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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**GERARDO ROMAN VALENCIA ZAPATA,
DAVID RAFAEL COLON SOLANO,
KEYMARIS ALVAREZ MIRANDA,
GABRIELA ALONDRA VARGAS
PLASENCIA**

Petitioners,

v.

POLLY KAISER, Acting Field Office Director
of the San Francisco Immigration and Customs
Enforcement Office; **TODD LYONS**, Acting
Director of United States Immigration and
Customs Enforcement; **KRISTI NOEM**,
Secretary of the United States Department of
Homeland Security, **PAMELA BONDI**,
Attorney General of the United States, acting in
their official capacities,

Respondents.

Case No. 3:25-cv-07492

**PETITIONERS' REPLY TO
RESPONDENTS' OPPOSITION
TO PETITIONERS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: September 18, 2025

Time: 10:00 a.m.

Location: Courtroom 15 – San Francisco
Courthouse

The Honorable RITA F. LIN

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INTRODUCTION

18 The government's positions are unprecedented. Never before has the government undertaken

19 such a sweeping campaign to arrest and detain people like Petitioners—individuals in ongoing removal

20 proceedings with serious claims for relief, who have no criminal history and have complied with all

21 immigration-court and supervision requirements. The government's arrest of petitioners on September 4,

22 2025, occurring after the *Make the Road* stay was issued on August 29, 2025, appears to violate that

23 court's order. *Make the Road New York v. Noem*, 2025 WL 2494908 at *2. Further, binding precedent

24 squarely holds the Due Process Clause protects noncitizens like Petitioners from unlawful detention, and

25 the government's only legitimate interests in civil immigration detention are mitigating danger and flight

26 risk. Where those interests are not present, detention violates due process and the detained individual

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1 must be released. Indeed, in just the past few weeks, multiple courts faced with essentially
 2 indistinguishable facts as Petitioners' have issued precisely that relief. See *Salcedo v. Kaiser*, 3:25-cv-
 3 06924-EMC (N.D. Cal. September 12, 2025) (attached as Exhibit A), *Cordero et al v Kaiser*, No. 25-cv-
 4 07286 (N.D. Cal. Aug. 29, 2025) (granting *ex parte* TRO in a multi-petitioner habeas petition); *Garcia*
 5 *v. Kaiser*, No. 3:25-cv-06916 (N.D. Cal. Aug. 29, 2025) (granting preliminary injunction); *Salazar v.*
 6 *Kaiser*, No. 1:25-CV-01017-JLT-SAB, 2025 WL 2456232, at *2 (E.D. Cal. Aug. 26, 2025) (granting
 7 preliminary injunction); *Ortiz Calderon v. Kaiser*, No. 3:25-cv-6695 (N.D. Cal. Aug. 22, 2025)
 8 (granting preliminary injunction); *Clavijo v. Kaiser*, 2025 WL 2419263, *25 (N.D. Cal. Aug. 21, 2025)
 9 (granting preliminary injunction); *Paz Hernandez v. Kaiser*, No. 1:25-cv-00986 (E.D. Cal. Aug. 21,
 10 2025) (granting preliminary injunction); *Garcia Barrera v. Andrews*, 2025 WL 2420068, at *3 (E.D.
 11 Cal. Aug. 21, 2025); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *12
 12 (E.D. Cal. Aug. 14, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025);
 13 *Valdez v. Joyce*, 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025); *Martinez v. Hyde*, 2025 U.S.
 14 Dist. LEXIS 115194, at *5-*6 (D. Mass. June 17, 2025); Opinion & Order, *Singh v. Andrews*, 1:25-cv-
 15 00801-KES-SKO (E.D. Cal. July 11, 2025) ("*Singh Order*").
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 17

18 The Court should therefore grant Petitioners' request for a preliminary injunction.

19 ARGUMENT

20 I. Petitioners are likely to succeed on the merits of their due process claims.

21 a. The government's actions violate the *Make The Road* stay

22 At the threshold, the government's arrest of petitioners on September 4, 2025, occurring after the
 23 *Make the Road* stay was issued on August 29, 2025, appears to violate that court's order. The *Make the*
 24 *Road* court specifically stayed the government's expansion of expedited removal and its application to
 25 "people living in the interior of the country who have not previously been subject to expedited removal."
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 28

1 *Make the Road New York v. Noem*, 2025 WL 2494908 at *2. Respondents argue that the D.C. District
 2 Court's decision in *Make the Road New York v. Noem* was "wrongly decided" and is on appeal. Dkt. 16
 3 ("Opp.") at 10. That assertion is both inaccurate and irrelevant. Unless and until the D.C. Circuit
 4 reverses or stays the order, the August 29, 2025 injunction remains binding on the government. See
 5 *Nken v. Holder*, 556 U.S. 418, 434 (2009) (noting that a judgment "takes effect" unless stayed pending
 6 appeal).

7
 8 Petitioners were arrested at immigration court in San Francisco, precisely the type of interior
 9 enforcement the *Make the Road* court found violated due process. The court specifically noted its
 10 concern about the government's practice of "targeting for expedited removal people already in section
 11 240 removal proceedings" through courthouse arrests. *Id.* at *11-12. That petitioners may have initially
 12 been apprehended near the border months or years ago does not authorize their re-arrest in the interior
 13 for expedited removal after they were released and placed in regular removal proceedings.
 14

15 **b. Petitioners are not in expedited removal proceedings.**

16 Petitioners are not in expedited removal proceedings, they remain in full removal proceedings,¹
 17 Opp. 10, and their TRO motion and requested relief do not concern expedited removal at all. See Mem.
 18 11-17 (challenging only detention). Thus, contrary to Respondents' repeated suggestions, Opp. 13-17,
 19 the motion is squarely focused on challenging only the lawfulness of their detention; it has nothing to do
 20 with whether, in the future, Respondents will place them in expedited removal proceedings.² Their
 21 challenges to detention are properly before this Court.
 22

23 **c. The government's election to release conferred a protected liberty interest**
 24

25 ¹ 8 U.S.C. § 1229a codifies Section 240 of the INA, governing non-expedited removal hearings.

26 ² Although not relevant to resolution of the TRO, this Court would still have jurisdiction over Petitioner's
 27 detention challenge even if they were in expedited removal. See, e.g., *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170-
 28 72 (W.D. Wash. 2023) (explaining that the Supreme Court's jurisdictional holding in *DHS v. Thuraissigiam*, 591
 U.S. 103, 107 (2020), is "limited" to due process challenges to admission processes, and does not bar due process
 challenge to detention by noncitizens placed in expedited removal).

1 U.S. immigration law distinguishes between detention of noncitizens seeking admission under §
2 1225(b) and detention of those already in the country pending removal proceedings under § 1226. *Jennings*
3 *v. Rodriguez*, 583 U.S. 281, 289 (2018).

4
5 When the government released Petitioners on their own recognizance shortly after their 2023-
6 2024 entries, it necessarily determined that they were neither a danger to the community nor a flight
7 risk. See, e.g., *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia*
8 *for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 1236(c)(8) ("Any [authorized] officer ...
9 may ... release [a noncitizen] not described in section 236(c)(1) of the Act ... provided that the
10 [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger
11 to property or persons, and that the [noncitizen] is likely to appear for any future proceeding."). Here,
12 the government released Petitioners and affirmatively placed them in full removal proceedings under §
13 1229a and released them under § 1226(a), not § 1225(b). That choice reflected an explicit determination
14 that Petitioners posed neither a danger nor a flight risk. See 8 C.F.R. § 236.1(8) ("Any officer authorized
15 to issue a warrant of arrest may" release a noncitizen if she "demonstrate[s] to the satisfaction of the
16 officer that such release would not pose a danger to property or persons, and that [she] is likely to appear
17 for any future proceeding."); see also *Hernandez*, 872 F.3d at 983 ("If the DHS officer or IJ determines
18 that the non-citizen does not pose a danger and is likely to appear at future proceedings, then she may
19 release the non-citizen on bond or other conditions of release."). By releasing Petitioners under §
20 1226(a), the government recognized that they fell outside the mandatory detention scheme of § 1225(b).
21 See *Lopez Benitez v. Francis*, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) ("[A] noncitizen
22 cannot be subject to both mandatory detention under § 1225 and discretionary detention under
23 §1226[.]").
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1 This election carries constitutional significance. The Due Process Clause "applies to all 'persons'
2 within the United States, including [noncitizens], whether their presence here is lawful, unlawful,
3 temporary, or permanent." *Zadvydas*, 533 U.S. at 693; see also *Doe v. Becerra*, -- F. Supp. 3d --, 2025
4 WL 691664, at *3 (E.D. Cal. Mar. 3, 2025) ("As a person inside the United States, [noncitizen] is entitled
5 to the protections of the Due Process Clause."). As this Court recognized in granting Petitioners' motion
6 for a temporary restraining order, "[f]reedom from imprisonment—from government custody, detention,
7 or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Ramirez-Clavijo*
8 *v. Kaiser*, 2025 WL 2097467, at *2 (N.D. Cal. July 25, 2025) (quoting *Zadvydas*, 533 U.S. at 690); see
9 also *Lopez Benitez*, 2025 WL 2371588, at *9 ("It is well established that such protection extends to
10 noncitizens, including those who are in removal proceedings."). By placing Petitioners in full removal
11 proceedings and releasing them under § 1226(a), the government conferred on them a liberty interest
12 protected by the Due Process Clause. See *Ortega v. Bonner*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)
13 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [noncitizen]
14 have a liberty interest in remaining out of custody on bond."); *Pinchi v. Noem*, -- F. Supp. 3d --, 2025 WL
15 2084921, at *3 (N.D. Cal. July 24, 2025) ("Thus, even when ICE has the initial discretion to detain or
16 release a noncitizen pending removal proceedings, after that individual is released from custody she has a
17 protected liberty interest in remaining out of custody."); *Diaz v. Kaiser*, 2025 WL 1676854, at *2 (N.D.
18 Cal. June 14, 2025) ("Courts have previously found that individuals released from immigration custody
19 on bond have a protectable liberty interest in remaining out of custody on bond."); *Garcia v. Bondi*, 2025
20 WL 1676855, at *2 (N.D. Cal. June 14, 2025) (same); *Lopez Benitez*, 2025 WL 2371588, at *9 (holding
21 that noncitizen subject to detention under § 1226(a) has protected liberty interest); *Romero v. Kaiser*, 2022
22 WL 1443250, at *1–2 (N.D. Cal. May 6, 2022) (holding that noncitizen conditionally released after finding
23 of no danger or flight risk "raised serious questions going to the merits of her claim that due process
24 requires a hearing before an IJ prior to re-detention."); *Vargas v. Jennings*, 2020 WL 5074312, at *1, 3
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PETITIONERS' REPLY

(N.D. Cal. Aug. 23, 2020) (finding that noncitizen released on bond pursuant to § 1226(c) "raised serious questions on the merits of her claim that she is entitled to a pre-deprivation hearing before an immigration judge if she is re-arrested").

