UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jose LOPEZ REYES, Plaintiffs, v. Cammilla WAMSLEY, et al., Defendants.	Case No. 2:25-cv-1868 **TRAVERSE AND RESPONSE TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS** Note on Motion Calendar: October 10, 2025

INTRODUCTION

The central claim in this case is that the Due Process Clause requires Respondents to afford Petitioner Jose Lopez Reyes 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. Lopez in May, 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.

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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. Lopez's immediate release is warranted.

Respondents' return focuses almost exclusively on an issue that was not raised in his habeas petition: the statutory basis for Mr. Lopez'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. Lopez *prior* to his re-detention where ICE must prove by clear and convincing evidence that Mr. Lopez 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. Lopez's release.

STATEMENT OF FACTS

The parties agree on critical facts in this case. In short, Mr. Lopez entered the United States on April 1, 2022, and was released on his own recognizance. Dkt. 3 ¶ 2; Dkt. 8 at 2–3. He was placed in removal proceedings, and scheduled for a May 27, 2025, hearing before the Miami Immigration Court. Dkt. 3 ¶ 2; Dkt. 8 at 3. Mr. Lopez subsequently filed a timely application for asylum, as well as an application to adjust status pursuant to the Cuban Adjustment Act. Dkt. 3 ¶ 4; Dkt. 8 at 3.

Since his release in 2022, Mr. Lopez has complied with the conditions of his release, a point that Respondents never contest. He checked-in with ICE as required, *see* Dkt. 3 ¶¶ 2, 7–9, and appeared for his immigration court hearing on May 27, 2025, *see id.* ¶ 10; *see also* Dkt. 8 at 3. In the time between his release in 2022 and his re-arrest over three years later, Mr. Lopez also

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built a life here. He obtained work authorization, began working as a truck driver, and met his girlfriend, Marlyn. Dkt. 3 ¶¶ 5–6.

However, when Mr. Lopez appeared as required at his May 27, 2025, immigration court hearing, rather than proceed with his case, the court dismissed the case on the motion of ICE. *Id.* ¶ 10; Dkt. 8 at 3. ICE subsequently purported to issue Mr. Lopez an expedited removal order under 8 U.S.C. § 1225(b)(1), Dkt. 8 at 3, even though the plain language of the expedited removal statute does not allow for its application where a noncitizen has "been physically present in the United States continuously for the 2-year period" prior to the date ICE processes the person for expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Following Mr. Lopez's re-arrest in May, he was transferred to several different facilities, until he was placed in custody at the Northwest ICE Processing Center. Dkt. 3 ¶ 11; Dkt. 8 at 3; Dkt. 9 ¶¶ 9–10. Mr. Lopez was eventually administered a credible fear interview (CFI), Dkt. 3 ¶ 13; Dkt. 8 at 3, which assesses whether a person in expedited removal proceedings has a "significant possibility" of satisfying the criteria for asylum in a full hearing before an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(v). Mr. Lopez passed the CFI and was found to have a credible fear; as a result, he has ended up back where he started: in removal proceedings, with a pending claim for relief from removal based on his fear of return to Cuba. Dkt. 8 at 3. Only this time, he is detained, without the money to hire an attorney, meaningfully compile evidence to support his case, and facing the many other difficulties that detention imposes on people attempting to defend against their removal. Dkt 3 ¶¶ 14–17; Supp. Lopez Decl. ¶¶ 2, 4–5.

In their response, Respondents allege that Mr. Romero intends to seek voluntary departure because he wants to go to Spain. Dkt. 8 at 3. However, as Mr. Romero describes in his supplemental declaration, he intends to continue fighting his case if required to proceed with his

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hearing on October 14, 2025. Supp. Lopez Decl. ¶ 2. And in any event, Mr. Lopez cannot simply seek removal to Spain: he is a Cuban citizen, ICE seeks to remove him to Cuba, and he would require a visa to enter Spain. In his declaration, Mr. Lopez also clarifies that he is not represented in his removal proceedings, despite Respondents' claim to the contrary. *Id.* ¶ 3; *but see* Dkt. 9 ¶ 14 (ICE officer who was not at the September 24, 2025, hearing incorrectly claiming that "Petitioner appeared with counsel").

Mr. Lopez remains scheduled for an October 14, 2025, individual calendar hearing. Dkt. 9 ¶ 16. 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

Mr. Lopez'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. Lopez is now detained under § 1225(b) or § 1226(a). That question is not presented in this petition: Mr. Lopez 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

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Court should therefore focus on the actual inquiry before it: whether the Due Process Clause requires Mr. Lopez's release.

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.

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. Lopez addresses each *Mathews* factor below.

[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).

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I. Mr. Lopez has a weighty private interest.

Mr. Lopez 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 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)).

This principle applies with significant force given Mr. Lopez's initial release from detention on his own recognizance. "The Supreme Court has repeatedly held that in at least some

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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).

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.

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

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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).

As in these cases, Mr. Lopez has a strong interest in his liberty. Prior to his re-detention, Mr. Lopez had lived in this country for over three years, working and developing ties to it. He was granted work authorization, developed community here, and complied with all the conditions required of him, including attending check-ins with ICE and his court proceedings. These facts demonstrate that Mr. Lopez 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.

Respondents do not offer any meaningful response to this point in the return. Instead, they merely assert that Congress has broad power over immigration matters. Dkt. 8 at 14. But this argument is really one about the government's interest, not Mr. Lopez's. And as Mr. Lopez explains below, that government interest is not some sweeping power to detain any noncitizen.

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Instead, the true government interest here is whether someone like Mr. Lopez 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.

