

The Honorable James L. Robart
The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE LOPEZ REYES,

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field Office
Director of United States Immigration and
Customs Enforcement and Removal
Operations, *et. al.*

Respondents.

Case No. 2:25-cv-01868-JLR-MLP

FEDERAL RESPONDENTS'¹ HABEAS
RETURN

Noted for Consideration: October 10, 2025

This Court should deny Petitioner Jose Lopez Reyes's habeas petition. Dkt. 1. Presumably on the belief that his detention should be governed by 8 U.S.C. § 1226(a), Petitioner contends his mandatory detention and ineligibility for bond is unlawful. He is wrong. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2) and he is subject to mandatory detention and ineligible for bond.²

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

² A court in this District recently issued an order finding that mandatory detention pursuant to 8 U.S.C. § 1225(b) is unlawful for the certified class. *Rodriguez Vazquez v. Bostock*, No. 25-5240-TMC, -- F. Supp. 3d --, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). The relevant class is defined as "all noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C.

The Immigration and Nationality Act’s (“INA”) plain language mandates that Petitioner – who is present in the United States without having been admitted – is correctly considered an “applicant for admission” and therefore subject to detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.”). The best reading of the statute is that Congress insured that all noncitizens would be inspected by immigration authorities by treating noncitizens who are present in the United States without having been inspected and admitted as applicants for admission. Noncitizens who are present without having been inspected and admitted have the benefit of full removal proceedings and are not subject to expedited removal. But they are subject to detention during their removal proceedings.

Accordingly, Federal Respondents respectfully request that the Court deny the habeas petition.

I. BACKGROUND

A. Factual Background

Petitioner is a citizen and national of Cuba, who was apprehended by U.S. Customs and Border Protection (“CBP”) near San Ysidro, California, on April 1, 2022, after entering the United States without inspection by an immigration officer. Hubbard Decl., ¶ 3; Strong Decl., Ex. A (Notice to Appeal). Petitioner was processed for removal proceedings under Section 240 of the Immigration and Nationality Act (INA) as an alien present without admission or parole, INA § 212(a)(6)(A)(i). Hubbard Decl., ¶ 4; Ex. A. Due to a lack of detention bed space,

§ 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.” *Id.*, at *27. Here, Petitioner is not a member of the class because he was apprehended upon arrival. Dkt. 1, ¶¶ 1, 25.

1 Petitioner was served with a Notice to Appear and released on an Order of Recognizance.
2 Hubbard Decl., ¶ 4; Ex. A; Strong Decl., Ex. B (Order of Release on Recognizance).

3 Petitioner was later issued a Notice of Hearing for May 27, 2025, an Initial Master
4 Calendar Hearing in the Miami Immigration Court. Hubbard Decl., ¶ 5. Petitioner subsequently
5 filed an application for asylum and for adjustment of status under the Cuban Adjustment Act.
6 Hubbard Decl., ¶¶ 6-7. Petitioner filed a Motion to Terminate Removal Proceedings at the Miami
7 Immigration Court on May 2, 2023, to pursue adjustment of status with United States Citizenship
8 and Immigration Services (USCIS). Hubbard Decl., ¶ 8; Strong Decl., Ex. C (Order of
9 Immigration Judge). The immigration judge denied Petitioner's motion, because Petitioner failed
10 to prove evidence of parole, and it did not appear that the Petitioner was eligible to adjust status
11 with USCIS. Hubbard Decl., ¶ 8; Ex. C.

12 On May 27, 2025, Petitioner appeared at the Miami Immigration Court without counsel
13 for an initial master calendar hearing. *Id.*, ¶ 9. DHS orally moved for dismissal of the notice to
14 appear due to changed circumstances, which the immigration judge ("IJ") granted. *Id.* Petitioner
15 was taken into ICE custody thereafter for expedited removal proceedings and subsequently
16 transferred to the Northwest ICE Processing Center ("NWIPC") in June 2025. *Id.*, ¶¶ 9-10.
17 Petitioner was given a credible fear interview, and because it was positive for credible fear,
18 Petitioner was served with a subsequent notice to appear in August 2025 so he could seek relief
19 via an I-589 with the immigration court. *Id.*, ¶¶ 11-12; Strong Decl., Ex. D (Notice to Appear).
20 Petitioner remains in custody at the NWIPC while his applications for relief remaining pending
21 with the Tacoma Immigration Court. *Id.*, ¶¶ 13-14, 16. Since the filing of this habeas petition,
22 Petitioner informed ICE that he wished to voluntarily depart the United States and travel to Spain
23 to be with his family. *Id.*, ¶ 15. Petitioner has not requested a bond hearing with the Tacoma
24 Immigration Court. *Id.*, ¶ 17.

B. Legal Background

1. Applicants for Admission

“The phrase ‘applicant for admission’ is a term of art denoting a particular legal status.”