That liberty interest cannot be withdrawn at will. Once granted, it may be revoked only through procedures that ensure the government's "asserted justification for physical confinement outweighs [Petitioner's] constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990; see also *Doe*, 2025 WL 691664, at *5 ("Governmental actions may create a liberty interest entitled to the protections of the Due Process Clause." (citing *Bd. of Pardons v. Allen*, 482 U.S. 369, 371 (1987))). Respondents' contrary position—that Petitioners somehow remained perpetually "subject to" § 1225(b) despite their release under § 1226(a)—would permit the government to create the illusion of liberty and revoke it at will, without process or justification. Neither statute nor Constitution permit that result.

In similar circumstances, courts have rejected the government's attempts to rewrite its own paperwork after the fact. See *Lopez Benitez*, 2025 WL 2371588, at *4 ("Here, Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a)."); *Gomes v. Hyde*, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025) ("Because Gomes was arrested on a warrant and ordered detained under Section 1226, her detention continues to be governed by Section 1226(a)'s discretionary framework."); *Dos Santos v. Noem*, 2025 WL 2370988, at *6 (D. Mass. Aug. 14, 2025).

Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), does not require a different result. That case involved a noncitizen placed directly into expedited removal proceedings under § 1225(b), never released, and never governed by § 1226(a)'s discretionary framework. *Thuraissigiam*, 591 U.S. at 114. Petitioners' circumstances are fundamentally different: he was placed in full proceedings and affirmatively released under the § 1226(a) framework. Moreover, the petitioner in *Thuraissigiam*

1 challenged his negative credible-fear determination and sought relief directing the government "to provide
2 [him] with a new opportunity to apply for asylum and other applicable forms of release," but "made no
3 mention of release from custody." *Id.* at 115 (alteration in original). Petitioners here challenge not a
4 negative credible-fear finding, but the constitutionality of their re-detention without a neutral hearing.
5 *Thuraissigiam* is thus inapposite.

6
7 Because the government elected to release Petitioners on their own recognizance, Petitioners are
8 entitled to due process before any re-detention (regardless of what authority DHS purports to be
9 exercising). At a minimum, that requires a hearing before a neutral adjudicator where the government
10 bears the burden of proving, by clear and convincing evidence, that they are now a danger or flight risk.
11 See *Al-Sadeai v. U.S. Immigr. & Customs Enft.*, 540 F. Supp. 3d 983, 988–99 (S.D. Cal. 2021) ("In the §
12 1226(a) custody hearing context, however, the Ninth Circuit has held that the Constitution requires placing
13 the burden of proof on the Government to show, by clear and convincing evidence, that detention is
14 justified.").

15
16 The government's argument that it can retroactively reclassify petitioners' detention authority
17 fundamentally misunderstands the nature of liberty interests created by its own actions. As *Salcedo* makes
18 clear, when the government releases someone under § 1226(a) after determining they are neither a flight
19 risk nor danger to the community, it creates a protected liberty interest that "cannot be unilaterally
20 abrogated without process by the Government simply 'switching tracks.'" *Salcedo*, 3:25-cv-06924-EMC
21 (N.D. Cal. September 12, 2025) at *14 (Exh. A).

22
23
24 The government cannot have it both ways. Having exercised its discretion to release petitioners
25 under § 1226(a)—thereby making the determination that detention was not necessary—it cannot now
26 claim that detention was always mandatory under § 1225(b). As the *Salcedo* court noted, these detention
27 regimes "are facially inconsistent: one provides for discretionary release with procedural protections,
28

1 while the other mandates detention without discretion. It is not possible for [petitioners] to be
2 simultaneously subject to both detention regimes." *Id.*

3 The government's expansive reading of § 1225(b)(2) has further been systematically rejected by
4 district courts examining this issue. As detailed in *Salcedo*, courts have found this interpretation would
5 render the phrase "seeking admission" superfluous, violating fundamental canons of statutory
6 construction. *Id.* at *16-17. The government's position would mean that every undocumented person in
7 the United States is perpetually "seeking admission" regardless of how long they have lived here, an
8 unnatural reading that "ignores the tense of the term." *Id.*

10 Moreover, the government's interpretation would nullify Congress's recent Laken Riley Act
11 amendments to § 1226, which added mandatory detention provisions for certain inadmissible aliens. If all
12 inadmissible aliens were already subject to mandatory detention under § 1225(b)(2), as the government
13 claims, this amendment would be meaningless, violating the principle that "Congress acts to amend a
14 statute, we presume it intends its amendment to have real and substantial effect." *Id.* at *18 (quoting *Stone*
15 *v. I.N.S.*, 514 U.S. 386, 397 (1995)).

18
19 **d. The BIA's recent decision in *Matter of Yajure Hurtado* lacks persuasive**
20 **authority and contradicts binding precedent**

21 The government's heavy reliance on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025),
22 is misplaced. As the court in *Salcedo v. Kaiser* explained last week, "the BIA decision is entitled to little
23 deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while 'agencies
24 have no special competence in resolving statutory ambiguities,' '[c]ourts do')." *Salcedo v Kaiser*, 3:25-
25 cv-06924-EMC (N.D. Cal. September 12, 2025) at *15 (attached as Exh. A). Under *Skidmore v. Swift &*
26 *Co.*, 323 U.S. 134, 140 (1944), the "weight of such a judgment in a particular case will depend upon the
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1 thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and
2 later pronouncements, and all those factors which give it power to persuade, if lacking power to
3 control.” *Id.* The court goes on to state that “Under *Loper*, the Court has no obligation to defer to the
4 BIA’s view, particularly when that view has not “remained consistent over time.” *Loper*, 603 U.S. at
5 386; *see also Skidmore*, 323 U.S. at 140.” Prior to its September 2025 decision, the BIA issued three
6 non-precedential decisions taking the opposite position, with one even stating it was “unaware of any
7 precedent” supporting the government’s current interpretation. *Id.* “[T]he Court finds the well-reasoned
8 decisions of the many district courts that have rejected the Government’s expansive view of 1225(b)(2)
9 far more persuasive than the new BIA ruling, a ruling at odds with its prior decisions and DHS’s actions
10 over the past thirty years.” *Id.* at 21.

12 In addition, the BIA’s reasoning in *Yajure Hurtado* directly conflicts with the thorough analysis
13 in *Make the Road v. Noem*. That court rejected the government’s identical argument that those who
14 entered unlawfully have no liberty interest beyond what Congress provides, finding instead that
15 “individuals who have effected entry to the United States are entitled to due process.” *Make the Road*,
16 2025 WL 2494908 at *21.

17
18
19 **e. Joint habeas petitions do not violate § 1252(f)(1)’s prohibition on class-wide**
20 **relief**

21 The government’s procedural objection under footnote 6, Opp. at 13, fundamentally
22 mischaracterizes both the nature of this petition and the scope of § 1252(f)(1). That provision prohibits
23 courts from enjoining immigration provisions “other than with respect to the application of such
24 provisions to an individual alien against whom proceedings...have been initiated.” 8 U.S.C. § 1252(f)(1).
25

26 This petition seeks relief for four specifically named individuals, each with their own removal
27 proceedings. The requested relief, pre-detention hearings, would apply only to these four petitioners, not
28

1 to any broader class. This is precisely the type of "individual alien" relief that § 1252(f)(1) explicitly
2 permits. Courts in this District have previously found no procedural impediment to joint habeas
3 petitions. See e.g. *Cordero et al v Kaiser*, No. 25-cv-07286 (N.D. Cal. Aug. 29, 2025) (granting a
4 temporary restraining order to five petitioners who filed a joint habeas petition challenging their
5 immigration detention).

6
7 Section 1252(f)(1) states that "no court (other than the Supreme Court) shall have jurisdiction or
8 authority to enjoin or restrain the operation of the provisions of part IV of this subchapter... other than
9 with respect to the application of such provisions to an individual alien against whom proceedings under
10 such part have been initiated." 8 U.S.C.A. § 1252. This provision primarily limits courts from granting
11 class-wide injunctive relief that interferes with the operation of immigration laws, except in cases
12 involving individual aliens. The Supreme Court has interpreted this language to bar class-wide
13 injunctive relief but not to preclude relief for individual aliens. See *Garland v. Aleman Gonzalez*, 596
14 U.S. 543 (2022).

15
16 The statute does not explicitly address whether multiple petitioners can join in a single habeas
17 petition. The focus of § 1252(f)(1) is on the type of relief courts can grant, rather than the procedural
18 format of petitions. Therefore, the statute does not prohibit joint habeas petitions as long as the relief
19 sought pertains to the application of immigration provisions to individual aliens.

