall take the  
actions contemplated by the memorandum “in a manner that takes  
account of legitimate reliance interests,” but states that “the  
expedited removal process includes asylum screening, which is  
sufficient to protect the reliance interests of any alien who has  
applied for asylum or planned to do so in a timely manner.” Huffman  
Memorandum (Jan. 23, 2025).

Since mid-May of 2025, the Department of Homeland Security has  
made a practice of appearing at regular removal proceedings in  
immigration court, moving to dismiss the proceedings, and then re-  
arresting the individual in order to place them in expedited removal  
proceedings. Dkt. No. 1 at ¶¶ 35–40. If the immigration judge does

1 not dismiss the full removal proceedings, ICE still makes an arrest,  
2 apparently in reliance on § 1225(b)(2)'s detention provision.

3 *Salcedo Aceros*, 2025 WL 2637503 at \*1-4 (internal footnotes omitted).

4 **C. Parole Revocation**

5 In *Y-Z-H-L v. Bostock*, 792 F. Supp. 3d 1123 (D. Or. 2025), the court explained the parole  
6 process in immigration cases and noted that before parole may be revoked, the parolee must be  
7 given written notice of the impending revocation, which must include a cogent description of the  
8 reasons supporting the revocation decision. The court held:

9 Section 1182 . . . has a subsection titled “Temporary admission of  
10 nonimmigrants,” which allows noncitizens, even those in required  
11 detention, to be “paroled” into the United States. This provision, at  
12 issue in this case, states:

13 The Secretary of Homeland Security may, except as  
14 provided in subparagraph (B) or in section 1184(f) of this  
15 title, in his discretion parole into the United States  
16 temporarily under such conditions as he may prescribe  
17 only on a case-by-case basis for urgent humanitarian  
18 reasons or significant public benefit any alien applying  
19 for admission to the United States, but such parole of  
20 such alien shall not be regarded as an admission of the  
21 alien and **when the purposes of such parole shall, in  
22 the opinion of the Secretary of Homeland Security,  
23 have been served the alien shall forthwith return or  
24 be returned to the custody from which he was paroled  
25 and thereafter his case shall continue to be dealt with  
26 in the same manner as that of any other applicant for  
27 admission to the United States.**

28 8 U.S.C. § 1182(d)(5)(A).

21 *Id.* at 1133 (emphasis added). *Y-Z-H-L* determined that under the Administrative Procedure Act,  
22 immigration parolees are entitled to determinations related to their parole revocations that are not  
23 arbitrary, capricious or an abuse of discretion. *Id.* at 1146-47. An agency acts arbitrarily and  
24 capriciously by failing to make a reasoned determination or where the agency fails to “articulate[]  
25 a satisfactory explanation for its action including a rational connection between the facts found and  
26 the choice made.” *Id.* at 1144 (footnote and citation omitted). Parole revocations in the context of  
27 the INA must occur on a case-by-case basis and may occur “when the purposes of such parole shall,  
28 in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith

1 return or be returned to the custody from which he was paroled.” *Id.* at 1133 (quoting 8 C.F.R.  
2 § 212.5(e)). 8 C.F.R. § 212.5(e) requires written notice of the termination of parole except where  
3 the immigrant has departed or when the specified period of parole has expired.

4 Applying *Y-Z-H-L* and § 212.5(e), in *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128  
5 (W.D.N.Y. 2025), the court found that the INA requires a case-by-case analysis as to the decision  
6 to revoke humanitarian parole:

7 This Court agrees that both common sense and the words of the  
8 statute require parole revocation to be analyzed on a case-by-case  
9 basis and that a decision to revoke parole “must attend to the reasons  
10 an individual [noncitizen] received parole.” *See id.* There is no  
11 indication in the record that the government conducted any such  
12 analysis here. On the contrary, the letter Mata Velasquez received  
13 merely stated summarily that DHS had “revoked [his] parole.”  
14 Docket Item 62-1 at 5. Thus, there is no indication that—as required  
15 by the statute and regulations—an official with authority made a  
16 determination specific to Mata Velasquez that either “the purpose for  
17 which [his] parole was authorized” has been “accomplish[ed]” or that  
18 “neither humanitarian reasons nor public benefit warrants [his]  
19 continued presence...in the United States.” *See* 8 C.F.R.  
20 § 212.5(e)(2)(i). As a result, DHS’s revocation of Mata Velasquez’s  
21 parole violated his rights under the statute and regulations. *See Y-Z-  
22 L-H*, 2025 WL 1898025, at \*13.