Torres v. Barr, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

Aliens treated as applicants for admission. – An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival ...) shall be deemed for the purposes of this Act an applicant for admission.

8 U.S.C. § 1225(a)(1).³ Congress added Section 1225(a)(1) to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. 104-208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Before the IIRIRA, “immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (*en banc*). A deportation hearing was a proceeding against a noncitizen already physically present in the United States, whereas an exclusion hearing was against a noncitizen outside of the United States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for “admission” was determined only in exclusion proceedings, and exclusion proceedings were limited to “entering” noncitizens – those noncitizens “coming ... into the United States, from a foreign port or place or from an outlying possession.” *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]oncitizens who had entered without inspection could take advantage of greater procedural and substantive rights afforded in deportation proceedings, while noncitizens who presented

³ Admission is the “lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13).

1 themselves at a port of entry for inspection were subjected to more summary exclusion
 2 proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459
 3 U.S. at 25-26. Prior to the IIRIRA, noncitizens who attempted to lawfully enter the United States
 4 were in a worse position than noncitizens who crossed the border unlawfully. *See Hing Sum*, 602
 5 F.3d at 1100; *see also* H.R. Rep. 104-469, pt. 1, at 225-229 (1996). IIRIRA “replaced
 6 deportation and exclusion proceedings with a general removal proceeding.” *Hing Sum*, 602 F.3d
 7 at 1100.

8 The IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
 9 lawfully admitted, regardless of their physical presence in the country, are placed on equal
 10 footing in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-
 11 469, pt. 1, at 225 (explaining that Section 1225(a)(1) replaced “certain aspects of the current
 12 ‘entry doctrine,’” under which noncitizens who entered the United States without inspection
 13 gained equities and privileges in immigration proceedings unavailable to aliens who presented
 14 themselves for inspection at a port of entry). The provision “places some physically-but not-
 15 lawfully present noncitizens into a fictive legal status for purposes of removal proceedings.”
 16 *Torres*, 976 F.3d at 928.

17 2. Detention Under 8 U.S.C. § 1225

18 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
 19 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
 20 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
 21 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless
 22 claims and expeditiously removing the aliens making such claims from the country.”). Section
 23 1225 applies to “applicants for admission” to the United States, who are defined as “alien[s]
 24 present in the United States who [have] not been admitted” or noncitizens “who arrive[] in the

United States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287.

a. Section 1225(b)(1)

Section 1225(b)(1) applies to “arriving aliens” and “certain other” noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen “described in” Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or the Secretary of Homeland Security – that is, any noncitizen not “admitted or paroled into the United States” and “physically present” fewer than two years – who is inadmissible under Section 1182(a)(7) at the time of “inspection.” See 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under Section 1225(a)(3), that noncitizen lacks entry documents and so is subject to Section 1182(a)(7). The Attorney General’s or Secretary’s authority to “designate” classes of noncitizens as subject to expedited removal is subject to his or her “sole and unreviewable discretion.” 8 U.S.C. § 1225(b)(1)(A)(iii); see also *American Immigration Lawyers Ass’n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to “the fullest extent authorized by Congress.” *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS “to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled

1 into the United States and who have not affirmatively shown, to the satisfaction of an
2 immigration officer, that they have been physically present in the United States continuously for
3 the two-year period immediately preceding the date of the determination of inadmissibility,” who
4 were not otherwise covered by prior designations. *Id.*, at 8139-40.

5 Expedited removal proceedings under Section 1225(b)(1) include additional procedures if
6 a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture,
7 or return to the noncitizen’s country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If
8 the asylum officer or immigration judge does not find a credible fear, the noncitizen is “removed
9 from the United States without further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I),
10 (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum
11 officer or immigration judge finds a credible fear, the noncitizen is generally placed in full
12 removal proceedings under 8 U.S.C. § 1229a but remains subject to mandatory detention. *See* 8
13 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

14 Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from
15 removal under Section 1229a. Section 1229a governs full removal proceedings initiated by a
16 notice to appear and conducted before an immigration judge, during which the noncitizen may
17 apply for relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in
18 narrower, statutorily defined circumstances – typically to individuals apprehended at or near the
19 border who lack valid entry documents or commit fraud upon entry – and allows for their
20 removal without a hearing before an immigration judge, subject to limited exceptions. For these
21 noncitizens, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or
22 removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

b. Section 1225(b)(2)

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under Section 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). While Section 1225 does not provide for noncitizens to be released on bond, DHS has the sole discretionary authority to release any applicant for admission on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

3. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under Section 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.⁴ By regulation, immigration officers can release a noncitizen if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

⁴ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

II. ARGUMENT

The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed from the United States. “[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings “would be in vain if those accused could not be held in custody pending the inquiry” of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be detained during their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the “plain meaning” of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings).

