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13 UNITED STATES DISTRICT COURT FOR THE
14 CENTRAL DISTRICT OF CALIFORNIA

15 Laura Beatriz Punina Chimbolema, 
16 

17 Petitioner,
18 v.

19 PAMELA BONDI, in her official capacity as
20 Attorney General,

21 KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

U.S. DEPARTMENT OF HOMELAND
SECURITY,

F. SEMAIA, in his official capacity as Warden of
Adelanto Detention Facility,

ERNESTO SANTACRUZ, JR., in his official
capacity as Acting ICE Field Office Director,
Respondents.

Case No. 5:25-cv-02578-VBF-
RAO

PETITIONER'S REPLY TO
RESPONDENTS'
OPPOSITION TO MOTION
FOR A TEMPORARY
RESTRAINING ORDER

1
2 **I. Introduction**

3 Petitioner filed a motion for a temporary restraining order (TRO) pursuant to
4 Fed. R. Civ. P. 65(d). Petitioner sought an order to preserve the status quo prior to
5 her unlawful detention – namely, her release on an order of her own recognizance
6 (OREC). Respondents opposed the motion, arguing that this Court lacks
7 jurisdiction to grant the relief sought, that Petitioner’s circumstances lack the
8 urgency necessary for a TRO because she has already been detained for three
9 months, that Petitioner is properly detained without bond pursuant to 8 U.S.C.
10 § 1225(b)(2), and that Respondents have unfettered discretion to revoke her release
11 for any reason (or no reason at all), without giving her notice of any reasons
12 justifying the revocation, and without any meaningful opportunity to be heard on
13 why she should remain at liberty. But, as Respondents concede, the vast majority
14 of federal courts (both in and out of this District) to take up these issues have ruled
15 against them. Petitioner urges this Court to do the same.

16 **II. Argument**

17 **A. This Court is not Stripped of Jurisdiction to Decide the Lawfulness of**
18 **Petitioner’s Detention**

19 Respondents argue that Petitioner is challenging the Department of Homeland
20 Security’s decision to commence removal proceedings against her, and thus, this
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1 Court lacks jurisdiction to hear her claims under 8 U.S.C. § 1252(g). *See* ECF 6 at
2 p. 5. Respondents’ position is without merit.

3 The jurisdiction stripping provision contained at 8 U.S.C. § 1252(g) applies
4 narrowly to only three discrete decisions: the decision to commence proceedings,
5 the decision to adjudicate cases, and the decision to execute removal orders. *Reno*
6 *v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999).

7 Contrary to Respondents’ assertion, Petitioner does not challenge the
8 commencement of removal proceedings against her. Indeed, she is currently in
9 removal proceedings (for the second time), and she is actively litigating that matter
10 before the Immigration Court with the assistance of counsel. Rather, Petitioner
11 challenges the summary revocation of her release on her recognizance, without any
12 notice, any reasons given for the revocation, or any opportunity to argue why she
13 should be permitted to remain at liberty. *See e.g., Hasan v. Crawford*, ---
14 F.Supp.3d ---- 2025 WL 2682255, *4 (E.D. Va. Sept. 19, 2025); *Mata Velasquez v.*
15 *Kurzdofer*, --- F.Supp.3d ---, 2025 WL 1953796, * (W.D. NY July 16, 2025)
16 (finding that 8 U.S.C. § 1252(g) did not bar a habeas petition challenging DHS’s
17 decision to re-detain a non-citizen that it had previously released on parole); *A.L. v.*
18 *Oddo*, 761 F. Supp.3d 822, 825 (W.D. Pa. Jan. 6, 2025) (noting that federal courts
19 have “the authority to hear habeas corpus claims by noncitizens challenging the
20 lawfulness or constitutionality of their detention by ICE” and citing *Jennings v.*
21

1 *Rodriguez*, 583 U.S. 281, 292-95 (2018)). To the extent that Respondents assert
2 Petitioner is challenging a decision to remove her, as contemplated by 8 U.S.C.
3 § 1252(b)(9), the assertion makes little sense, as there is no removal order entered
4 against Petitioner, and Respondents are not trying to remove her from the United
5 States at this time. *See also Mosqueda v. Noem*, 2025 WL 2591530, *3 (C.D. Ca.
6 Sept. 8, 2025) (rejecting the argument that 8 U.S.C. § 1252(b)(9) or 8 U.S.C.
7 § 1252(g) strip jurisdiction over a challenge to non-citizens' detention).