23 *Id.* at 146. And in *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025), the court reached  
24 a similar conclusion relying on the Due Process Clause:

25 . . . even when ICE has the initial discretion to detain or release  
26 a noncitizen pending removal proceedings, after that individual  
27 is released from custody she has a protected liberty interest in  
28 remaining out of custody. *See Romero v. Kaiser*, No. 22-cv-02508,  
2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022) (“[T]his Court  
joins other courts of this district facing facts similar to the present  
case and finds Petitioner raised serious questions going to the merits  
of his claim that due process requires a hearing before an IJ prior to  
re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021  
WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v.  
Jennings*, No. 20-cv-5785, 2020 WL 5074312, at \*3 (N.D. Cal. Aug.  
23, 2020); *Ortega*, 415 F. Supp. 3d at 969 (“Just as people on  
preparole, parole, and probation status have a liberty interest, so too  
does [a noncitizen released from immigration detention] have a  
liberty interest in remaining out of custody on bond.”).

26 *Id.* (emphasis added). Other courts, including this Court, have held similarly. *See Doe v. Becerra*,  
27 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025); *see also Padilla v. U.S. Immigr. & Customs Enf’t*,  
28 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme Court has consistently held that

1 non-punitive detention violates the Constitution unless it is strictly limited, and, typically,  
2 accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the  
3 imprisonment serves the government’s legitimate goals.”).

### 4 **III. Exhaustion**

#### 5 **A. Governing Authority**

6 “Section 2241 ... ‘does not specifically require petitioners to exhaust direct appeals before  
7 filing petitions for habeas corpus.’” *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004) (citing  
8 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)). The Ninth Circuit, however, requires  
9 that, “as a prudential matter, that habeas petitioners exhaust available judicial and administrative  
10 remedies before seeking relief under § 2241.” *Castro-Cortez*, 239 F.3d at 1047 (citing *United*  
11 *States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997)). “Under the doctrine of exhaustion, ‘no one is  
12 entitled to judicial relief for a supposed or threatened injury until the prescribed ... remedy has been  
13 exhausted.’” *Laing*, 370 F.3d at 997-98 (citing *McKart v. United States*, 395 U.S. 185, 193 (1969)).  
14 “Exhaustion can be either statutorily or judicially required. If exhaustion is required by statute, it  
15 may be mandatory and jurisdictional, but courts have discretion to waive a prudential requirement.”  
16 *Id.* at 998 (citing *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review*, 959 F.2d  
17 742, 746 (9th Cir. 1991); *Stratman v. Watt*, 656 F.2d 1321, 1325-26 (9th Cir. 1981)). “Although  
18 courts have discretion to waive the exhaustion requirement when it is prudentially required, this  
19 discretion is not unfettered.... Lower courts ... [must] first determin[e whether] the exhaustion  
20 requirement has been satisfied or properly waived.” *Id.* (internal citations omitted); see *Murillo v.*  
21 *Mathews*, 588 F.2d 759, 762, n.8 (9th Cir. 1978) (“Although the application of the rule requiring  
22 exhaustion is not jurisdictional, but calls for the sound exercise of judicial discretion, it is not lightly  
23 to be disregarded.”).

#### 24 **B. Analysis**

25 Petitioner asserts that “exhaustion would be futile and is not required.” (Doc. 1 ¶ 39).  
26 Respondents do not address the exhaustion issue. See (Doc. 8).