20
21 The habeas corpus statute, 28 U.S.C. § 2241, allows individuals to challenge their detention.
22 Courts have recognized that habeas petitions can be filed jointly by multiple petitioners when their
23 claims arise from similar circumstances or legal issues. For example, in *Nguyen v. Kissinger*, the court
24 addressed a class action habeas petition and did not find procedural joinder to be inherently problematic.
25 *Nguyen v. Kissinger*, 528 F.2d 1194 (1975). Additionally, in *Doe v. Garland*, the court emphasized that
26 habeas petitions must be brought in the district of confinement and focus on the petitioner's present
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28

1 physical confinement. *Doe v. Garland*, 109 F.4th 1188 (2024). These principles support the
2 permissibility of joint habeas petitions, provided they comply with jurisdictional and procedural
3 requirements.

4 The government's suggestion that this Court lacks jurisdiction to grant individual relief to named
5 petitioners simply because they filed jointly finds no support in § 1252(f)(1) or any other authority.
6

7 The cases cited by Respondents are distinguishable and non-binding. *Acord v. California*, No.
8 17-cv-01089, 2017 WL 4699835 (E.D. Cal. Oct. 19, 2017), involved a § 2254 petition by pro se state
9 prisoners attempting to proceed as a class action; fundamentally different from immigration detainees
10 filing a joint § 2241 petition with counsel. The Acord court's primary concern was that pro se litigants
11 cannot represent others. *Id.* at *1.
12

13 The two out-of-circuit cases, *Buriev v. Warden*, No. 25-cv-60459, 2025 WL 1906626 (S.D. Fla.
14 Mar. 18, 2025), and *Rubinstein v. United States*, No. 23-cv-12685, 2024 WL 37931 (E.D. Mich. Jan. 3,
15 2024), similarly involved pro se prisoners with divergent criminal convictions and sentences. Those
16 courts emphasized practical problems unique to pro se prisoner litigation: inability to meet for
17 coordination, frequent transfers between facilities, and the requirement that each petitioner sign every
18 pleading. *Rubinstein*, 2024 WL 37931, at *2. These concerns are absent here, where Petitioners are
19 represented by counsel and detained at the same facility challenging the same detention policy. If the
20 government truly believed joinder was improper, the appropriate remedy would be severance, not
21 dismissal—yet the government only "reserve[s]" the right to move for severance, tacitly acknowledging
22 this Court's jurisdiction. *Opp.* at 13.
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f. The government must bear the burden when re-detaining previously released individuals

The government's argument that petitioners should bear the burden of proving they are not flight risks or dangers, Opp. at 15, ignores the critical fact that the government has already made that determination. When DHS released each petitioner on their own recognizance, it necessarily found, under its own regulations, that they "would not pose a danger to property or persons" and were "likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

This is not a case like *Rodriguez Diaz v. Garland*, which addressed prolonged detention of someone who remained in custody. Here, the government seeks to re-detain individuals it already determined were safe to release. As multiple courts have recognized, once the government releases someone, it creates "an implicit promise that the individual's liberty will be revoked only if they fail to abide by the conditions of their release." *E.g. Ortiz Calderon v. Kaiser*, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).

The government offers no evidence of changed circumstances justifying re-detention. Indeed, petitioners have complied with all release conditions, attended required check-ins, and appeared for their immigration hearings, the very hearing where they were arrested. Under these circumstances, requiring petitioners to re-prove what the government has already determined would be absurd. The burden must be on the government to show what has changed to justify revoking the liberty it previously granted.

Moreover, *Rodriguez Diaz*'s discussion of burden allocation addressed statutorily authorized hearings under § 1226(a), not the constitutional due process hearings required here. When the government violates constitutional rights through detention without process, different considerations apply. As the Ninth Circuit recognized in *Singh v. Holder* (which *Rodriguez Diaz* distinguished but did not overrule

on constitutional grounds), when detention implicates fundamental liberty interests, heightened procedural protections including burden-shifting may be constitutionally required. *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

g. The Mathews test is the applicable standard for procedural due process claims

The government has taken the position that *Mathews v. Eldridge* does not apply to immigration detention. Opp. at 11. In *Rodriguez Diaz v. Garland*, the panel cited the Ninth Circuit’s long history of applying *Mathews v. Eldridge* to procedural due process claims, including in the immigration context, but also noted that the Supreme Court had not applied *Mathews* in *Demore*. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The *Rodriguez Diaz* panel thus “assume[d] without deciding” that the *Mathews* test applies. *Id.*

However, in a case decided a month after *Rodriguez Diaz*, the Ninth Circuit unequivocally held in a non-immigration case that the *Mathews* test is the applicable standard for procedural due process claims. *See Johnson v. Ryan*, 55 F.4th 1167, 1179–80 (9th Cir. 2022).

As the court in *Johnson* articulated: “In order to analyze a procedural due process claim, we engage in a two-step analysis: First, we determine whether the inmate was deprived of a constitutionally protected liberty or property interest. Second, we examine whether that deprivation was accompanied by sufficient procedural protections. ... In order to determine whether the procedural protections provided are sufficient at the second step, we look to (1) the private interest affected; (2) the risk of an erroneous deprivation and the probable value of any additional or substitute procedural safeguards; and (3) the government’s interest. *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335(1976)).

Applying *Johnson v. Ryan*’s framework to Petitioners’ case demonstrates that the *Mathews* test governs and favors release. First, Petitioners possessed a constitutionally protected liberty interest. Having been released on their own recognizance when they entered the United States, they developed reasonable reliance on their continued freedom, and diligently attended every immigration court hearing and filed an application for asylum within the one-year filing deadline. Dkt. 4-1 (“Mem.”) at 9. They

1 had no criminal history anywhere in the world. Mem. at 9. Their liberty interest mirrors that recognized
2 in *Morrissey v. Brewer*, where the Supreme Court held that parolees have "relied on at least an implicit
3 promise that parole will be revoked only if [they] fail[] to live up to the parole conditions." 408 U.S.
4 471, 482 (1972). Here, Petitioners reasonably relied on their continued freedom contingent on
5 compliance with immigration proceedings, which they scrupulously maintained.

6 Second, examining whether sufficient procedural protections accompanied their detention, all
7 three *Mathews* factors overwhelmingly support Petitioners. The private interest, freedom from physical
8 detention, represents the most fundamental liberty interest. The risk of erroneous deprivation is
9 exceptionally high: Respondents detained them as part of a coordinated operation that is aimed at
10 dramatically accelerating deportations through courthouse arrests, not based on individualized
11 assessment. Mem. at 10. No neutral decisionmaker evaluated whether detention served legitimate
12 purposes of preventing flight risk or danger, determinations Respondents themselves rejected when
13 initially releasing them, having determined that they were not a flight risk or danger to the community,
14 Opp. at 12. Finally, the government's interest is negligible: Petitioners were arrested immediately after
15 attending a hearing in San Francisco Immigration Court, definitively proving they pose no flight risk.
16 Mem. at 10. They have meticulously complied with all the requirements that the government has
17 imposed on them. Mem. at 9.

18 The Ninth Circuit's binding precedent in *Johnson v. Ryan* establishes that *Mathews* governs
19 procedural due process claims, notwithstanding the government's contrary position. Applied here,
20 *Mathews* compels Petitioners' immediate release and prohibition on re-detention absent a pre-
21 deprivation hearing. Respondents violated clearly established law by summarily detaining someone who
22 demonstrably poses neither flight risk nor danger, indeed, someone whose exemplary conduct has only
23 confirmed the government's prediction that they posed no risk. Mem. at 9. The government cannot
24 credibly claim that someone arrested at their own court hearing requires detention to ensure appearance,
25 nor that someone with no criminal history poses danger warranting confinement Petitioners' procedural
26 due process rights demand what numerous courts in this District have already ordered in analogous
27 cases: release and protection from re-detention without constitutionally adequate process. See *Diaz v.*
28

1 *Kaiser*, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Garcia v. Bondi*, 2025 WL 1676855 (N.D. Cal.
2 June 14, 2025).

3 **h. Petitioners have a due process right to challenge their detention.**

4 Noncitizens like Petitioners have due process rights to challenge detention. *Zadvydas v. Davis*,
5 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States' "geographic borders" lack
6 constitutional protections, all "persons" within them are protected by the Due Process Clause, regardless
7 of immigration status); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though
8 constitutional rights of citizens and noncitizens "are not coextensive," noncitizens are entitled to due
9 process, including to challenge detention pending proceedings)). As the Ninth Circuit has held, the Due
10 Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are
11 "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated
12 on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see also *Padilla*, 704 F. Supp. 3d at 1172.
13 The Due Process Clause allows Petitioners to challenge their detention.

14 Respondents fundamentally misapprehend Petitioners' due process claims, which challenge their
15 deprivation of liberty and not the adequacy of the procedures the immigration laws afford them
16 "regarding admission." Opp. at 11. Most of the cases Respondents cite do not even analyze due process
17 claims against detention; instead, they challenge congressional line-drawing in the substantive rules
18 governing admission and deportation. See *id.* (citing *D.H.S. v. Thuraissigiam*, 591 U.S. 103, 117-18
19 (2020) (noncitizen sought review of constitutionality of admission procedures applied to him, but "did
20 not ask to be released"); *Landon v. Plasencia*, 459 U.S. 21, 35-37 (1982) (due process analysis
21 addressed only adequacy of procedures in exclusion hearing); *United States ex rel. Knauff v.*
22 *Shaughnessy*, 338 U.S. 537, 542 (1950) (due process analysis addressed only right to admission).
23
24

25 To the extent Respondents take the extraordinary position that Petitioners have no due process
26 rights at all, that is unsupported by law and would have gruesome practical consequences: "If excludable
27 [noncitizens] were not protected by even the substantive component of constitutional due process, ... we
28

do not see why the United States government could not torture or summarily execute them. ... [W]e conclude that government treatment of excludable [noncitizens] must implicate the Due Process Clause of the Fifth Amendment." *Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*, 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) ("[T]he principle that unadmitted [noncitizens] have no constitutionally protected rights defies rationality. Under this view, the Attorney General, for example, could invoke legitimate immigration goals to justify a decision to stop feeding all detained [noncitizens] Surely we would not condone mass starvation.").

i. The government cites no facts suggesting that Petitioners pose a danger or a flight risk, and it has no other legitimate interest in detaining Petitioners.