8 B. Petitioner's Circumstances are Sufficiently Urgent to Warrant a TRO

9 Respondents argue that Petitioner's circumstances lack exigency because she
10 had already been detained for three months at the time she sought a TRO. *See* ECF
11 6 at p. 7. Respondents further assert that Petitioner waited five days after filing her
12 habeas petition to seek the TRO. Both of these contentions are incorrect.

13 First, as a matter of procedural history, Petitioner's habeas petition and
14 motion for a TRO were both filed on September 29, 2025. *See* ECF 1, 2. Second,
15 the fact that Respondents have unlawfully detained Petitioner for three months does
16 not make her continued detention somehow less urgent. Moreover, Respondents
17 oversimplify the legal developments related to Petitioner's detention that have
18 occurred throughout the three months of her detention. At the time she was re-
19 detained in June 2025, Petitioner was unrepresented by counsel. Shortly thereafter,
20 the Department of Homeland Security (DHS) began to press the argument that all
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1 non-citizens who entered the United States without inspection were detained under
2 8 U.S.C. § 1225(b). *See* Exhibit D (“Interim Guidance Regarding Detention
3 Authority for Applicants for Admission,” (July 8, 2025)). This litigation position
4 culminated in the Board of Immigration Appeals issuing its decision in *Matter of*
5 *Yujare Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025, less than four
6 weeks before Petitioner filed her motion for a TRO. Until that time, there was at
7 least a theoretical possibility that Petitioner could have obtained release through a
8 bond hearing in the Immigration Court. Thus, for Respondents to imply that
9 Petitioner “took too long” to challenge the unlawfulness of her detention amidst
10 this constantly evolving legal landscape, and thus, that her detention is no longer
11 urgent, is disingenuous.

12 C. Petitioner is not Detained under 8 U.S.C. § 1225(b)(2)

13 Respondents acknowledge several in-district decisions disagreeing with their
14 position that all non-citizens who enter without being admitted are subject to
15 mandatory detention under 8 U.S.C. § 1225(b). *See* ECF 6 at p. 6. Indeed, their
16 position on this matter has been roundly rejected by courts across the country. *See*
17 *e.g.*, *Hasan*, 2025 WL at *9 (E.D. Va. Sept. 19, 2025); *Jimenez v. FCI Berlin*, ---
18 F.Supp.3d ----, 2025 WL 2639390, *10 (D. N.H. Sept. 8, 2025) (non-citizen
19 released on OREC detained under 8 U.S.C. § 1226); *Ramirez Clavijo v. Kaiser*,
20 2025 WL 2419263, *3 (N.D. Ca. Aug. 21, 2025) (non-citizen who entered without
21

1 inspection, was released on her own recognizance after apprehension at the time of
2 entry, and was placed in removal proceedings is “unequivocally” released under 8
3 U.S.C. § 1226, not § 1225); *Lopez Benitez v. Francis*, --- F.Supp.3d ----, 2025 WL
4 2371588, *8 (S.D.N.Y. Aug. 13, 2025) (non-citizen released on OREC detained
5 under 8 U.S.C. § 1226); *Martinez v. Hyde*, --- F.Supp.3d ----, 2025 WL 2084238,
6 *4, 9 (D. Ma. July 24, 2025) (same and noting that DHS’s position “would upend
7 decades of practice”); *Gomes v. Hyde*, 2025 WL 1869299, *8 (D. Ma. July 7, 2025)
8 (same).

9 The decision in *Yujare Hurtado* also conflicts with the regulations that
10 specify which non-citizens are ineligible for bond. 8 C.F.R. § 1003.19(h)(2) lists
11 five categories of noncitizens who may not receive bond: (1) respondents in
12 exclusion proceedings, § 1003.19(h)(2)(i)(A); (2) “arriving aliens” in removal
13 proceedings, § 1003.19(h)(2)(i)(B); (3) noncitizens described in section 237(a)(4)
14 of the INA, § 1003.19(h)(2)(i)(C); (4) noncitizens subject to mandatory detention
15 under section 236(c)(1) of the INA, § 1003.19(h)(2)(i)(D); and (5) noncitizens in
16 deportation proceedings under former section 242(a)(2) of the INA.
17 § 1003.19(h)(2)(i)(E). Individuals who entered without being admitted, like
18 Petitioner, fall into none of these categories.