27 The Court finds that the prudential exhaustion requirement should be waived as it would be  
28 futile to seek release by administrative means given Respondents’ position that Petitioner is subject

1 to mandatory detention and they do not address exhaustion of administrative remedies in their  
2 opposition to the petition. *See* (Doc. 8 at 2); *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018) (“§§  
3 1225(b) ... do[e]s not give detained aliens the right to periodic bond hearings during the course of  
4 their detention.”); *Rodriguez Diaz v. Garland*, 53 F. 4th 1189, 1201 (9th Cir. 2022). Further, the  
5 BIA has held that all noncitizens present within the country without admission are seeking  
6 admission pursuant to § 1225, rendering any administrative relief futile. *See J.A.C.P. v. Wofford*,  
7 No. 1:25-cv-01354-KES-SKO (HC), 2025 WL 3013328, at \*7 n.9 (E.D. Cal. Oct. 27, 2025) (“In  
8 addition, pursuit of administrative remedies would almost certainly be futile given the BIA’s recent  
9 holding that all noncitizens present in the United States without admission are ‘seeking admission’  
10 for purposes of 8 U.S.C. § 1225(b)(2)(A) and must be detained.”) (citing *Matter of Yajure Hurtado*,  
11 29 I&N Dec. 216 (B.I.A. 2025)).

12 For these reasons and because Respondents do not argue Petitioner should be required to  
13 exhaust administrative remedies, the undersigned recommends that the prudential exhaustion  
14 requirement be waived for Petitioner’s claim for habeas corpus relief. *See, e.g., Chavez v. Noem*,  
15 No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at \*3 (S.D. Cal. Sept. 24, 2025) (waiving  
16 prudential exhaustion requirement because the BIA “already applied its expertise in deciding and  
17 designating” *Hurtado* as precedential, pursuant to which detainees are subject to mandatory  
18 detention without bond under § 1225(b)(2)); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253  
19 (W.D. Wash. 2025) (“The Ninth Circuit has recognized ‘the irreparable harms imposed on anyone  
20 subject to immigration detention.’”) (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir.  
21 2017)); *J.A.C.P.*, 2025 WL 3013328, at \*7 n.9.

#### 22 **IV. Discussion**

23 Petitioner asserts three causes of action in his petition: violation of (1) procedural due  
24 process and (2) substantive due process under the Fifth Amendment to the U.S. Constitution; and  
25 (3) the Immigration and Nationality Act (“INA”). (Doc. 1 at 9-24).

26 As set forth below, because the undersigned finds that Respondents have violated  
27 Petitioner’s constitutional rights to procedural due process, and because Petitioner’s other claims  
28 seek the same or similar relief (*i.e.*, for immediate release and to enjoin Respondents from re-

1 detaining Petitioner unless his re-detention is justified at a custody hearing before a neutral arbiter  
2 in which the government bears the burden of proof), the undersigned forbears from addressing  
3 Petitioner’s other claims.

4 **A. Procedural Due Process**

5 1. Governing Authority

6 “The Due Process Clause of the Fifth Amendment mandates that ‘[n]o person shall ... be  
7 deprived of life, liberty, or property, without due process of law.’” *United States v. Quintero*, 995  
8 F.3d 1044, 1051 (9th Cir. 2021) (citing U.S. Const. amend. V). “The Due Process Clause ‘protects  
9 individuals against two types of government action’: violations of substantive due process and  
10 procedural due process.” *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987)).

11 “Procedural due process imposes constraints on governmental decisions which deprive  
12 individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the  
13 Fifth ... Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “[F]reedom from  
14 imprisonment—from government custody, detention, or other forms of physical restraint—lies at  
15 the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).  
16 “Procedural due process requires that, even where a deprivation of liberty survives substantive due  
17 process scrutiny, the action ‘be implemented in a fair manner.’” *Quintero*, 995 F.3d at 1051-52  
18 (citing *Salerno*, 481 U.S. at 746). “The ‘right to be heard before being condemned to suffer  
19 grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal  
20 conviction, is a principle basic to our society.’” *Mathews*, 424 U.S. at 902 (citation omitted). “The  
21 fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in  
22 a meaningful manner.’” *Id.* (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). “[D]ue process  
23 is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey*  
24 *v. Brewer*, 408 U.S. 471, 481 (1972).