The only permissible legitimate justifications for immigration detention are danger and flight risk. *Zadvydas*, 533 U.S. at 690. When the government released Petitioners on their own recognizance shortly after their entry, it necessarily determined that they were neither a danger to the community nor a flight risk. See, e.g., *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 1236(c)(8) ("Any [authorized] officer ... may ... release [a noncitizen] not described in section 236(c)(1) of the Act ... provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.").

In fact, the government's brief confirms it released Petitioners on their own recognizance, Dkt. 16 ("Opp.") at 12. Nothing about Petitioners' circumstances changed between that initial decision and their immigration-court appearance on September 4, 2025, to justify re-detention. If anything, Petitioners' conduct in the past years and months, their lack of criminal history, court attendance, pursuit of a credible asylum claim, full compliance with supervision requirements, and community ties, only further confirm that they are not a danger or a flight risk. Dkt. 4-1 ("Mem.") at 11-12; see *Padilla*, 704

1 F. Supp. 3d at 1173 (government could "point to no ... public safety concerns or flight risk that might
2 apply to [noncitizens] with bona fide asylum claims and who desire to remain in the United States").

3 Respondents have no meaningful answer to this and cite no facts suggesting Petitioners now pose
4 a risk of flight or danger. Petitioners were arrested when they appeared at their immigration court
5 hearing to pursue meritorious immigration claims. See *Valdez*, 2025 WL 1707737, at *3 ("[T]he present
6 allegation by ICE that Petitioner is at risk of flight is directly at odds with [DHS's] decision to release
7 Petitioner on her own recognizance" and "the record evidence").

8
9
10 **j. Petitioners' detention without a hearing violated procedural due process.**

11 Respondents contend that Petitioners are entitled to no procedural protections because detention
12 is a constitutional aspect of removal proceedings. Opp. 13-17. But Petitioners do not raise a facial
13 challenge against immigration detention—rather, they argue that their detention, as applied to their
14 specific facts, is unconstitutional. See Mem. 11-12. Petitioners bring an as-applied due process challenge
15 to their detention, see Mem. 13. None of the authorities Respondents rely on suggest Petitioners may not
16 bring an as-applied challenge to their detention. On the contrary, the Supreme Court has explicitly
17 recognized the availability of judicial review over as-applied challenges to detention, including
18 mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420; *Demore v. Kim*, 538 U.S. 510, 532-
19 33 (2003) (Kennedy, J., concurring).

20
21
22 Respondents assert that because, they argue, Petitioners are “subject to expedited removal,” even
23 though they are not actually in expedited removal proceedings (see *Supra* at I.b), Petitioners “lack a
24 liberty interest” Opp. at 11. However, this conflates eligibility for a particular procedure with the actual
25 deprivation of liberty. The government's own actions belie this position, by releasing Petitioners on their
26 own recognizance (Opp. at 12), Respondents necessarily determined they posed neither flight risk nor
27 danger, thereby creating the very liberty interest they now claim does not exist. Mem. at 7-8. Moreover,
28

1 Respondents cite no authority holding that individuals lawfully released from immigration custody and
2 living in the community for over a year possess no liberty interest in their ongoing freedom. To the
3 contrary, the Supreme Court has recognized that even individuals whose liberty is conditional or
4 revocable maintain protected interests in that liberty. See *Morrissey*, 408 U.S. at 482. Petitioners'
5 months to years of freedom in the community, during which they developed a community in the San
6 Francisco Bay Area, created precisely the "enduring attachments of normal life" that due process
7 protects. Mem. at 15. The government cannot strip away these established liberty interests simply by
8 invoking contradictory eligibility for expedited removal while simultaneously pursuing regular removal
9 proceedings under Section 240.
10

11 Longstanding Supreme Court precedent guarantees a pre-deprivation hearing before the
12 government may revoke a person's conditional release. See *Morrissey v. Brewer*, 408 U.S. 471, 482-83
13 (1972) (requiring pre-deprivation hearing before parole may be revoked); *Gagnon v. Scarpelli*, 411 U.S.
14 778, 781-82 (1973) (same, for probation); *Young v. Harper*, 520 U.S. 143, 146-47 (1997) (same, for pre-
15 parole conditional supervision). Contrary to Respondents' assertions, Opp. 17-18, these decisions, which
16 were decided on constitutional, not statutory grounds, control equally in the immigration context. Indeed,
17 "decisions defining the constitutional rights of prisoners establish a floor for the constitutional rights of
18 [noncitizens in immigration custody]," who are "most decidedly entitled to more considerate treatment
19 than those who are criminally detained." *Unknown Parties v. Johnson*, 2016 WL 8188563, at *5 (D.
20 Ariz. Nov. 18, 2016) aff'd sub nom. *Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis
21 added). Accordingly, multiple decisions in this Circuit—with which Respondents fail to grapple—have
22 applied *Morrissey* and its progeny to bar immigration authorities from re-detaining noncitizens like
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1 Petitioners, who are in removal proceedings, without a pre-deprivation hearing. See Mem. 18; *Garro*
2 *Pinchi*, 2025 WL 1853763, at *1 (granting TRO and ordering immediate release).³

3 Here, Petitioners invoke "the most elemental of liberty interests—the interest in being free from
4 physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). In
5 comparison to Petitioners' weighty interest in liberty, Respondents' interest in detaining them is
6 minimal. They proffer no evidence that Petitioners are either a flight risk or danger, because there is
7 none: prior to their surprise arrest, Petitioners had ties to the community, were pursuing an asylum
8 claim, and were diligently complying with every instruction Respondents had imposed upon them. See
9 Mem. at 7; see also *Garro Pinchi*, 2025 WL 1853763, at *2; *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
10 970 (N.D. Cal. 2019); *Jorge M. F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021).
11
12

13 The risk of erroneous deprivation of liberty, without any procedural safeguards, is high. See
14 Mem. At 15. The cost to Respondents of providing Petitioners a pre-deprivation custody hearing would
15 have been minimal. Faced with substantially similar facts, other courts have held that immediate release
16 and prohibition of re-detention without a pre-deprivation hearing is the proper remedy. See, e.g., *Garro*
17 *Pinchi*, at *2 (ordering "immediate[]" release" of noncitizen detained without notice or pre-detention
18 hearing); *Valdez*, 2025 WL 1707737, at *4-5 (same, and finding ICE's conduct toward the petitioner to
19 be "an abuse of process"). Because the Constitution cannot tolerate Petitioners' continued detention, this
20 Court should do the same.⁴
21
22

23 II. The remaining equitable factors weigh strongly in Petitioners' favor.

24 Petitioners' unlawful detention is irreparable injury of the highest order. Although Respondents
25 passingly contend that "detention [...] [is] a constitutionally valid aspect of the deportation process,"
26

27 ³Respondents cite no authority suggesting that *Morrissey* and its progeny do not apply here.

28 ⁴

1 Opp. at 14, courts in this Circuit have repeatedly recognized the "irreparable harms imposed on anyone
2 subject to immigration detention." *Hernandez*, 872 F.3d at 995 (emphasis added); see, e.g., *Garro*
3 *Pinchi*, 2025 WL 1853763, at *3; *Ortega*, 2025 WL 1771438, at *5; *Diaz*, 2025 WL 1676854, at *3;
4 *Lewis*, 2023 WL 8898601, at *4; *Singh*, 2023 WL 5836048, at *9; Order at 11-12, *Singh v. Andrews*,
5 1:25-cv-00801-KES-SKO (E.D. Cal. July 11, 2025) ("*Singh* Order"). That irreparable harm is
6 compounded when the detention is likely unconstitutional, for "the deprivation of constitutional rights
7 unquestionably constitutes irreparable injury." *United Farm Workers v. Noem*, -- F. Supp. 3d --, 2025
8 WL 1235525, at *51 (E.D. Cal. Apr. 29, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
9 Cir. 2012)). Nor do Respondents address the additional irreparable harm that Petitioners faces.

11 The balance of the hardships and public interest also strongly support grant of a PI. The only harm to
12 the government that Respondents identify is interference with its "compelling interest in the steady
13 enforcement of its immigration laws." Opp. at 14. But the government has no interest in wielding that
14 authority to unconstitutionally detain Petitioners, and others like them, without any due process. The
15 government "cannot reasonably assert that it is harmed in any legally cognizable sense by being
16 enjoined from constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983); see
17 *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (the government "cannot suffer harm from
18 an injunction that merely ends an unlawful practice" implicating "constitutional concerns"). Conversely,
19 "the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas*
20 *v. Jennings*, 2020 WL 5074312, at *4 (N.D. Cal 2020). And that interest is always served by ensuring
21 that such "procedures comply with the Constitution," *Hernandez*, 872 F.3d at 996; see also *Preminger v.*
22 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

26 Because "the balance of hardships tips sharply in [her] favor," Petitioners need only show
27 "serious questions going to the merits" under the Ninth Circuit's "sliding scale test." *All. for the Wild*
28

1 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); see *UFW*, 2025 WL 1235525, at *44. Yet, as
2 described above, they have done far more than that: they have established a strong likelihood of success
3 on the merits of their due process claims.

4 **CONCLUSION**

5 The Court should grant Petitioners' motion for a preliminary injunction and enjoin Respondents
6 from re-detaining them absent a pre-deprivation hearing before a neutral decisionmaker, where the
7 government bears the burden of proving, by clear and convincing evidence, that changed circumstances
8 render them a danger to the community or a flight risk.
9

10 Respectfully submitted,

11
12 Date: September 16, 2025

13
14 /s/ Nikolas De Bremaeker
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15
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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAULA ANDREA SALCEDO ACEROS,

Plaintiff,

v.

