Honorable U.S. District Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Marta Cecilia ESCALANTE PEREZ Petitioner, v. JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations; TODD LYONS, Acting Director of U.S. Immigration Customs Enforcement; Attorney General of the United States[1]; BRUCE SCOTT, Warden, Northwest ICE Processing Center; ICE; EOIR; and DHS. Respondents.	Case No.: 2:26-cv-00956-TSZ **PETITIONER'S TRAVERSE ISO PETITION FOR WRIT OF HABEAS CORPUS** ORAL ARGUMENT REQUESTED EXPEDITED HEARING REQUESTED

[1] Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, when a public officer sued in their official capacity leaves office, "the officer's successor is automatically substituted as a party." Here, Petitioner originally named then-Attorney General Pamela Bondi as a defendant in her Petition. Pamela Bondi has since left office and as such under Rule 25(d) she is automatically substituted for her successor, the current Attorney General of the United States, who, at this time, is Acting Attorney General Todd Blanche.

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PETITIONER'S TRAVERSE ISO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Ms. Escalante Perez is a single mother and asylum seeker with no criminal history. For almost a decade, Petitioner regularly and consistently complied with her release conditions—including during the upside-down time of the COVID-19 pandemic and even as she suffered severe and persistent domestic violence. Nevertheless, she was re-detained by DHS agents without the legal authority to do so for reasons that were invented. Worse, she has been detained for months following a fifteen-minute bond hearing in which the Immigration Judge applied no legal standard, weighed no facts, left no contemporaneous record, and produced only a cursory checkbox decision devoid of any legal reasoning. Petr's Decl., ECF 2 at ¶ 17; Pritchard Decl., ECF 3, Ex. 8 at p. 1. But to take away a person's liberty requires careful, thoughtful Government action. "It is procedure that spells much of the difference between rule by law and rule by whim or caprice." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 179 (1951) (Douglas, J., concurring); *Malinski v. New York*, 324 U.S. 401, 414 (1945) (Frankfurter, J., concurring) ("The history of American freedom is, in no small measure, the history of procedure"). The process used by Respondents—DHS and EOIR—here falls far below what was due to the Petitioner. On this record, the DHS should not have re-detained Petitioner and "there are no circumstances in which the [Immigration Judge] could plausibly establish that Petitioner posed a flight risk." *W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *4 (W.D. Wash. Jan. 30, 2026).

RESPONDENTS' POSITION

The Respondents assert that their detention of Petitioner is authorized because, in their view, she got all the process she was due in the form of two bond hearings before an immigration judge. Government Return, ECF 14 at 5-6; Pritchard Decl., ECF 3, Ex. 6 at 17. Respondents assert

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that the statute precludes judicial review of the bond decision, citing 8 U.S.C. § 1226(e). ECF 14 at 7-8. Respondents assert that the December 9, 2025 bond decision is constitutionally adequate because the Immigration Judge made an oral decision explaining the law, the facts, and the reasoning for his bond denial. ECF 14 at 8. As a result, the Respondents oppose Ms. Escalante's release.

The Respondents are mistaken many times over. First, DHS violated Ms. Escalante's due process rights when they re-detained her on August 7, 2025. Petitioner did not violate the terms of her release, and Respondents have not provided admissible evidence that she did. By re-detaining Petitioner without an opportunity to be heard before DHS, Respondents violated her due process rights under 8 U.S.C. §1226(a), as this Court held in *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1319 (W.D. Wash. 2025). Even if they did have any admissible evidence of Petitioner's alleged non-compliance, Respondents' justification for Petitioner's detention is pretextual and contradicted by their own conduct and an at least five-year delay in enforcement. And even then, the re-detention was executed unlawfully because it was completed by an agent without any legal authority to do so.

Second, the bond hearings provided by the Respondents before an immigration judge were inadequate to satisfy the law. The first bond hearing was illegal because the refusal by the Immigration judge to find jurisdiction violated 8 U.S.C. § 1226(a). *Del Valle Castillo, et. al. v Wamsley,* 2:25-cv-02054-TMC, Dkt. 28 (W.D. Wash. Nov. 26, 2025). And the second bond hearing on December 9, 2025 falls far below the standard of due process to which Ms. Escalante was entitled. The Immigration Juge literally and merely checked a box to order the Petitioner's continued detention. The Immigration Judge failed to apply the correct governing standard, failed to consider any of the required factors, and failed to make a rational decision. All of these aspects

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of the Immigration Judge's decision are judicially reviewable. The Respondents' position that the Immigration Judge issued a reasoned decision applying the law is wholly contradicted by the record.