25 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including  
26 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533  
27 U.S. at 693 (citations omitted); see *Hernandez*, 872 F.3d at 990 (“[I]t is well-established that the  
28 Due Process Clause stands as a significant constraint on the manner in which the political branches

1 may exercise their plenary authority.”). “In the context of immigration detention, it is well-settled  
2 that ‘due process requires adequate procedural protections to ensure that the government’s asserted  
3 justification for physical confinement outweighs the individual’s constitutionally protected interest  
4 in avoiding physical restraint.’” *Hernandez*, 872 F.3d at 990 (quoting *Singh v. Holder*, 638 F.3d  
5 1196, 1203 (9th Cir. 2011)).

## 6 2. Analysis

7 On Petitioner’s as-applied procedural due process challenge to his continuing detention by  
8 immigration authorities, the undersigned considers (1) “whether there exists a protected liberty  
9 interest under the Due Process Clause, and ...[(2)] the procedures necessary to ensure any  
10 deprivation of that protected liberty interest accords with the Constitution.” *Garcia v. Andrews*,  
11 No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at \*2 (E.D. Cal. July 14, 2025) (citing *Kentucky*  
12 *Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)).

13 Petitioner has an underlying, continuing liberty interest in being free from re-detention.  
14 Specifically, Petitioner was released from custody by ICE approximately two years prior to his re-  
15 detention in December 2025. (Doc. 1 ¶ 32). By releasing Petitioner in their discretion, immigration  
16 officials necessarily determined that Petitioner did not present a risk of flight or danger to the  
17 community. *See* 8 C.F.R. § 1236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may,  
18 in the officer’s discretion, release an alien not described in section 236(c)(1) of the Act, under the  
19 conditions at section 236(a)(2) and (3) of the Act; provided that the alien must demonstrate to the  
20 satisfaction of the officer that such release would not pose a danger to property or persons, and that  
21 the alien is likely to appear for any future proceeding.”); accord *Rodriguez Diaz*, 53 F.4th at 1196.

22 The undersigned agrees with other courts and other judges of this Court that noncitizens  
23 released from immigration custody on parole, general orders of supervision or on their own  
24 recognizance have a liberty interest in their freedom that implicates protections under principles of  
25 procedural due process. *See Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D. Cal.  
26 2025) (“The fact that Petitioner is subject to discretionary conditions of release likewise does not  
27 mean he lacks a protectable liberty interest and can be re-detained without process.”); *see id.*  
28 (“[E]ven if immigration detainees must wait months before a periodic re-review of their detention,

1 those already released on immigration bond possess an interest in their continued liberty, which  
2 grows over time, and a due process right to a hearing before being re-detained.”); *Nak Kim Chhoeun*  
3 *v. Marin*, 442 F. Supp. 3d 1233, 1245 (C.D. Cal. 2020). Accord *Doe*, 787 F. Supp. 3d at 1099  
4 (considering in connection with a petitioner’s procedural due process claim that “[t]he lengthy  
5 duration of his conditional release as well as the meaningful connections Petitioner seems to have  
6 made with his community during that time create a powerful interest for Petitioner in his continued  
7 liberty”); *Ramazan M. v. Andrews*, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at \*5-  
8 6 (E.D. Cal. Nov. 10, 2025) (“Even when a statute allows the government to arrest and detain an  
9 individual, a protected liberty interest under the Due Process Clause may entitle the individual to  
10 procedural protections not found in the statute”). Cf. *Daley v. Andrews*, No. 1:25-cv-00922-KES-  
11 CDB, 2026 WL 101840, at \*9-10 (E.D. Cal. Jan. 14, 2026) (finding a petitioner mandatorily  
12 detained pursuant to § 1226(c) did not have a protectible liberty interest because he had remained  
13 in continuous custody and never released on supervision).