POLLY KAISER, et al.,

Defendants.

Case No. 25-cv-06924-EMC (EMC)

**ORDER GRANTING MOTION FOR
PRELIMINARY INJUNCTION**

Docket No. 4

Petitioner Paula Andrea Salcedo Aceros is an asylum seeker who fled to the United States in June, 2024. After being briefly detained upon entry, she was released by border agents on her own recognizance. Since that time, she has abided by the conditions of her release and filed a timely application for asylum. On August 15, 2025, after Ms. Salcedo Aceros appeared at the San Francisco Immigration Court for a scheduled hearing, she was arrested by Immigration and Customs Enforcement (“ICE”) agents and detained. The same day, Ms. Salcedo Aceros filed a petition for a writ of habeas corpus and a motion for a temporary restraining order. On August 16, the Court issued the TRO and ordered the Government to show cause why a preliminary injunction should not issue. The Court now **GRANTS** the preliminary injunction.

I. STATUTORY BACKGROUND

The detention and removal of inadmissible noncitizens in the United States is governed by a complex statutory framework.

A. Full Removal Proceedings and Discretionary Detention (§ 1226)

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

“Federal regulations provide that aliens detained under §1226(a) receive bond hearings at the outset of detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§236.1(d)(1)). If, at this hearing, the detainee demonstrates by the preponderance of the evidence that he or she is not “a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk,” the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)). Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. § 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). However, if an immigration judge has determined the noncitizen should be released, the DHS may not re-arrest

that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021). Where the release decision was made by a DHS officer, not an immigration judge, the Government's practice has been to require a showing of changed circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).

B. Expedited Removal and Mandatory Detention (§ 1225)

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

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

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

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

alien” as applicants for admission “coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1.2.¹ The second group – designated noncitizens – includes noncitizens who meet all of the following criteria: (1) they are inadmissible due to lack of a valid entry document or misrepresentation; (2) they have not “been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (3) they are among those whom the Secretary of Homeland Security has designated for expedited removal. *Thuraissigiam*, 591 U.S. at 109; § 1225(b)(1).

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

¹ The full definition reads: “Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien’s departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.”

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

§ 1225 also contains a provision that applies to applicants for admission not covered by §1225(b)(1). *Jennings*, 583 U.S. at 287. This provision, 1225(b)(2), states that, subject to statutory exceptions, “in the case 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, the alien shall be detained for a proceeding under section 1229a [full removal proceedings] of this title.” § 1225(b)(2). In other words, noncitizens subject to 1225(b)(2) are not eligible for expedited removal but are subject to mandatory detention while their full removal proceedings are pending. This is in contrast to the default detention regime under § 1226(a), which allows for discretionary release and review of detention through a bond hearing.

C. The Government’s Recent Change in Position

Until this year, the DHS has applied §1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation.

This practice was codified by regulation. The regulations implementing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) state that “Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In fact, the government has conceded in other contexts that “DHS’s long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.” Dkt. No. 17 (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)). And in its briefing before this Court, the Government acknowledges that “until recently,” it considered § 1226(a) to be an available detention authority for noncitizens who might also be subject to § 1225. Dkt. No. 15 at 6.

In 2025, however, the Government’s policy changed dramatically. The DHS revised its § 1225 designation to “apply expedited removal *to the fullest extent authorized by statute.*” Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025) (emphasis added). The Secretary of Homeland Security memorandum directed federal immigration officers to “consider . . . whether to apply expedited removal” to “any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied.” Dkt. No. 1 at ¶ 33. Officers are encouraged to “take steps to terminate any ongoing removal proceeding and/or any active parole status.”² *Id.* The memorandum states that DHS shall take the actions contemplated by the memorandum “in a manner that takes account of legitimate reliance interests,” but states that “the expedited removal process includes asylum screening, which is sufficient to protect the reliance interests of any alien who has applied for asylum or planned to do so in a timely manner.” Huffman Memorandum (Jan. 23, 2025).

Since mid-May of 2025, the Department of Homeland Security has made a practice of appearing at regular removal proceedings in immigration court, moving to dismiss the

² Section 1226(a) provides for discretionary “conditional parole” for non-dangerous noncitizens who do not present a flight risk; § 1182(d)(5)(A) separately provides for a case-by-case “parole” for “urgent humanitarian reasons or significant public benefit.”

proceedings, and then re-arresting the individual in order to place them in expedited removal proceedings. Dkt. No. 1 at ¶¶ 35–40. If the immigration judge does not dismiss the full removal proceedings, ICE still makes an arrest, apparently in reliance on § 1225(b)(2)’s detention provision.

II. FACTUAL BACKGROUND

Ms. Salcedo Aceros is a noncitizen who fled Columbia after being kidnapped and threatened with death. Dkt. No. 5-2. On June 10, 2024, border patrol picked up Ms. Salcedo Aceros near Otay Mesa, California. Dkt. No. 16-1. She admitted to the border patrol officers that she did not have valid immigration documents and that she had crossed the border without being inspected by an immigration officer at a designated port of entry. *Id.* She was charged as removable under Section 212(a)(6)(A)(i) as “an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.” Dkt. No. 17-2. Border patrol determined that she did “not appear to be a threat to national security, border security, or public safety.” Dkt. No. 17-2. She also had “no prior criminal history.” *Id.* Border patrol therefore released her on her own recognizance with a Notice to Appear “due to lack of bed space.” *Id.* The Notice to Appear directed her to appear before an immigration judge in San Francisco. Dkt. No. 16-2. She was also provided with a Form I-220A, which stated that she had been “placed in removal proceedings” and released “[i]n accordance with section 236 [§1226] of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations.” Dkt. No. 17-1.

Following her release by federal agents, Ms. Salcedo Aceros moved to Castro Valley, California. *Id.* Since that time, she has complied with supervision requirements and attended required check-ins. *Id.* In February, 2025 she was injured in a car accident, which she is still recovering from. Dkt. No. 5-2 at 3. In June 2025, she filed an application for asylum based on gender-based violence. Dkt. No. 1 at 12.

On August 15, Ms. Salcedo Aceros appeared at San Francisco Immigration Court for her scheduled hearing before an immigration judge. *Id.* At the hearing, the government orally moved

1 to dismiss the full removal proceedings. Dkt. No. 5-1 at 2. The immigration judge deferred ruling
2 to allow petitioner time to respond and set a merits hearing on her asylum application for February
3 29, 2028. Dkt. No. 1 at 12. When Ms. Salcedo Aceros exited the courtroom after her hearing,
4 ICE agents arrested her in the hallway. Dkt. No. 5-1 at 3.

5 The same day she was detained, Ms. Salcedo Aceros filed a petition for habeas corpus and
6 a motion for a TRO, which the Court granted on August 16, 2025. Dkt. No. 6. The Government
7 was ordered to release Ms. Salcedo Aceros from the Government's custody, to refrain from re-
8 detaining Ms. Salcedo Aceros without notice and a pre-deprivation hearing before a neutral
9 decisionmaker, and to refrain from removing Ms. Salcedo Aceros from the United States. Dkt.
10 No. 6. On August 25, the Court extended the TRO to September 6, and on September 4, after
11 hearing argument from the parties, the Court extended the TRO to September 13. Dkt. No. 18;
12 Dkt. No. 20.

13 14 III. LEGAL STANDARD

15 "A plaintiff seeking a preliminary injunction must establish that [s]he is likely to succeed
16 on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief,
17 that the balance of equities tips in h[er] favor, and that an injunction is in the public interest."
18 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008). "[I]f a plaintiff can only show that
19 there are 'serious questions going to the merits'—a lesser showing than likelihood of success on
20 the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply
21 in the plaintiff's favor and the other two Winter factors are satisfied.'" *All. for the Wild Rockies v.*
22 *Peña*, 865 F.3d 1211, 1217 (9th Cir. 2017) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709
23 F.3d 1281, 1291 (9th Cir. 2013)). The final two factors "merge when the Government is the
24 opposing party." *Nken v. Holder*, 556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009).

IV. DUE PROCESS CLAIM

A. Ms. Salcedo Aceros Is Likely to Succeed on the Merits, or at Least Raises Serious Questions

The Due Process Clause protects all persons within the United States from being “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. It is settled law that the Due Process clause applies to noncitizens within the United States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 2500, 150 L. Ed. 2d 653 (2001); *Trump v. J. G. G.*, — U.S. —, 145 S. Ct. 1003, 1006, 221 L.Ed.2d 529 (2025) (“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”).

“Once it is determined that due process applies, the question remains what process is due.” *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L. Ed. 2d 484 (1972). The constitution typically “requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is particularly true when the interest is in liberty, the loss of which cannot fully be compensated after the fact.

To determine what procedures are required, courts apply the three-part test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Government argues that the *Mathews* test does not apply because the Supreme Court has not used the test to address due process claims raised by noncitizens. *See Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.”). However, the Ninth Circuit has “assume[d] without deciding” that *Mathews* applies in the immigration detention context, *Diaz*, 53 F.4th at 1206-07; *see also Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at n. 2 (N.D. Cal. July 24, 2025) (collecting cases where the Ninth Circuit has applied *Mathews* in due process challenges to removal proceedings). And many courts in this district have applied the *Mathews* test to noncitizens in circumstances similar or identical to those here. *See e.g., Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v.*

1 *Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal. Aug. 21, 2025); *Pinchi v.*
2 *Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025); *Hernandez*
3 *Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025).

4 The Government argues that noncitizens in Ms. Salcedo Aceros' position "cannot assert a
5 protected property or liberty interest in additional procedures not provided by the statute." Dkt.
6 No. 15. The Government's contention that Ms. Salcedo Aceros has no due process protections is
7 not supported by the cases on which it relies. The Government cites *United States ex rel. Knauff*
8 *v. Shaughnessy*, 338 U.S. 537, 544 (1950) for the proposition that for noncitizens, "[w]hatever the
9 procedure authorized by Congress . . . is due process." But this selective quotation omits the end
10 of the sentence: "as far as an alien *denied entry* is concerned." *Id.* (emphasis added). Ms. Salcedo
11 Aceros is not requesting additional due process to adjudicate denial of entry, and thus
12 *Shaughnessy* does not apply. *See also Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (no
13 constitutional rights regarding finding of *exclusion*).