For the reasons set forth below, this Court should decline to permit Respondents to wash their hands of their obligations under the statute and under the Constitution. This Court has the authority to reach Petitioner's claims and remedy Respondents' legal violation by ordering Petitioner's release under the reasonable conditions DHS previously issued for her. Pritchard Decl., ECF 3, Ex. 1 at 1; 8 U.S.C. § 2241; *Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024); *Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011).[2]

ARGUMENT

I. Respondents' re-detention of Petitioner was unlawful.

Petitioner did not violate the terms of her release: indeed, she appeared when and where required and, most importantly, she never missed an immigration court hearing during all the many years in which her non-detained removal case was pending. The uncontested evidence plainly demonstrates that DHS broke the law when they re-detained Ms. Escalante because a lowly "Deportation Officer" is prohibited from exercising the re-detention authority. Finally, there is no evidence to support the Respondents' assertion of noncompliance. Their primary evidence—the Bloom declaration at ECF 15—is hearsay and violates the best evidence rule and contradicts the

[2] Respondents concede that Petitioner has exhausted her claims and they make no argument to the contrary. ECF 14. Indeed, Petitioner administratively pursued her claim to the BIA who dismissed her administrative appeal. ECF 16-5. Notably, the 30-day time limit at 8 C.F.R. § 1003.38(b) "is a claim-processing rule and not a jurisdictional provision." *Matter of Morales-Morales*, 28 I&N Dec. 714, 716 (BIA 2023). The BIA thus has "authority to accept what are otherwise untimely appeals" where the appealing party can establish equitable tolling. *Id.* The BIA's decision is erroneous because it does not acknowledge, let alone grapple with, equitable tolling.

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credible evidence in the record before the Court. Petitioner's Decl., ECF 2 at ¶¶ 6-9; Pritchard Decl., ECF 3, Ex. 1. It is irrational and not credible that a purported 2016 violation or a purported 2020 violation (during the COVID pandemic) would, in 2025, be sufficient cause to re-detain her.

A. Petitioner did not violate the terms of her release.

Having once released Petitioner, to take her back into custody, DHS must demonstrate a material change in facts warranting re-detention. 8 U.S.C. § 1226(b); *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance"); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (noting that DHS has incorporated *Matter of Sugay* "into its practice, requiring a showing of changed circumstances . . . where the previous release decision was made by a DHS officer"). Respondents contend that after her release in 2015 "[o]ver the following years, Petitioner repeatedly failed to comply with those requirements, missing multiple check-ins throughout 2016 and again missing multiple check-ins over the course of 2020." ECF 14 at 2. But that statement is false and there is no admissible evidence to support it.

1. Respondents' assertion that Petitioner violated her conditions of release is false.

Petitioner complied with the terms of her release and most importantly appeared for her immigration court proceedings. Pritchard Decl., ECF 3, Ex. 1 (Petitioner's Order of Release on Recognizance and Personal Report Record); Pritchard Decl., ECF 3, Ex. 2 at ¶¶ 6-8. Respondents' assertion to the contrary is false.

2. Respondents' evidence of non-compliance is inadmissible.

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Respondents present no admissible evidence to support their argument of non-compliance. To the contrary, the record reflects that the government itself appears to have been satisfied with Petitioner's compliance, given that in 2023, years *after* Petitioner's alleged violations, DHS affirmatively joined in a request to terminate Petitioner's proceedings, expressing that it was no longer in the government's interest to pursue the removal case against her. Pritchard Decl., ECF 3, Ex. 2 at 2. Additionally, the record reflects that Petitioner attended check-ins with ICE at least four times in 2016 and at least twice in 2020, the years during which Respondents allege Petitioner repeatedly failed to report. Pritchard Decl., ECF 3, Ex. 1 at 2; ECF 14 at 2.