14 Respondents assert that Petitioner is an “applicant for admission” and is “subject to  
15 mandatory detention” under 8 U.S.C. § 1225(b)(2). (Doc. 8 at 2; citing, *inter alia*, *Alonzo v. Noem*,  
16 No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025)). The petitioners’  
17 circumstances in *Alonzo* are factually dissimilar from those presented here, as another judge of this  
18 Court has explained: Petitioner here was detained by Border Patrol and released, and immigration  
19 proceedings have remained pending for a significant period of time. See *Garcia v. Chesnut*, No.  
20 1:25-cv-01907-JLT-CDB, 2025 WL 3771348, at \*8 (E.D. Cal. Dec. 31, 2025) (“However, unlike  
21 here, the petitioners in *Valencia* and *Alonzo* had never been encountered, let alone processed, by  
22 immigration officials, and had not been released on recognizance pending completion of Section  
23 240 removal proceedings.”).

24 Additionally, other judges of this Court, as well as many other courts, have considered and  
25 rejected the government’s arguments, finding that § 1226(a), not § 1225(b)(2), provides the  
26 appropriate framework for noncitizens released following their initial encounter with immigration  
27 authorities and have resided in the United States for a significant period, like Petitioner here. See,  
28 *e.g.*, *H.J.G.G. v. Wofford*, No. 1:25-cv-01718-JLT-EPG-HC, 2025 WL 3761803, at \*4 (E.D. Cal.

1 Dec. 30, 2025) (citing *Castillo v. Wofford*, No. 1:25-cv-01586-JLT-HBK, 2025 WL 3466064, at \*8  
2 (E.D. Cal. Dec. 2, 2025)); accord *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 935-37 (N.D.  
3 Cal. 2025), *appeal filed*, No. 25-7472 (9th Cir. Nov. 26, 2025). Under such circumstances, “the  
4 government cannot switch tracks” and subject Petitioner to mandatory detention now under section  
5 1225(b)(2) “after it previously released him on his own recognizance under section 1226(a).”  
6 *Valencia Zapata*, 801 F. Supp. 3d at 936; accord *Souza v. Robbins*, No. 1:25-cv-01597-DJC-JDP,  
7 2025 WL 3263897, at \*2 (E.D. Cal. Nov. 23, 2025).

8 Because Petitioner has shown he has a protected liberty interest to remain free from re-  
9 detention based on his discretionary release in December 2025, the undersigned must determine  
10 what process is due before the government may terminate that liberty interest. To determine this,  
11 the undersigned considers the following factors articulated in *Mathews*: “[ (1) ] the private interest  
12 that will be affected by the official action; [ (2) ] the risk of an erroneous deprivation of such interest  
13 through the procedures used, and the probable value, if any, of additional or substitute procedural  
14 safeguards; and [ (3) ] the Government’s interest, including the function involved and the fiscal and  
15 administrative burdens that the additional or substitute procedural requirement would entail.”  
16 *Mathews*, 424 U.S. at 335; see *Hernandez*, 872 F.3d at 993-94 (applying *Mathews* test in  
17 immigration detention context); *id.* at 993 (“The appropriateness of the requirement that ICE and  
18 IJs consider financial circumstances and alternative conditions of release is confirmed by the  
19 balance of factors under *Mathews*[.]”).

20 As to the first factor, Petitioner has shown he has a significant private interest in remaining  
21 on release from detention. He had been released from immigration custody for two years prior to  
22 his re-detention, and during that time, he maintained lawful employment, made connections within  
23 his community, and incurred no criminal history. (Doc. 1 ¶¶ 32, 44, 64). Petitioner’s continued  
24 liberty interest in remaining on release is undermined by his re-detention without a bond hearing.  
25 *Doe*, 787 F. Supp. 3d at 1093-94 (“Freedom from imprisonment is at the core of the Due Process  
26 Clause.... The lengthy duration of his conditional release as well as the meaningful connections  
27 [he] seems to have made with his community during that time create a powerful interest for [him]  
28 in his continued liberty.”).

1 As to the second factor, the risk of an erroneous deprivation of Petitioner’s liberty interest  
2 is considerable here where he has not received any bond or custody redetermination. *Id.* at 1094;  
3 *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at \*5 (E.D. Cal. May 16,  
4 2025). Because there were no procedural safeguards to determine if Petitioner’s re-detention was  
5 justified, the probable value of the additional procedural safeguard of a bond hearing to determine  
6 whether Petitioner is a flight risk or a danger to the community is high such that this factor weighs  
7 in favor of granting a bond hearing. *See Doe*, 787 F. Supp. at 1094 (“[G]iven that Petitioner was  
8 previously found to not be a danger or risk of flight and the unresolved questions about the timing  
9 and reliability of the new information, the risk of erroneous deprivation remains high.”); *A.E.*, 2025  
10 WL 1424382, at \*5; *Ramazan*, 2025 WL 3145562, at \*6. Therefore, this factor weighs in favor of  
11 granting a bond hearing.