A. Under the statutory text, noncitizens present in the United States without having been admitted are applicants for admission.

The plain language of the statute is clear: Petitioner is subject to detention under Section 1225(b)(2) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025); *but see Rodriguez Vazquez*, 2025 WL 2782499, at *_ (W.D. Wash. Sept. 30, 2025). Section 1225(b)(2)(A) requires mandatory detention of “an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” 8 U.S.C. § 1225(b)(2)(A). The INA specifies that “[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this Act an applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that he is a noncitizen who is present in the United States who has not been

1 admitted. Thus, Petitioner is an “applicant for admission” and subject to mandatory detention
2 under Section 1225(b)(2).

3 To the extent that Petitioner might argue that the phrase “seeking admission” limits the
4 scope of Section 1225(b)(2)(A), such argument is unpersuasive. Courts “interpret the relevant
5 words not in a vacuum, but with reference to the statutory context, ‘structure, history and
6 purpose’.” *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*,
7 570 U.S. 48, 76 (2013)). The Board of Immigration Appeals (“BIA”) has long recognized that
8 “many people who are not actually requesting permission to enter the United States in the
9 ordinary sense are nevertheless deemed to be ‘seeking admission’ under immigration laws.”
10 *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

11 Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36
12 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569
13 (2016)). The phrase “seeking admission” in Section 1225(b)(2)(A) must be read in the context of
14 “applicant for admission” in Section 1225(a)(1). Applicants for admission include arriving
15 noncitizens and noncitizens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are
16 understood to be “seeking admission” under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress
17 made clear that all noncitizens “who are applicants for admission or otherwise seeking
18 admission” are to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or”
19 here “introduce[s] an appositive – a word or phrase that is synonymous with what precedes it
20 (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *See United States v. Woods*, 571 U.S. 31,
21 45 (2013).

22 “[O]ne of the most basic interpretive canons” instructs that a “statute should be construed
23 so that effect is given to all its provisions.” *Corley v. United States*, 556 U.S. 303, 314 (2009).
24 “Applicant” is defined as “[s]omeone who requests something; a petitioner, such as a person who

1 applies for letters of administration.” Black’s Law Dictionary (12th ed. 2024). Applying the
2 definition of “applicant” to “applicant for admission,” an applicant for admission is a noncitizen
3 “requesting” admission, defined by statute as “the lawful entry of the alien into the United States
4 after inspection.” 8 U.S.C. § 1101(a)(13)(A). “Seeking admission” does not have a different
5 meaning from applicant for admission (“requesting admission”); the terms are synonymous.

6 **B. The statute controls, not prior agency practices.**

7 Any argument that prior agency practice applying Section 1226(a) to applicants for
8 admission is unavailing because the plain language of the statute – and not prior practice –
9 controls. *Yajure-Hurtado*, 29 I. & N. Dec. at 225-26. In overturning *Chevron*, the Supreme Court
10 recognized that courts often change precedents and “correct[] our own mistakes.” *Loper Bright*
11 *Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res.*
12 *Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades-old agency
13 interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself
14 predated IIRIRA by twenty years. *Loper Bright*, 603 U.S. at 380. Therefore, longstanding agency
15 practice carries little, if any, weight under *Loper Bright*. The weight given to agency
16 interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the
17 consistency with earlier and later pronouncements, and all those factors which give them power
18 to persuade.’” *Loper Bright*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift Co.*, 323 U.S. 134,
19 140 (1944) (cleaned up)).

20 To be sure, “when the best reading of the statute is that it delegates discretionary
21 authority to an agency,” the Court must “independently interpret the statute and effectuate the
22 will of Congress.” *Loper Bright*, 603 U.S. at 395. But “read most naturally, §§ 1225(b)(1) and
23 (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”
24

1 *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support a position other than
2 Petitioner's detention is mandated by Section 1225(b)(2).

3 **C. Even if detained under 8 U.S.C. § 1226(a), Petitioner has failed to exhaust his**
4 **administrative remedies.**

5 This Court should require Petitioner to avail himself of substantial procedural protections
6 before seeking habeas relief in a federal district court. Since arriving at the NWIPC, Petitioner
7 has not requested a bond redetermination hearing from an IJ. 8 C.F.R. § 236.1(d)(1); *see*
8 *Hubbard Decl.*, ¶ 17. And even if he were to disagree with an IJ's future bond decision, he would
9 be able to administratively appeal the decision to the BIA. Therefore, Petitioner has several
10 layers of process available to him prior to seeking this Court's intervention.

11 Although exhaustion of administrative remedies is not a jurisdictional prerequisite for
12 habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust
13 available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v.*
14 *INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v.*
15 *Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not
16 a "'jurisdictional' prerequisite." *Id.* Courts may require prudential exhaustion where: "(1) agency
17 expertise makes agency consideration necessary to generate a proper record and reach a proper
18 decision; (2) relaxation of the requirement would encourage the deliberate bypass of the
19 administrative scheme; and (3) administrative review is likely to allow the agency to correct its
20 own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815
21 (9th Cir. 2007).