Nonetheless, Respondents attempt to supply factual support for their argument that Petitioner violated her reporting requirements and thus was properly deemed a flight risk by relying on the Declaration of Deportation Officer Ian Bloom. ECF 14 at 2; Bloom Decl., ECF 15. Bloom's declaration is inadmissible under the Federal Rules of Evidence, as it is replete with out-of-court statements offered for the truth of the matter asserted in the statement. *See* Fed. R. of Evid. 801(c); *see also United States v. Lucas-Hernandez*, 102 F.4th 1039, 1043 (9th Cir. 2024).[3]

The Bloom declaration also violates the best evidence rule. The best evidence rule provides that "[a]n original writing, recording, or photograph is required in order to prove its content unless

[3] The Federal Rules of Evidence generally apply in proceedings under 28 U.S.C. § 2241. Federal Rule of Evidence 1101 states that the Rules govern "civil cases and proceedings," and then lists several exceptions, none of which includes habeas proceedings. Fed. R. Evid. 1101(b), (d). Subsection (e) then clarifies that another statute or set of rules "may provide for admitting or excluding evidence independently from these rules." Fed. R. Evid. 1101(e). That exception also does not apply, as federal habeas rules do not displace the Rules of Evidence. Significantly, the comment to Rule 1101 clarifies that "[t]he rule does not exempt habeas corpus proceedings." Fed. R. Evid. 1101 advisory committee's note to subdivision (d). Consistent with this reading, the Supreme Court has applied the Federal Rules of Evidence to determine admissibility in a habeas proceeding. *See, e.g., Amadeo v. Zant*, 486 U.S. 214, 227 n.5 (1988). By their plain text, the Rules make clear that they apply in full force in the present case, thus, governing the admissibility of Respondents' proffered evidence.

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these rules or a federal statute provides otherwise." Fed. R. Evid. 1002. "The rule is the familiar one requiring production of the original of a document to prove its contents[.]" Fed. R. Evid. 1002 advisory committee's note. In other words, a declarant cannot simply assert what a document contains where that document itself can "prove its content." *Id.*; *accord, e.g., United States v. Valdovinos-Mendez*, 641 F.3d 1031, 1035 (9th Cir. 2011) (finding the best evidence rule does not apply when an immigration official testifies as to the *lack of* records, and noting that this differs from testimony where the "[a]gent . . . testif[ies] to the contents of the records sought to be proved," in which case the rule applies).

Officer Bloom concedes at the outset that his declaration is not based on personal knowledge. He states it is based on "various records and systems maintained by DHS in the regular course of business." Bloom Decl., ECF 15 at ¶ 2. He then testifies to the contents of those unproduced records. This is hearsay, an out-of-court statement offered for the truth of the matter asserted. Fed. R. Evid. 801(c). A witness who lacks personal knowledge of the underlying events cannot testify to their subject matter. Fed. R. Evid. 602; *see also Lucas-Hernandez*, 102 F.4th at 1043; *M-Z-H- v. Hermosillo*, 2025 WL 3718655, *4-6 (W.D. Wash. 2025) (applying the best evidence rule and the hearsay rule to find a similar ICE declaration inadmissible).

Application of the Federal Rules here is straightforward and fatal to the Bloom Declaration. Paragraph 5 asserts that Petitioner "missed multiple [ICE] check-ins throughout 2016, but did become compliant until 2020, when Petitioner again missed multiple check-ins over the course of the year." ECF 15. Bloom does not assert that he was personally monitoring Petitioner's compliance in 2016 or 2020. Indeed he asserts no personal knowledge of Petitioner's alleged violations. His assertions rely on out-of-court records he has not produced. Fed. R. Evid. 802. This

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violates both the hearsay rule and the best evidence rule. Fed. R. Evid. 802, 1002; *Valdovinos-Mendez*, 641 F.3d at 1035.

B. The evidence plainly demonstrates the re-detention was contrary to law

The Respondents' paperwork plainly demonstrates the due process violation in re-detaining Ms. Escalante.[4] Respondents' Exhibit at 16-3, DHS Form I-200 Warrant for Arrest of Alien, demonstrates on its face the illegality of the decision to re-detain Ms. Escalante.