14 The Government also cites *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 105
15 (2020), which likewise concerned the due process afforded to "aliens seeking initial entry"
16 challenging their *exclusion*. In *Thuraissigiam*, the petitioner had "succeeded in making it 25 yards
17 into U. S. territory" when he was detained under the expedited removal statute. *Id.* at 114. After
18 an asylum officer and immigration judge determined that he lacked a "credible fear" and was thus
19 eligible for immediate removal, the petitioner sought "a new opportunity to apply for asylum and
20 other applicable forms of relief." *Id.* at 115. Notably, "[h]is petition made no mention of release
21 from custody." *Id.* In denying his petition, the Supreme Court relied on the "sovereign
22 prerogative" to "admit or exclude" aliens, which it held applied even to noncitizens "paroled
23 elsewhere in the country for years pending removal." *Id.* at 139. Such petitioners had "only those
24 rights *regarding admission* that Congress has provided by statute." *Id.* at 140 (emphasis added).
25 *Thuraissigiam*'s holding concerns the right to additional due process sought over admission
26 determinations. It does not address the due process rights of a noncitizen to remain free once
27 released.

28 Those in Ms. Salcedo Aceros' position, a noncitizen granted the liberty of release pending

removal proceedings, have due process rights. The breadth of those rights turns on the application of the *Mathews* test. *Mathews* requires consideration of three factors: (1) the private interest affected; (2) the risk of an erroneous deprivation; and (3) the Government's interest. *Mathews*, 424 U.S. at 335. Here, all three factors suggest that Ms. Salcedo Aceros has a right to a pre-detention hearing before a neutral arbiter.

1. Ms. Salcedo Aceros Has a Liberty Interest

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. "A protected liberty interest may arise from a conditional release from physical restraint." *Rodriguez v. Kaiser*, No. 1:25-cv-01111-KES-SAB (HC), 2025 U.S. Dist. LEXIS 172756, at *8 (E.D. Cal. Sep. 4, 2025) (citing *Young v. Harper*, 520 U.S. 143, 147-49, 117 S. Ct. 1148, 137 L. Ed. 2d 270 (1997)). "[E]ven when an initial decision to detain or release an individual is discretionary, the government's subsequent release of the individual from custody creates "an implicit promise" that the individual's liberty will be revoked only if they fail to abide by the conditions of their release." *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Accordingly, a noncitizen released from custody pending removal proceedings has a protected liberty interest in remaining out of custody. See e.g., *Ramirez Clavijo v. Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025) (collecting cases); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022).

In this case, Ms. Salcedo Aceros gained a liberty interest in her continued freedom when the DHS elected to release her on her own recognizance. Under *Morrissey*, this release implied a promise that she would not be re-detained so long as she abided by the terms of her release. See e.g., *Calderon*, 2025 WL 2430609, at *2. That promise accords with the protections afforded by statute.

1 Ms. Salcedo Aceros was released “[i]n accordance with section 236 [§1226] of the
2 Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal
3 Regulations.” Dkt. No. 17-1. Under federal regulation, DHS was authorized to release her under
4 §1226 only upon a determination that “such release would not pose a danger to property or
5 persons” and that she was “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8).
6 DHS’s decisions to release Ms. Salcedo Aceros thus reflected “a determination by the government
7 that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F.
8 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
9 (9th Cir. 2018). DHS’s file confirms that Ms. Salcedo Aceros had “no prior criminal history” and
10 did “not appear to be a threat to national security, border security, or public safety.” Dkt. No. 16-
11 1. The Government does not argue that circumstances have changed since it determined that Ms.
12 Salcedo Aceros was neither a flight risk nor a danger to the community. Indeed, the record before
13 the Court indicates that Ms. Salcedo Aceros has complied with the obligations set forth in her
14 Notice to Appear, including by appearing for the immigration hearing at which she was arrested.

15 A noncitizen detained under Section § 1226(a) has the right to contest their custody
16 determination before an immigration judge, at which time the government bears the burden to
17 prove that the detention is justified. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) *citing* 8
18 C.F.R. §§ 236.1(d)(1); 8 CFR 1003.19; *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S.
19 Dist. LEXIS 157488, at *2 (D. Mass. Aug. 14, 2025). This right becomes available at the “outset
20 of detention.” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 236.1(d)(1)).
21 Ms. Salcedo Aceros was rightfully released under Section 1226 since she was neither a danger nor
22 a flight risk, as a bond hearing would likely have been found, and she was entitled to maintain her
23 freedom while removal proceedings were ongoing absent a change in circumstances. *See Saravia*,
24 280 F. Supp. 3d at 1176.

25 The Government seeks to avoid the strictures of 1226(a) with its bond hearing protections
26 by asserting Mr. Salcedo Aceros has no protected liberty interest (or any statutory rights under
27 §1226) because she is subject to a different detention authority — § 1225(b) — which does not
28 contemplate pre-detention hearings. Dkt. No. 15 at 8.

The Government concedes that Ms. Salcedo Aceros is currently in full removal proceedings under Section 1229, and that while those proceedings are live, she cannot be simultaneously subjected to Section 1225(b)(1)'s expedited removal proceedings.³ But the Government asserts that it may nevertheless detain Ms. Salcedo Aceros under Section 1225(b)(2). The Government argues that this provision provides for mandatory detention even while full removal proceedings are ongoing for any noncitizen considered an "applicant for admission" who does not fall under § 1225(b)(1). In other words, the Government's position is that whether Ms. Salcedo Aceros is in full removal proceedings or not, and regardless of the authority under which it initially detained her, it may at any time subject her to detention without the possibility of release on bond because she is an "applicant for admission" who is "seeking admission" and thus subject mandatory detention under § 1225(b)(2).

a. The Government's Attempt to Switch from Section 1226(a) to Section 1225(b)(2)

The Government's argument does not hold. As a preliminary matter, whether the Government may have had the power to detain Ms. Salcedo Aceros under 1225(b), the reality is that the detention authority consistently applied by the government to Ms. Salcedo Aceros since her arrival in the United States has always been § 1226. In 2024, the Government placed Ms. Salcedo Aceros in normal removal proceedings under Sections §1229, not §1225(b)(1), and chose to release her on conditional parole under §1226(a), not hold her in detention under §1225(b)(2). These actions created a reliance interest in her continued freedom, so long as she abided by the terms of her release. *See e.g., Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025) (recognizing a noncitizen's protected interest in continued liberty);

³ A district court recently stayed the Government's application of Section 1225(b)(1)'s expedited removal proceedings to "people living in the interior of the country who have not previously been subject to expedited removal," which would include Ms. Salcedo Aceros. *See Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496 (D.D.C. Aug. 29, 2025). While the stay is operative, the Government may not subject Ms. Salcedo Aceros to expedited removal even if full removal proceedings against her are dismissed.

1 *see also* Huffman Memorandum (Jan. 23, 2025) (recognizing that noncitizens granted
2 discretionary parole have “reliance interests”).

3 Sections 1226(a) and 1225(b) cannot be applied simultaneously. Their detention regimes
4 are facially inconsistent: one provides for discretionary release with procedural protections, while
5 the other mandates detention without discretion. It is not possible for Ms. Salcedo Aceros to be
6 simultaneously subject to both detention regimes. She was and is subject to Section 1226(a), not
7 1225(b).

8 Ms. Aceros enjoys a liberty interest under § 1226(a) and the procedural protections
9 thereunder that cannot be unilaterally abrogated without process by the Government simply
10 “switching tracks.” *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588,
11 at *5 (S.D.N.Y. Aug. 13, 2025) (refusing to credit the Government’s post hoc litigation position
12 that its detention was under 1225(b) when it had consistently treated the petitioner as subject to
13 1226).

14
15 b. The Limit of the Government’s Authority under Section 1225(b)(2)

16 There is another reason why the Government cannot simply switch tracks from Section
17 1226(a) to 1225(b)(2) to detain Ms. Salcedo Aceros. Section 1225(b)(2) does not give the
18 Government the broad detention power it now claims.

19 Ms. Salcedo Aceros argues that § 1225(b)(2) does not apply to noncitizens like her, who
20 have been released by DHS on their own recognizance into the interior of the country. Dkt. No.
21 17 at 4. A number of district courts that have examined this issue in recent months have so held.
22 These courts have rejected the Government’s expansive construction of §1225(b)(2), which would
23 allow it to detain without a hearing virtually any noncitizen not lawfully admitted. These courts
24 examined the text, structure, agency application, and legislative history of 1225(b)(2) and
25 concluded that it applies only to noncitizens “seeking admission,” a category that does not include
26 noncitizens like Ms. Salcedo Aceros, living in the interior of the country. *See Gomes v. Hyde*, No.
27 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (“[T]he plain text of
28 Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that

1 Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the
 2 Attorney General while residing in the United States.”); *Lopez Benitez v. Francis*, No. 25 CIV.
 3 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (holding 1225(b)(2) “clearly”
 4 not applicable to noncitizens who have resided in the country for years); *Rosado v. Figueroa*, No.
 5 CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *29 (D. Ariz. Aug. 11, 2025)
 6 (finding that the Government’s “selective reading” of 1225(b)(2) “violates the rule against
 7 surplusage and negates the plain meaning of the text”); *Martinez v. Hyde*, No. CV 25-11613-
 8 BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government’s “novel
 9 interpretation” that 1225(b) applies to noncitizens detained while present in the United States);
 10 *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that Section 1226,
 11 not 1225(b)(2), governed inadmissible noncitizens residing in the country).