Second, "the risk of erroneous deprivation of [Mr. Lopez'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. Lopez 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).

Notably, Mr. Lopez 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. Lopez was re-detained. *See* Dkt. 8 at 3; Dkt. 9 ¶¶ 8–9. At most, a

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deportation officer claims that Mr. Lopez was "amenable for expedited removal." Dkt. 8 ¶ 11. But that claim depends on a plainly unlawful reading of the expedited removal statute. That statute only permits expedited removal for persons who have lived in the United States for two years or less at the time they are process for expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). This simply underscores the arbitrary and unlawful nature of Mr. Lopez's re-detention.[2]

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. Lopez 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. Lopez's ties to this country have deepened over the more than 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

[2] Moreover, even if expedited removal *were* lawfully applied, the point here is that due process requires pre-deprivation notice and a hearing, regardless of the basis for detention or type of proceedings that followed.

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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.").

Respondents do not contest this factor whatsoever. They simply state in conclusory fashion, and without citation to authority, that "the existing procedures are sufficient to protect the interest in continued liberty." Dkt. 8 at 14. But they do not even explain *what procedures they provided*. The reason for that should be obvious: there were no procedures. Respondents simply detained Mr. Lopez 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, such as whether he is a flight risk or danger to the community.[3] *See, e.g.*, *Kumar*, 2025 WL 2677089, at *3 (explaining that this factor favored the petitioner where it was "undisputed that Petitioner's arrest was not preceded by a finding that Petitioner was a flight risk nor a danger to the community"). And in any event, here, the record "does not paint the picture of a flight risk," as Mr. Lopez timely attended his ICE

[3] It is well established that civil immigration detention is justified only to prevent flight or to protect the community from dangerous individuals. *See, e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (identifying government interest in "protecting the public from dangerous criminal [noncitizens]" and addressing "[t]the risk of a detainee absconding" when making continued detention determination for noncitizens in removal proceedings); *Hernandez*, 872 F.3d at 990 ("The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must bear a reasonable relation to its purpose." (citation modified)); *E.A.T.-B.*, 2025 WL 2402130, at *5 ("reject[ing] the "suggestion that government agents may sweep up any person they wish and hold that person without consideration of dangerousness or flight risk" as "offen[sive to] the ordered system of liberty that is the pillar of the Fifth Amendment" (citation modified)).

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check-ins and required court appearance. *Ramirez Tesara*, 2025 WL 2637663, at *4. Accordingly, this factor also overwhelmingly favors Mr. Lopez.

III. The government's interest is minimal.

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. Notably, since his release in 2022, Mr. Lopez has demonstrated that he poses neither a flight risk nor a danger to the community, as he has no criminal history, has timely filed for asylum, has obtained a work permit, and has faithfully complied with all conditions of release, including by attending his in-person check-ins and immigration court.

Respondents briefly claim that it has an interest in enforcing immigration law and detaining persons during proceedings. Dkt. 8 at 14. But the government's interest in immigration enforcement "is not at stake here; instead, it is the much lower interest in detaining [Mr. Lopez] pending removal without a bond hearing." *Perera*, 598 F. Supp. 3d at 746. Many other courts have observed the same. *See, e.g.*, *Zagal-Alcaraz v. ICE Field Office*, No. 3:19-CV-01358-SB, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) ("The government interest at stake here is not the continued detention of Petitioner, but the government's ability to detain him without a bond hearing."), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13, 2020). What is more, Mr. Lopez has complied with the immigration laws: he timely filed for asylum, as

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the Immigration and Nationality Act (INA) expressly permits. 8 U.S.C. § 1158. He was thereafter granted employment authorization. Any claimed "enforcement" amounts to punishing and deterring people like Mr. Lopez from asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.

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. Lopez 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. Lopez 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).

In sum, Mr. Lopez 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.

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IV. Respondents' remaining arguments distract from what is at issue in this case.

As noted above, Respondents' return to the petition focuses entirely on the statutory question of when someone might be subject to detention under 8 U.S.C. § 1226(a) as opposed to detention under § 1225(b). Dkt. 8 at 4–12. This *is not at issue in this case*. Mr. Lopez never pleaded a statutory claim, and the Court is not asked to resolve one. All that is at issue here is Mr. Lopez's due process rights, a claim that Respondents barely contest.

For similar reasons, Respondents' arguments as to administrative exhaustion miss the mark. Mr. Lopez's central claim is that due process required Respondents to provide a hearing *before he was re-detained*, and regardless of the statutory basis for detention. They did not do so, and so there is no claim to exhaust. Nor did Respondents provide or identify any process by which Mr. Lopez could seek such a hearing before being re-detained, underscoring that no way exists to exhaust the claim that he has brought here. While Respondents point to the availability of bond hearings under 8 U.S.C. § 1226(a) for those already detained (a detention authority Respondents claim does not even apply here), Respondents merely distract from the central issue that this petition presents: that due process requires a pre-deprivation hearing where ICE must justify detention *prior to re-arrest*.

V. Immediate release is warranted.

As in *Ramirez Tesara*, *E.A. T.-B.*, and *Kumar*, this Court should order Mr. Lopez'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

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

CONCLUSION

For all the foregoing reasons, due process requires Respondents to afford Mr. Lopez 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. Lopez must be released on the same conditions of release that Respondents had imposed upon him prior to his re-arrest in May.

Respectfully submitted this 10th day of October, 2025.

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WORD COUNT CERTIFICATION

I, Aaron Korthuis, certify that this traverse and response contains 4,525 words, in compliance with the Local Civil Rules.

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