[4] So much of what DHS has done in this case is emblematic of DHS' lawless behavior in Oregon during community sweeps. For example, the arrest report, at ECF 16-2 is the DHS form I-213 Record of Deportable/Inadmissible Alien. It is completely unreliable. It appears to be produced by "E 10813 Fernandez Jr" who is listed as a "Deportation Officer." ECF 16-2 at 2 (at signature and title of immigration officer). But it contains no signature from E 10813 Fernandez. *Id.* The line indicating where the "Signature and Title of Immigration Officer" should go has no signature. *Id.* The line below it indicates that a different unknown individual signed "FOR EF[.]" *Id.* There were six arresting agents (E 10813 Fernandez Jr, D 9025 Colson, W 9172 Adams, R. 3598 Quinn, D 05659 Salvato, and J + S09765 Moshofsky) but there is no indication that any of these agents signed it. *Id.* at 3. A federal court in Oregon has found that ICE agents' statements about providing warnings before shattering windows was not credible. *See, e.g., M-J-M-A- v. Hermosillo*, —F.Supp.3d— , 2026 WL 562063 *1 (D. Or. 2026), here, agents invented paperwork that never existed to lodge made-up violations of release conditions to justify a detention. *See id*. at *7-8 (describing how one agent would fill out the arrest narrative in a form even when she was not present, and a different agent would sign it who also was not present; agents used boilerplate language that did not accurately reflect what had happened during the arrest). Here, DHS purports that Petitioner was "placed under arrest at 5:50 AM." ECF 16-2 at 4. It purports—without bringing forward any of the underlying documents or "[f]urther immigration record checks" that supposedly "revealed that ESCALANTE-Perez has previously been required to check in intermittently with ERO in Portland and Eugene but has failed to answer phone calls or arrive at scheduled meetings, including an eight-month period of noncompliance in 2020." ECF 16-2 at 4. But that is completely unreliable because there is no indication of who that assertion comes from. The unknown maker of the I-213 who also wrote that "[o]n December 03, 2020, ERO Eugene noted that ESCALANTE-Perez had not answered her phone nor mailed letters since April 2024." Of course, that makes no sense. There is another agent whose name appears with a signature, Adams, W 9172. He is listed as the examining officer. Inexplicably, the report itself was not received or reviewed by the "Examining Officer" ADAMS, W 9172 until August 12, 2025 at which time the disposition was made to issue a "Warrant of Arrest/Notice to Appear." The "Date of Action" is listed as August 12, 2025, but it also appears as August 7, 2025 at 10:48am and that the "arrest" happened at 5:50 AM. *Id.* at 1.

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Issued after the fact of her arrest and after she had been taken into custody, the arrest warrant itself is signed by one "W 9172 Adams" who indicates their title is "Deportation Officer." ECF 16-3. Deportation Officer Adams "determined" that Ms. Escalante was to be re-detained and issued a "COMMAND" to "arrest and take [her] into custody for removal proceedings[.]" ECF 16-3 at 2. But Deportation Officer Adams had no legal authority to do so because "Deportation Officers" cannot issue warrants or authorize re-detention. 8 C.F.R. § 287.5(e)(2); 8 C.F.R. § 236.1(c)(9).

An agent whose rank is only that of a "Deportation Officer" is not authorized to issue an arrest warrant and Adams had no legal authority to issue this warrant against Ms. Escalante commanding her re-detention. 8 C.F.R. § 287.5(e)(2) (listing which immigration officials are authorized to issue a warrant of arrest); 8 C.F.R. § 236.1(b) ("A warrant of arrest may be issued only by those immigration officers listed in [§ 287.5(e)(2)].") Similarly, a "Deportation Officer" may not cancel an individual's release. 8 C.F.R. § 236.1(c)(9). The regulations limit re-detention decisions to only a very limited set of individuals, to wit, a "district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge[.]" 8 C.F.R. § 236.1(c)(9). A "Deportation Officer" is not among those with this authority. *Id.*

Agent Adams lacked the legal power to order Ms. Escalante's re-detention. Accordingly, the evidence plainly shows that the DHS re-detention determination was unlawful and violated Petitioner's due process rights.