12 The Government has not pointed to a single district court that has agreed with its
 13 construction of 1225(b)(2). Instead, the Government points to a recent BIA decision agreeing
 14 with its interpretation. Dkt. No. 22 (citing *Matter of Jonathan Javier Yajure Hurtado*, 29I & N
 15 Dec. 216 (BIA 2025)). There, the BIA held that Section 1225(b)(2) prescribes mandatory
 16 detention for all inadmissible noncitizens living in the United States. For the reasons discussed
 17 below, the Court finds the conclusion of the district courts more persuasive than the BIA’s new
 18 ruling.

19 First, the BIA decision is entitled to little deference. *Loper Bright Enters. v. Raimondo*,
 20 603 U.S. 369, 400 (2024) (observing that while “agencies have no special competence in resolving
 21 statutory ambiguities,” “[c]ourts do”). Under *Skidmore*, the “weight of such a judgment in a
 22 particular case will depend upon the thoroughness evident in its consideration, the validity of its
 23 reasoning, its consistency with earlier and later pronouncements, and all those factors which give
 24 it power to persuade, if lacking power to control.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140
 25 (1944). In this regard, the BIA’s current position is inconsistent with its earlier pronouncements.
 26 Prior to its September 5 decision, the BIA issued three non-precedential decisions taking the
 27 opposite position. See *Martinez*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025). In one
 28 decision, the Board even stated that it was “unaware of any precedent” that would support the

Government's position. *Id.* Under *Loper*, the Court has no obligation to defer to the BIA's view, particularly when that view has not "remained consistent over time." *Loper*, 603 U.S. at 386; *see also Skidmore*, 323 U.S. at 140.

Moreover, the BIA's reasoning lacks persuasive power for several reasons.

i.

As with any question of statutory interpretation, the Court begins with the relevant statutory provisions. § 1225(a) defines an applicant for admission as:

"[a]n 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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) . . ."

§ 1225(b)(2)(A) states:

"[I]n the case 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, the alien shall be detained for a proceeding under section 1229a of this title."

The Government argues and the BIA agreed that every noncitizen who has not been lawfully admitted to the United States continues to be a noncitizen "seeking admission" and thus subject to § 1225(b)(2). In other words, it treats the phrases "applicant for admission" and "seeking admission" as synonymous.

But this reading would render the phrase "seeking admission" in § 1225(b) superfluous. To qualify for § 1225(b)(2), a noncitizen must (1) be an applicant for admission, (2) be "seeking admission", and (3) be "not clearly and beyond a doubt entitled to be admitted." If, as the Government argues, all applicants for admission are deemed to be "seeking admission" for as long as they remain applicants, then the phrase "seeking admission" would add nothing to the provision. This "violates the rule against surplusage." *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *see also United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, 143 S.Ct. 1720, 216 L.Ed.2d 370 (2023) ("[E]very clause and word of a statute should have meaning."); *TRW Inc. v. Andrews*, 534 U.S. 19,

31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001) (“[N]o clause, sentence, or word shall be superfluous, void, or insignificant.”) (quoting *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)).

Moreover, the Government’s and the BIA’s reading of “seeking admission” is unnatural and ignores the tense of the term. As one district court observed:

“[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as “seeking admission” to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as “seeking admission” (or “seeking” “lawful entry”) at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there.”

Lopez Benitez, 2025 WL 2371588, at *7.

ii.

Indeed, the Government’s and BIA’s position conflicts with the implementing regulation for § 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024) (implementing regulations may provide a “useful reference point for understanding a statutory scheme” when issued “contemporaneously”). 8 C.F.R. § 235.3 describes Section 1225(b)(2) as applying to “any arriving alien who appears to the inspecting officer to be inadmissible.” (Emphasis added.) The regulation thus contemplates that “applicants seeking admission” are a subset of applicants “roughly interchangeable” with “arriving aliens.” *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). “Arriving aliens” are specifically defined by regulation as applicants for admission “coming or attempting to come into the United States at a port-of-entry.” 8 C.F.R. § 1.2. This plainly does not describe Ms. Salcedo Aceros. Indeed, the DHS’s Notice to Appear form similarly distinguishes between “arriving alien” and “alien present in the United States who has not been admitted or paroled.” Dkt. No. 16-2.

- ☐ You are an arriving alien.
- ☒ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

These regulations and forms presume that the term alien “seeking admission” has limited

1 application, not the sweeping construction given to it by the BIA.

2 *iii.*

3 Another “fundamental canon of statutory construction” is that “the words of a statute must
4 be read in their context and with a view to their place in the overall statutory scheme.” *Gundy v.*
5 *United States*, 588 U.S. 128, 140–41, 139 S.Ct. 2116, 204 L.Ed.2d 522 (2019). Here, the
6 Government’s interpretation would “nullify” a recent amendment to the immigration statutes. *See*
7 *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025).
8 Section 1226 generally establishes a discretionary detention framework, but provides that for
9 certain noncitizens, detention is mandatory. Section 1226(c). In January of *this year*, Congress
10 amended Section 1226 to add an additional category of citizens subject to mandatory detention.
11 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). This category includes noncitizens who
12 are (1) inadmissible under 1182(6)(A) [present without admission or parole], (6)(C)
13 [misrepresentation], or (7)(A) [lack of proper documentation] *and* (2) have been charged with one
14 of certain enumerated crimes. *Id.* If the Government’s view is correct, however, all noncitizens
15 who are inadmissible are *already* subject to mandatory detention under § 1225(b)(2), whether or
16 not they have been charged with a qualifying crime and thus are subject to § 1226(c). This view
17 would render the Laken Riley Act a meaningless amendment, since it would have prescribed
18 mandatory detention for noncitizens already subject to it. But “[w]hen Congress acts to amend a
19 statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. I.N.S.*,
20 514 U.S. 386, 397, 115 S.Ct. 1537, 131 L.Ed.2d 465 (1995); *see also Marx v. Gen. Revenue*
21 *Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013) (“[T]he canon against
22 surplusage is strongest when an interpretation would render superfluous another part of the same
23 statutory scheme.”). If Congress amended Section 1226 to create mandatory detention for certain
24 inadmissible noncitizens, it follows that those noncitizens were not already subject to mandatory
25 detention. Thus, the scope of Section 1225(b)(2) cannot be as broad as the government argues.

26 *iv.*

27 In addressing whether a noncitizen who has lived for years within the United States can be
28 considered “seeking admission,” the BIA expressed concern that if a noncitizen is not “admitted”

1 to the United States but is not deemed “seeking admission,” then the noncitizen’s legal status
2 would present a “legal conundrum.” *Id.* at 221. The BIA did not further elaborate, but
3 presumably its concern was that such an individual would have no legal status under the
4 immigration code. This concern is misplaced. The statute explicitly provides a term of art for
5 someone who is not “admitted” but is not *necessarily* “seeking admission”: such noncitizens fall
6 into the broader category of “applicants for admission.” As noted, otherwise the language in
7 1225(b)(2), which treats noncitizens “seeking admission” as a subset of “applicants for admission”
8 would be superfluous. All “applicants for admission” have some legal status whether they belong
9 to the subset of those seeking admissions or not.

10 The BIA also reasoned that petitioner’s argument for a narrower construction of Section
11 1225(b)(2) left unanswered which applicants for admission would be covered by that section if
12 applicants for admission who have lived within the United States for years are excluded from its
13 reach. *Id.* In other words, the BIA believed that an interpretation of § 1225(b)(2) that does not
14 cover all applicants for admission would render § 1225(b)(2) an empty set. Not so. Most
15 obviously, § 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other
16 than 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) (which are the grounds that put an arriving noncitizen
17 on the track for expedited removal). The statute governing inadmissibility lists ten grounds for
18 inadmissibility, many of which have distinct sub-grounds. *See* 8 U.S.C. § 1182(a)(1)-(10). There
19 are thus arriving noncitizens inadmissible on these other bases who would fall under Section
20 1225(b)(2), as opposed to Section 1225(b)(1). Section 1225(b)(2) would not be a null set even if
21 narrowly construed.

22 v.

23 The BIA acknowledged that the Government’s interpretation of § 1225(b)(2) makes it
24 redundant with § 1226(c)’s mandatory detention provisions, and renders superfluous Congress’
25 recent amendment, but nevertheless maintained that this redundant interpretation is not
26 problematic. But as noted above, this conclusion is inconsistent with conventional rules of
27 statutory interpretation. Further, the BIA failed to recognize that interpreting §1225(b)(2) as
28 district courts have done would not render *any* section of the immigration code superfluous.

1 Under the district courts' interpretation, Section 1225(b)(2) has a role within the statutory
2 framework, applying to arriving aliens inadmissible on grounds other than the two that allow for
3 expedited removal, as noted above.

4 *vi.*

5 The BIA's consideration of the legislative history of the Illegal Immigration Reform and
6 Immigrant Responsibility Act of 1996 is also unpersuasive. Prior to 1996, the immigration laws
7 distinguished individuals based on "entry" rather than admission. *Hing Sum v. Holder*, 602 F.3d
8 1092, 1099 (9th Cir. 2010). Noncitizens who had effected an "entry" into the United States were
9 subject to deportation proceedings, while those who had not made an "entry" were subject to
10 "more summary" exclusion proceedings. *Id.* at 1099–100 (9th Cir. 2010). To remedy this, the
11 IIRIRA substituted "admission for entry" and replaced deportation and exclusion proceedings with
12 a general "removal" proceeding. *Id.* In the BIA's view, this indicates that in enacting IIRIRA
13 Congress sought to create completely level treatment for noncitizens in removal proceedings,
14 regardless of whether they are living in the United States or encountered at the border. It would
15 therefore follow that a provision like § 1225(b)(2) would not differentiate between noncitizens
16 based on their presence in the United States, or the length of that presence.