12 Third, the government’s interest in detaining Petitioner without a bond hearing is low. *Doe*,  
13 787 F. Supp. 3d at 1094 (citation omitted); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal.  
14 2019)); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at \*3 (N.D. Cal. June 14, 2025)  
15 (“And, like other Courts in this district, the Court concludes that the government’s interest in re-  
16 detaining Petitioner-[] without a hearing is ‘low,’ particularly in light of the fact that Petitioner[]  
17 has long complied with his reporting requirements.”). “The effort and cost to provide Petitioner  
18 with [a bond hearing] is minimal[.]” *Doe*, 787 F. Supp. 3d at 1094.

19 Respondents assert Petitioner’s arrest was a violation of his conditions of release. (Doc. 8  
20 at 4). The undersigned does not find Respondents’ assertions regarding Petitioner’s purported lack  
21 of compliance with any conditions of supervised release relevant to the issue of whether or not  
22 Petitioner is entitled to a custody redetermination. Therefore, any additional burden from requiring  
23 the government to seek a bond hearing before it may re-detain Petitioner does not outweigh his  
24 liberty interest and the risk of erroneous deprivation. Accordingly, this factor weighs in favor of  
25 granting a bond hearing.

26 In sum, the undersigned finds that, under *Mathews*, Respondents have violated Petitioner’s  
27 procedural due process rights under the Fifth Amendment to the U.S. Constitution through his arrest  
28 in December 2025 and continuing detention thereafter. Accordingly, the undersigned will

1 recommend the Court grant Petitioner’s petition on his claim for violation of procedural due process  
2 under the Fifth Amendment and recommend the Court order Respondents to provide Petitioner  
3 with a bond hearing as set forth below.

4 **B. Remedy**

5 The undersigned considers whether Petitioner is entitled to a pre-deprivation or post-  
6 deprivation bond hearing, and further, addresses what standards should apply at that hearing.

7 First, the undersigned concludes that Petitioner is entitled only to a post-deprivation bond  
8 hearing. As summarized above, Respondents assert that Petitioner’s arrest is a violation of his  
9 terms of release. *See* (Doc. 8). Petitioner asserts that due process requires a pre-deprivation bond  
10 hearing. *See* (Doc. 9 at 7-10).

11 ICE’s reliance upon Petitioner’s recent arrest as a basis to detain him was “not obviously  
12 pretext[ua]l.” *Martinez Hernandez v. Andrews*, No. 1:25-cv-01035 JLT HBK, 2025 WL 2495767,  
13 at \*12 (E.D. Cal. Aug. 28, 2025) (“If Respondent’s view of the facts is correct, it is at least arguable  
14 that providing Petitioner with notice and a pre-deprivation hearing would have been impracticable  
15 and/or would have motivated his flight.”) (citing cases); accord *O.A.C.C. v. Wofford*, No. 1:25-cv-  
16 01652-DAD-CSK (HC), 2025 WL 3485221, at \*4-5 (E.D. Cal. Dec. 4, 2025).

17 Second, Petitioner was released by ICE on his own recognizance following his initial  
18 encounter and arrest in December 2023 and prior to his re-detention in December 2025. *See* (Doc.  
19 1). In releasing Petitioner, immigration officials necessarily determined that he did not present a  
20 risk of flight or danger to the community. *See* 8 C.F.R. § 1236.1(c)(8) (“Any officer authorized to  
21 issue a warrant of arrest may, in the officer’s discretion, release an alien not described in section  
22 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act; provided that the  
23 alien must demonstrate to the satisfaction of the officer that such release would not pose a danger  
24 to property or persons, and that the alien is likely to appear for any future proceeding.”).  
25 Nevertheless, Petitioner has not been afforded a bond hearing before an immigration judge.