II. Respondents' re-detention without an opportunity to be heard was arbitrary and violated due process.

Respondent DHS deprived Petitioner of her fundamental right to due process by re-detaining her after her release from custody without any notice or opportunity to be heard in a

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meaningful way contemporaneous to the DHS decision. Respondents' only legal authority to deprive an individual of liberty is delegated by Congress through the Immigration and Nationality Act. This statutory custody authority must be read against the backdrop of the U.S. Constitution. *United States v. Witkovich,* 353 U.S. 194, 202 (1957) (affirming "cardinal principle" that statutes must be read in accordance with Constitution); *United States v. Butler*, 297 U.S. 1, 62 (1936) ("The Constitution is the supreme law of the land . . . All legislation must confirm to the principles it lays down."); *see Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (limiting statutory custody authority for post-removal order detention because it must be "read in light of the Constitution's demands"). "No person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V. It is well-established that the Due Process Clause of the Fifth Amendment applies to "all 'persons' within the United States," irrespective of their immigration status. *See J. G. G. v. Trump*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas*, 533 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *Jimenez v. Bostock*, 2025 WL 2430381, at *6 (D.Or. Aug. 22, 2025).

A. Respondent DHS was legally required to provide Petitioner a pre-deprivation opportunity to be heard.

DHS was required to provide a meaningful opportunity to Ms. Escalante to be heard on the cause of their decision to re-detain her prior to or contemporaneously with their decision. Noncitizens are entitled to a meaningful opportunity to be heard on their custody status before DHS. 8 C.F.R. § 236.1(c)(9). DHS is required to engage in a "deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of

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the Due Process Clause." *Gonzalez v. Joyce*, 2025 WL 2961626, *5 (S.D.N.Y. 2025). "That the Government may believe it has a valid reason to detain [a noncitizen] does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *E.A.T.-B,* 795 F. Supp. 3d at1322.

When the government seeks to deprive an individual of a protected liberty interest, courts apply the balancing test from *Mathews*, 424 U.S. at 335. As this Court explained in *E.A. T.-B.*, the three-factor *Mathews* test is the controlling framework for determining what process is due. *E.A. T.-B.*, 795 F. Supp. 3d at 1321. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; *see also* Order Granting Mot. for Temp. Restr. Order, *Ramirez Tesara v Wamsley*, 2:25-cv-01723-MJP-TLF (W.D. Wash. Sept. 11, 2025), Dkt. 19 at 5–9 (applying *Mathews* factors to assess right to pre-deprivation hearing); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (same); *Morrissey v. Brewer,* 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to assess what process is due a parolee).

All three *Mathews* factors compel the same conclusion here. First, Petitioner's private interest in continued liberty is paramount. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. This interest is paramount for an individual like Petitioner, who is a single mother and was supporting her family for approximately ten years after an initial, favorable custody determination. *See E.A. T.-B.*, 795 F. Supp. 3d at 1321.

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Second, "the risk of erroneous deprivation of [Petitioner's] liberty interest in the absence of a pre-detention hearing is high." *Id*. Here, Petitioner received neither notice nor an opportunity to be heard by DHS before she was deprived of her liberty. Petr's Decl., ECF 2 at ¶¶ 9-17 (describing her arrest and detention). Respondents' failure to provide notice in such circumstances violates the Due Process clause because it "deprive[d] [Petitioner] of any way to meaningfully contest the basis for [her] detention." *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 359-60 (S.D.N.Y. 2019) (granting a habeas writ where the Petitioner was denied the proper notice in the context of reinstatement of removal). Indeed, the right to be heard "has little reality or worth unless one is informed that the matter is pending" and can then choose how to respond. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Had Respondents provided Petitioner a pre-deprivation opportunity, they would have been compelled to conclude that Petitioner's facts and circumstances did not present any lawful basis for detention. *Zadvydas*, 533 U.S. at 690 (explaining that the "government detention violates [the Due Process] Clause" in civil proceedings, including immigration proceedings, unless there is "a special justification, such as harm-threatening mental illness, [that] outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'").

Finally, Respondents have no legitimate interest in depriving Petitioner of her procedural rights. As it stands, the record shows that Respondents conducted an *illegal* individualized custody determination purporting to justify Petitioner's continued custody, as explicitly required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3(d). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and to prevent danger to the community. *See Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh*, 638 F.3d at 1203 (noting that "the temporary detention of noncitizens may sometimes by

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justified by concerns about public safety or flight risk"); *Zadvydas*, 533 U.S. at 689 (the two goals of the INA's custody authority are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "[p]reventing danger to the community"); *see also* 8 C.F.R. § 236.1(c)(8) (requiring consideration of flight risk and dangerousness in custody determination under 8 U.S.C. § 1226(a)). Here, neither purpose of detention was satisfied.