22 The Court should not allow Petitioner to move forward with this litigation without first
23 exhausting his administrative remedies. A court in this district dismissed a noncitizen's habeas
24 petition because the petitioner had failed to seek a bond redetermination hearing at the

1 administrative level. *Cristobal v. Asher*, No. 20-1493-RSM-BAT, 2020 WL 8678097, at *3
2 (W.D. Wash. Dec. 14, 2020), *report and recommendation adopted by* 2021 WL 796597 (W.D.
3 Wash. Mar. 2, 2021). In *Cristobal*, the petitioner had been detained for 15 months and was
4 denied bond at an initial bond redetermination hearing, but he never sought a second bond
5 redetermination hearing based on changed circumstances before filing a habeas petition. In
6 comparison, Petitioner has not even pursued the preliminary administrative remedy that the
7 *Cristobal* petitioner had pursued – an initial bond redetermination hearing – before filing a
8 habeas petition in the district court. Therefore, this Court should also dismiss this Petition.

9 Furthermore, this case meets the elements requiring prudential exhaustion. Even if the IJ
10 had denied bond, Petitioner would have had the ability to appeal the denial to the BIA. The BIA
11 “has a special expertise in reviewing the question of whether the bond record as a whole makes it
12 substantially unlikely that the Department w[ill] prevail on [the petitioner’s] challenge to
13 removability.” *Francisco Cortez v. Nielsen*, No. 19-754-PJH, 2019 WL 1508458, at *3 (N.D.
14 Cal. Apr. 5, 2019) (internal quotation marks omitted). Also, allowing a “relaxation of the
15 exhaustion requirement” would promote the avoidance of seeking a bond redetermination by the
16 IJ or an appeal of similar IJ orders to the BIA. Finally, the outcome of a bond redetermination
17 hearing before an IJ or a subsequent BIA appeal may provide Petitioner with the relief sought
18 here – an individualized bond hearing and ultimately release.

19 **D. The Court should consider Petitioner’s due-process arguments in the context**
20 **of the heightened government interest in the immigration detention**

21 Nevertheless, Petitioner argues this Court should apply the “balancing test” of *Mathews*
22 *v. Eldridge*, 424 U.S. 319, 335 (1976) and determine that he should have received notice and a
23 hearing before being placed back into immigration detention, rather than seek a post-detention
24 bond hearing. But the Supreme Court has never utilized *Mathews*’ multi-factor “balancing test”

1 to evaluate due process claims raised by noncitizens held in civil immigration detention, despite
2 multiple opportunities to do so since the Supreme Court decided *Mathews* in 1976. *See*
3 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he Supreme Court when
4 confronted with constitutional challenges to immigration detention has not resolved them
5 through express application of *Mathews*.”) (citations omitted); *id.* at 1214 (“In resolving familiar
6 immigration-detention challenges, the Supreme Court has not relied on the *Mathews*
7 framework.”) (Bumatay, J., concurring). The Ninth Circuit has assumed without deciding the
8 *Mathews* test applied to challenges to immigration detention. *Rodriguez Diaz*, 53 F.4th at 1207.

9 And even if the Court were to apply the *Mathews* test, as Petitioner advocates, the Ninth
10 Circuit has emphasized that “*Mathews* remains a flexible test that can and must account for the
11 heightened governmental interest in the immigration detention context.”⁵ *Id.* at 1206. First,
12 while Petitioner has an interest in his liberty generally, it is not the same as that enjoyed by a
13 citizen, and “[i]n the exercise of its broad power over naturalization and immigration, Congress
14 regularly makes rules that would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426
15 U.S. 67, 79–80 (1976). Second, the existing procedures are sufficient to protect the interest in
16 continued liberty. Finally, courts have long recognized the “heightened government interest in
17 the immigration detention context,” particularly in the context of determining “whether
18 removable aliens must be released on bond during the pendency of removal proceedings.”
19 *Rodriguez Diaz*, 53 F.4th at 1206–08.

20 III. CONCLUSION

21 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
22 the habeas petition.

23 ⁵ Petitioner has cited cases from this district where the court applied the *Mathews* test and waived the prudential
24 exhaustion requirement, *see, e.g., E.A. T.-B. v. Wamsley, et al.*, No. 25-1192-KKE, -- F. Supp. 3d --, 2025 WL
2402130 (W.D. Wash. Aug. 19, 2025). While Respondents acknowledge these decisions, they respectfully disagree
with their holdings.

1 DATED this 7th day of October, 2025.

2 Respectfully submitted,

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16 *I certify that this memorandum contains 4,262 words,*
17 *in compliance with the Local Civil Rules.*