26 Under these circumstances, even in the light of disputed issues of fact concerning the nature  
27 and severity of Petitioner’s alleged violation of terms of his supervised release, the undersigned  
28 will recommend the Court find that the government should bear the burden of establishing at the

1 bond hearing, by clear and convincing evidence, that Petitioner poses a danger to the community  
2 or a risk of flight. *E.g.*, *Singh v. Andrews*, No. 1:25-cv-01543-DCJ-SCR, 2025 WL 3248059, at \*6  
3 (E.D. Cal. Nov. 19, 2025) (requiring government to carry burden by clear and convincing evidence,  
4 notwithstanding disputed issues of facts involving the petitioner’s alleged violation of release  
5 conditions); *M.V.I. v. Andrews*, No. 1:25-cv-01440-JLT-SKO, 2025 WL 3154403, at \*13-14 (E.D.  
6 Cal. Nov. 112, 2025) (same). “Doing so is logical” because “the immigrant’s initial release  
7 reflected a determination by the government that the noncitizen is not a danger to the community  
8 or a flight risk. Since it is the government that initiated re-detention, it follows that the government  
9 should be required to bear the burden of providing a justification for the re-detention.” *M.R.R. v.*  
10 *Chestnut*, No. 1:25-cv-01517-JLT-SKO, 2025 WL 3265446, at \*14 (E.D. Cal. Nov. 24, 2025)  
11 (relying on *Pinchi v. Noem*, 792 F. Supp. 3d 1025, at 1034, 1038 (N.D. Cal. 2025)); accord *Omer*  
12 *G. G. v. Kaiser*, No. 1:25-cv-01471-KES-SAB, 2025 WL 3254999, at \*8-9 (E.D. Cal. Nov. 22,  
13 2025).

14 **V. Conclusion and Recommendation**

15 Accordingly, IT IS HEREBY RECOMMENDED that:

- 16 1. Petitioner’s petition for writ of habeas corpus (Doc. 1) be GRANTED.
- 17 2. Respondents be ORDERED to provide Petitioner with a bond hearing in accordance  
18 with 8 U.S.C. § 1226(a) within 14 days of the date of this Order, at which Petitioner’s  
19 eligibility for bond must be considered, and where the government must demonstrate  
20 by clear and convincing evidence that Petitioner is a flight risk or danger to the  
21 community, such that physical custody is legally justified.
- 22 3. If Respondents do not provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a)  
23 as required herein, Respondents be ORDERED to release Petitioner from custody  
24 immediately and forbear from re-detaining Petitioner unless the government provides  
25 notice to Petitioner a minimum of seven (7) days in advance and holds a bond hearing  
26 consistent with this order; and
- 27 4. The Clerk of the Court be DIRECTED to enter judgment in favor for Petitioner and  
28 close this case.

1           These Findings and Recommendations will be submitted to the United States District Judge  
2 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within seven (7) days**  
3 after being served with these findings and recommendations, the parties may file written objections  
4 with the Court. Although this objection period is shorter than provided by Local Rule, such an  
5 adjustment is warranted given the nature of Petitioner’s harm, the finding of a violation of the U.S.  
6 Constitution by Respondents, and the fact that the parties have extensively briefed the issues  
7 involved. *See United States v. Barney*, 568 F.2d 134, 136 (9th Cir. 1978) (per curiam) (“The court  
8 may require a response within a shorter period if exigencies of the calendar require.”). The  
9 document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations”  
10 and shall not exceed 15 pages without leave of Court and good cause shown. The Court will not  
11 consider exhibits attached to the Objections, but a party may refer to exhibits in the record by  
12 CM/ECF document and page number. Any pages filed in excess of the 15-page limitation may be  
13 disregarded by the District Judge when reviewing these Findings and Recommendations under 28  
14 U.S.C. § 636(b)(1)(C).

15           A party’s failure to file any objections within the specified time may result in the waiver of  
16 certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

17 IT IS SO ORDERED.

18           Dated: May 29, 2026

19   
20 UNITED STATES MAGISTRATE JUDGE