Petitioner is not a flight risk. She has resided in Oregon since her arrival over a decade ago, she meaningfully complied with the conditions of her release and attended all her immigration court hearings, she is the primary provider for her children, and she has committed no crimes. *See generally* Petr's Decl., ECF 2. Petitioner is not a danger to the community; she has no criminal record and has consistently cooperated with ICE officials. *Id.*; Pritchard Decl., ECF 3, Ex. 1 at 2 (listing at least 18 times Petitioner presented herself for in-person check-ins with ICE). The government cannot now claim a compelling interest in immediately detaining Petitioner based on allegations that are years old, objectively stale and which it previously ignored, particularly after the government itself affirmatively chose to close its removal proceedings against her in 2023. Pritchard Decl., ECF 3, Ex. 2. The minimal administrative burden of providing an opportunity to be heard by DHS is outweighed by the profound risk to liberty.

B. An Immigration Judge hearing after the fact is insufficient

Respondents assert to the extent that DHS failed to conduct its custody determination in accordance with the statute and due process, any such failure was cured by Petitioner's subsequent bond hearings. ECF 14 at 5-6. That is incorrect. This precise contention was raised before the District Court for the Southern District of New York in *Gonzalez v. Joyce*, and the Court there resoundingly rejected it, noting that a post-deprivation bond hearing "is no substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' its

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decision to detain." 2025 WL 2961626 at *5. Indeed, the Court emphasized that a scheme wherein a post-deprivation hearing is allowed to cure the DHS' failure to follow the law in executing the arrest would fly in the face of the spirit of constitutional due process protections: "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Id.* Under the Due Process clause and pursuant to *Gonzalez*, the fact that Petitioner was afforded bond hearings after her detention does not impact her claim that DHS was required to provide her an opportunity to be heard.

III. The December 9, 2025 bond hearing violated the law.

Respondents allege that the process provided to Ms. Escalante Perez through her December 9, 2025 bond proceeding was sufficient to satisfy due process under the *Mathews v. Eldridge* test. ECF 14 at 8. They are wrong, and Ms. Escalante Perez has now been separated from her two minor children for eight months because Respondents failed to conduct a bond hearing that comported with due process.

A. Respondents' jurisdictional argument is wrong.

Respondents invoke 8 U.S.C. § 1226(e) as if it were an absolute jurisdictional bar to any review of bond decisions. ECF 14 at 7-8. Their reading is incorrect.

Section 1226(e) bars review of discretionary decisions only. It does not strip jurisdiction over legal or constitutional challenges or mixed questions of law and fact to bond hearings. *Singh*, 638 F.3d at 1200 (holding that federal district courts have habeas jurisdiction to review bond hearings for constitutional claims and legal error); *see also Hernandez*, 872 F.3d at 989 (holding that claims which allege the "discretionary process itself was constitutionally flawed" are

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"cognizable in federal court on habeas" despite jurisdictional restrictions in §§ 1226(e) and 1252(a)(2)(B)). More recently, the Ninth Circuit held that district courts have habeas jurisdiction to review bond hearings for errors of law, including mixed questions of law, such as whether the Immigration Judge properly concluded someone is a danger or flight risk precluding release on bond. *Martinez*, 124 F.4th at 783; *see also Wilkinson v. Garland*, 601 U.S. 209, 212 (2024) (holding that "the application of a statutory legal standard…to an established set of facts is a quintessential mixed question of law and fact"). The determination of whether a noncitizen is a flight risk is a mixed question of law and fact reviewable as a question of law. *Martinez*, 124 F.4th. at 779.