17 But the BIA erred in its analysis by identifying *one* of Congress' concerns in enacting
18 IIRIRA and then treating it as Congress's sole concern driving the statute. Congress was indeed
19 focused on ensuring that there was "no reward for illegal immigrants or visa overstayers." H.R.
20 REP. 104-469, 12. But Congress addressed this concern: the IIRIRA consolidated exclusion and
21 deportation procedures into a single procedure and provided that noncitizens "who enter illegally
22 or who overstay the period of authorized admission will have a greater burden of proof in removal
23 proceedings and will face tougher standards for most discretionary immigration benefits, such as
24 suspension of removal and work authorization." *Id.*

25 In making these changes, Congress did not fully disrupt the old system, including the
26 system of detention and release. In fact, according to the legislative record, "Section 236(a)
27 [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the
28 Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United

1 States.” H.R. REP. 104-469, 229. Congress’ concern about adjusting the law in some respects to
2 reduce inequities in the removal process did not mean Congress intended to entirely up-end the
3 existing detention regime by subjecting *all* inadmissible noncitizens to mandatory detention, a
4 seismic shift in the established policy and practice of allowing discretionary release under Section
5 1226(a) – the scope of which Congress did not alter. *See Vazquez v. Bostock*, 779 F. Supp. 3d
6 1239 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229).

7
8 ***

9 Accordingly, the Court finds the well-reasoned decisions of the many district courts that
10 have rejected the Government’s expansive view of 1225(b)(2) far more persuasive than the new
11 BIA ruling, a ruling at odds with its prior decisions and DHS’s actions over the past thirty years.

12
13 c. Conclusion.

14 The Court concludes that even if the Government theoretically could, without process,
15 switch detention regimes in the middle of the stream, § 1225(b)(2) provides no legal basis for the
16 Government’s detention of Ms. Salcedo Aceros. Thus, Ms. Salcedo Aceros has significant private
17 interest in her continued liberty. The first factor therefore favors Ms. Salcedo Aceros.

18
19 2. Risk of Erroneous Deprivation

20 The second factor, the risk of erroneous deprivation, also weighs in Ms. Salcedo Aceros’
21 favor. Once a liberty interest is established, the question is whether process – a hearing – would
22 lessen the risk of an erroneous detention. Where an individual has not received a bond or
23 redetermination hearing, “the risk of an erroneous deprivation [of liberty] is high.” *Singh v.*
24 *Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025). Here, the risk
25 of erroneous deprivation is high because a hearing will likely reveal Ms. Salcedo Aceros presents
26 no risk to public safety and no risk of non-appearance. Indeed, given her performance on release,
27 the Government has not argued otherwise, instead resting on Section 1225’s mandatory detention
28 provisions as a matter of law. The second factor therefore favors Ms. Salcedo Aceros.

1
2 3. The Government's Interest

3 Finally, the Government has failed to show any countervailing interest against a providing
4 a pre-detention hearing. "In immigration court, custody hearings are routine and impose a
5 'minimal' cost." *Singh*, 2025 WL 1918679, at *8 (citing *Doe v. Becerra*, No. 2:25-cv-00647-
6 DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025)). There is no concern with a hearing
7 delaying the Government's efforts to remove Ms. Salcedo Aceros either. Any such delay would
8 be minimal, and in any case, Ms. Salcedo Aceros is currently subject to full removal proceedings
9 and scheduled for an asylum hearing in 2028. Even if she could be brought into expedited
10 removal, a pre-deprivation bond hearing will not interfere with the proceedings. Whether the
11 Government conducts a pre-detention hearing – or, indeed, whether Ms. Salcedo Aceros is in
12 detention or not – will not obstruct the removal process. And detention for its own sake is not a
13 legitimate governmental interest. *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921,
14 at *5 (N.D. Cal. July 24, 2025) ("Detention for its own sake, to meet an administrative quota, or
15 because the government has not yet established constitutionally required pre-detention procedures
16 is not a legitimate government interest.").

17
18 4. A Pre-Deprivation Hearing Is Warranted

19 The Court notes that the Section 1226 framework typically provides for post-detention,
20 rather than pre-deprivation, bond hearings. If Section 1226 and its regulations are followed, this
21 provides for sufficient process, as detentions will only be made upon an initial DHS determination
22 that an individual is a flight risk or poses a danger to the community. *See Diaz v. Garland*, 53
23 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). Due to the Government's
24 erroneous position that Ms. Salcedo Aceros is subject to mandatory detention, however, it
25 detained her despite its own determination that she presented no such risks, and without any
26 finding of changed circumstances. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
27 2017). Under these circumstances, given the government's conduct, the substantial liberty
28 interests held by Mr. Salcedo Aceros, and the fact that the government has no evidence and does

not contend that Ms. Salcedo Aceros presents and risk of flight or to public safety, a *pre*-deprivation bond hearing is warranted. Indeed, every court in this district to address the issue has so held. *See e.g., Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *4 (N.D. Cal. Aug. 22, 2025) (ordering pre-deprivation hearing before any detention); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *9 (N.D. Cal. Aug. 21, 2025) (same); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (same).

As each *Mathew* factor favors Ms. Salcedo Aceros, she has shown a likelihood of success on the merits that due process entitles her to a bond hearing before a neutral arbiter prior to any re-arrest. Given that, as discussed below, the balance of equities tips sharply in Ms. Salcedo Aceros' favor, she also satisfies this factor even if she has only raised serious questions as to the merits of her claim.

B. Ms. Salcedo Aceros Faces Irreparable Harm

Ms. Salcedo Aceros is likely to suffer irreparable harm in the absence of preliminary injunctive relief. She is currently out of ICE custody only due to court order and there is no reason to believe that the government will not immediately re-detain her as soon as the temporary restraining order expires. "Deprivation of physical liberty by detention constitutes irreparable harm." *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018); *see also Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005). Unconstitutional deprivation of liberty satisfies the burden of irreparable harm

Further, as a practical matter, Ms. Salcedo Aceros is likely to suffer serious medical consequences if re-detained. The Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to immigration detention," including "subpar medical and psychiatric care in ICE

detention facilities. *Hernandez*, 872 F.3d at 995. Ms. Salcedo Aceros suffered a serious injury in a recent car accident. She still experiences acute and chronic back pain from the injury, for which she is currently scheduled to receive injections. During her detention at 630 Sansome, Ms. Salcedo Aceros reported that the cold conditions in the detention facility were aggravating her pain. Detention would likely exacerbate Ms. Salcedo Aceros' injuries and prevent her from receiving her scheduled treatments. These consequences to Ms. Salcedo Aceros' health are also significant and irreparable.⁴

C. The Balance of Equities and the Public Interest Favor Ms. Salcedo Aceros

"[T]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Jorge M. F.*, 2021 WL 783561, at *3 (cleaned up); *see also Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (quoting *Padilla v. Immigration & Customs Enforcement*, 953 F.3d 1134, 1147–48 (9th Cir. 2020)) ("It is always in the public interest to prevent the violation of a party's constitutional rights."); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Further, the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983). "Faced with ... a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." *Singh*, 2025 WL 1918679, at *9 (quoting *Hernandez*, 872 F.3d at 996).

The only potential injury the government faces is a short delay in detaining Ms. Salcedo

⁴ The Government claims Ms. Salcedo Aceros' medical claim is "largely conclusory" and "contradicted by the record." Dkt. No. 15 at 13. In support, the Government points to a note in Ms. Salcedo Aceros' file that she is "in good health and taking no medication." Dkt. No. 16-3. It is unclear from the face of the document what time period this statement refers to. In any case, Ms. Salcedo Aceros does not claim to be taking medication—she states that she has scheduled injections to treat pain from a specific injury.

1 Aceros if it ultimately demonstrates to a neutral decisionmaker by the preponderance of the
2 evidence that her detention is necessary to prevent danger to the community or flight. *See Pinchi*
3 *v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *See Jorge*
4 *M. F.*, 2021 WL 783561; *Diaz*, 2025 WL 1676854. While the Government cites as its interest “the
5 steady enforcement of its immigration laws,” it does not explain how holding a pre-detention bond
6 hearing interferes with this end. Dkt. No. 15 at 14. Indeed, to the contrary, the procedures
7 undertaken by DHS of summarily detaining noncitizens who dutifully appear at ICE offices and
8 immigration courts undermines legitimate government interests. As the DHS has previously
9 recognized, “[e]xecuting civil immigration enforcement actions in or near a courthouse may chill
10 individuals’ access to courthouses, and, as a result, impair the fair administration of justice.” Dkt.
11 No. 1 ¶ 45 (citing April 27, 2021 Civil Immigration Enforcement Actions in or Near Courthouses
12 memorandum). If anything, it is the Government that has thrown into turmoil the steady
13 enforcement of immigration law through repeated, highly public arrests in courtroom hallways.

14 Given that the Government faces no real injury from abiding by the Constitution, the
15 balance of equities tips sharply in Ms. Salcedo Aceros’ favor.

16 17 V. SUBSTANTIVE DUE PROCESS CLAIM

18 Granting Ms. Salcedo Aceros’ preliminary injunction and enjoining the government from
19 detaining her “obviates the threat of any imminent deprivation of her substantive due process
20 rights,” so the Court need not consider her substantive due process claims at this stage. *See*
21 *Pinchi*, 2025 WL 2084921, at n.1; *accord Calderon*, 2025 WL 2430609, at n1.

VI. CO! CLUSIO!

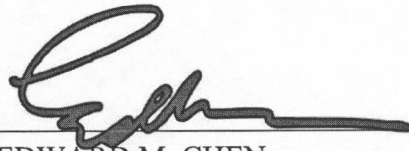
For the forgoing reasons, Ms. Salcedo Aceros' request for a preliminary injunction is **GRA! TED.** The Government is **E! JOI! ED A! D RESTRAI! ED** from

(1) Re-detaining Petitioner without a pre-deprivation hearing before a neutral decisionmaker; and

(2) Removing Petitioner from the United States pending these proceedings.

IT IS SO ORDERED.

Dated: September 12, 2025



EDWARD M. CHEN
United States District Judge