Respondents conflate unreviewable discretionary decisions with reviewable legal and constitutional error. ECF 14 at 7-8. Here, Petitioner is not challenging how the Immigration Judge weighed the evidence. She is challenging the fundamental legality of the process itself: the failure to create a record, the failure to apply the correct legal standard (or indeed articulate *any* legal standard), the failure to provide any contemporaneous reasoning, the failure to weigh any facts at all. Petition, ECF 1 at ¶¶ 8-9, 102-107. These are quintessential legal and constitutional claims that fall squarely within this Court's habeas jurisdiction under binding Ninth Circuit precedent. *Martinez*, 124 F.4th at 783; *Singh*, 638 F.3d at 1200. Additionally, Petitioner brings claims of legal error relating to the Immigration Judge's failure to apply the *Guerra* factors and failure to consider issuing a bond to mitigate any perceived flight risk under *Hernandez v. Sessions.* 872 F.3d at 986-87; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

B. Respondents' merits argument is wrong.

Respondents contend that the "Immigration Judge provided an oral decision on the record explaining the flight-risk basis." ECF 14 at 8. But that is not true and there is certainly no evidence

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of a reasoned oral decision. Notably, the Respondents offer no citation, declaration, or any kind of evidence to support that assertion. ECF 14 at 8. So if the Immigration Judge did not record the hearing, ECF 14 at 8 ("no verbatim transcript is required or routinely prepared"), and the Immigration Judge did not issue any written decision, ECF 14 at 8 ("No statute or regulation imposes [a written decision] requirement[] on 8 U.S.C. § 1226(a) bond hearings"), then all that is left here to review is the Immigration Judge's order that provides no legal standard, no factual findings, and no legal reasoning. Pritchard Decl., ECF 3, Ex. 8. In sum, the Respondents have stripped Ms. Escalante of her freedom and separated her from her children by merely checking a box beside a label of "FLIGHT RISK." *Id.* The Fifth Amendment requires more.

Under 8 U.S.C. § 1226(a), an Immigration Judge deciding whether to release a noncitizen on bond is legally required to assess whether the noncitizen poses a flight risk or a danger to the community. 8 C.F.R. § 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. at 38. Immigration judges must *reasonably* consider and balance factors, including the noncitizen's fixed address, length of residence, family ties, employment history, record of appearance, criminal record, history of immigration violations, attempts to flee, and manner of entry. *Matter of Guerra*, 24 I&N Dec. at 40. Due process required the Immigration Judge to provide at least some reasoned explanation for his decision. *She v. Holder,* 629 F.3d 958, 963 (9th Cir. 2010) (affirming that due process requires a "minimum degree of clarity in dispositive reasoning" in decisions made by EOIR).

The evidence before the Immigration Judge at Ms. Escalante Perez's hearing demonstrates that she does not pose a flight risk or a danger to society. Pritchard Decl., Dkt. 3, Ex. 7 at pp. 2-81. Yet the Immigration Judge's Order denied release on bond, without so much as addressing a single *Guerra* factor nor providing any reasoned explanation of his decision. Pritchard Decl., Dkt. 3, Ex. 8. Where the record establishes every factor favoring release and an immigration judge

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provides no legal justification, a no-bond finding is not a discretionary judgment—it is a failure to apply the law.

The Immigration Judge further compounded his legal and constitutional errors by finding Petitioner a flight risk yet failing to consider any bond amount or alternative conditions of release. Under *Hernandez*, an immigration judge must consider a noncitizen's financial circumstances and whether alternative conditions could mitigate flight risk. *Hernandez*, 872 F.3d at 986-87. Here, the Immigration Judge did neither. Pritchard Decl., Dkt. 3, Ex. 8 at 1. The Immigration Judge affirmatively represented that he had indeed *not* considered Petitioner's financial circumstances when he left the check box stating "Ability to pay considered" unchecked. *Id*. The judge then concluded that no amount of bond and no conditions could secure Petitioner's future appearance. *Id*.

The Immigration Judge's failure to consider any bond amount or alternative conditions violated both the statutory scheme and the Due Process Clause of the Fifth Amendment. *Hernandez,* 872 F.3d at 994 (requiring consideration of financial circumstances and alternative release conditions to ensure detention is not used when less restrictive means can satisfy the government's interest); *Singh,* 638 F.3d at 1203 (requiring the government to prove by clear and convincing evidence that no conditions of release can reasonably assure future appearance).

Civil immigration detention must be non-punitive and bear a reasonable relation to its purpose of ensuring compliance with immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92. The government may not detain a noncitizen unless detention is reasonably necessary to serve those purposes, and that necessity must be established through adequate procedures at every stage. *Zadvydas*, 533 U.S. at 690-91. Here, the Immigration Judge's order for Petitioner's continued detention constituted legal error because the record

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compels a finding that Petitioner is neither a flight risk nor a danger to the community. *See generally* Pritchard Decl., ECF 3, Ex. 7; Petitioner's Decl., ECF 2 at ¶¶ 7-9, 21 (noting that Petitioner attended all hearings in her non-detained removal proceedings, complied with ICE check-ins, lived in the same town in Oregon for approximately a decade, held steady employment, has a U.S. citizen child, and has a U-visa application pending with DHS).

Respondents allege that the risk of erroneous deprivation in Petitioner's case was slim given the process afforded her in her bond proceeding. ECF 14 at 5. Respondents point to the fact that Petitioner had notice of her bond hearing, she was represented by counsel in the proceeding, she had an opportunity to be heard, and she did indeed submit substantial evidence in support of her bond request. *Id.* Respondents see this as amounting to robust process which, in their view, significantly reduced the risk of an erroneous deprivation of Petitioner's liberty. *Id.*

Respondents miss the point. Petitioner's argument is that her opportunity to be heard was not meaningful because the adjudicator who sat in judgement applied no cognizable legal standard and arbitrarily denied her the relief she sought without any reasoned explanation. This is so because due process requires the government to provide at least some reasoned explanation of its decisions, including even those decisions which may be discretionary in nature. *She,* 629 F.3d at 963 (affirming that due process requires a "minimum degree of clarity in dispositive reasoning" in decisions made by the EOIR). Indeed, it is fundamental to an ordered society of laws that the government should have to provide at least some explanation of its reasoning when depriving an individual of their liberty. *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004) (recognizing freedom from physical detention as "the most elemental of liberty interests").

Here, the record reflects that the Immigration Judge offered no indication of the legal standard he used to consider Petitioner's bond request nor did he offer any reasoned explanation

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of his finding that Petitioner constitutes such an extreme flight risk that no amount of bond would sufficiently ensure her appearance in future proceedings if released. Pritchard Decl., ECF 3, Ex. 8. Rather, the Immigration Judge's decision simply consists of checked boxes which state the conclusions the Judge reached – that Petitioner was a flight risk and release under bond or conditions would be denied – without speaking to how those conclusions were reached. *Id.*

In this way the record of Petitioner's bond proceeding reveals an exceedingly high risk of erroneous deprivation. Indeed, a form order with no reasoning or legal standard articulated would seem to almost invite arbitrary decision-making. Moreover, because no legal standard was articulated by the Immigration Judge, it is difficult to assess whether the correct legal standard was used and whether it was properly applied to the facts. This further increases the risk that an incorrect legal standard may be utilized and an individual will erroneously be deprived of their liberty.

The third *Mathews* factor weighs in favor of Petitioner. The government can have no legitimate interest in breaking the law. Civil immigration detention, to be lawful, must be reasonably related to the purpose of ensuring the non-citizen's attendance for future proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. 678 at 690-92; *Demore v. Kim*, 538 U.S. 510, 527 (2003). Here, the parties agree that Petitioner poses no danger to the community, and the record clearly establishes that Petitioner is not a flight risk. Pritchard Decl., ECF 3, Ex.7, pp. 2-81; Petitioner's Decl., ECF 2 at ¶¶ 2-4, 9, 21, 24. Because Petitioner's detention is not reasonably related to the purpose of preventing flight or danger to the community, the government arguably has *no* legitimate interest in detaining her. Thus, contrary to Respondents' arguments, step three of the *Mathews* test likewise favors Petitioner.

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Petitioner has established that she wins under the *Mathews* test and that Respondents did, in fact, violate her due process rights during the course of her bond proceeding. The agency has doubled down on that error by dismissing on procedural grounds Petitioner's appeal of her no-bond decision to the Board of Immigration Appeals. ECF 16, Ex. 5. As discussed above, this Court is empowered to reach Petitioner's claims and this Court should grant a remedy which does not require Petitioner to go back before Respondent agencies – who have time and again acted unlawfully – to seek her liberty. Instead, the Court should grant Petitioner immediate release and restore the previous release conditions.

CONCLUSION

The Court should grant the writ and order Ms. Escalante Perez's immediate release under reasonable conditions.

Dated: April 8, 2026

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