19 The decision to allow immigration judges to grant bond to inadmissible
20 noncitizens (except for arriving aliens) was deliberately made by then-Attorney
21

1 General Janet Reno following the passage of the IIRIRA. In a proposed rule issued
2 in early 1997, the Justice Department provided that all “[i]nadmissible aliens in
3 removal proceedings” would be ineligible for bond. *Inspection and Expedited*
4 *Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed.
5 Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney
6 General deleted the proposed provision and replaced it with one that would apply
7 only to “[a]rriving aliens, as described in § 1.1(q) of this chapter, including aliens
8 paroled pursuant to section 212(d)(5) of the INA, in removal proceedings.”¹
9 *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;*
10 *Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361
11 (March 6, 1997). As the Attorney General explained, “[t]he effect of this change is
12 that inadmissible aliens, except for arriving aliens, have available to them bond
13 redetermination hearings before an immigration judge, while arriving aliens do
14 not.” *Id.* at 10323.

15 Relatedly, the Attorney General also specifically considered how to define
16 the term “arriving alien.” In the proposed rule, the Attorney General described the
17 definition of “arriving alien” as applying to “aliens arriving at a port-of-entry,
18 aliens interdicted at sea, and aliens previously paroled upon arrival.” 62 Fed. Reg.
19

20 ¹ This provision was originally promulgated as 8 C.F.R. 236.1(c)(5)(i) and was later
21 transferred to 8 C.F.R. 1003.19(h)(2)(i)(B).

1 at 445. The Attorney General stated that the phrase potentially “could also include
2 other classes of aliens, e.g., those apprehended crossing a land border between
3 ports-of-entry,” and she invited comments on the proper scope of the definition. *Id.*
4 The Attorney General received numerous comments in response, including from
5 those who suggested expanding the definition to include noncitizens who had been
6 present in the country for less than 24 hours without being inspected or admitted, or
7 who were apprehended within a certain distance of the border. 62 Fed. Reg. at
8 10303. But the Attorney General elected not to modify the proposed definition of
9 “arriving alien,” *id.*, which remains materially identical today.

10 Thus, Respondents’ application of mandatory detention to all non-citizens
11 who entered without being admitted is an attempt to perform an end run around the
12 regulations that bind them, and which limit mandatory detention to the five classes
13 of individuals described above.

14 Though Respondents assert the proper remedy is to order Respondents to
15 provide Petitioner with a bond hearing under 8 U.S.C. § 1226, as discussed below,
16 this remedy does not address the procedural due process violation committed by
17 Respondents when they re-detained Petitioner without notice or an opportunity to
18 be heard at a pre-deprivation hearing.² *See infra*, Section II.D. The proper remedy
19

20 ² Moreover, the two decisions cited by Respondents as support for their position
21 that the adequate remedy is to order the immigration court to hold a bond hearing

1 for this violation is to restore the status quo ante and order Petitioner's immediate
2 release from custody and the provision of a pre-deprivation custody hearing before
3 any attempt by Respondents to re-detain her. *See id.*; but see also *Lopez Benitez*,
4 2025 WL at *15 (finding the provision of a bond hearing before the immigration
5 court to be inadequate and ordering the non-citizen's immediate release from DHS
6 custody without finding that DHS had an obligation to provide a pre-deprivation
7 hearing prior to re-detaining the non-citizen).

8 D. Respondents do not have Unfettered Discretion to Revoke Petitioner's
9 Release

10 Respondents acknowledge that Petitioner was released on her own
11 recognizance after her initial apprehension, and they provide no evidence of any
12 changed circumstances that would demonstrate she is now a flight risk or a danger
13 to the community. Instead, they assert that they have unreviewable discretion to
14 revoke that release without any type of pre-deprivation process. District courts
15 have widely disagreed with this position. *See e.g., Hernandez v. Wofford*, 2025
16 WL 2420390, *6 (E.D. Ca. Aug. 21, 2025) (unpub) (finding that a non-citizen who
17 was released by ICE after an initial detention at the time of his entry has a protected

18 _____
19 did not address the argument that the petitioners' re-detention without notice
20 violated procedural due process. Rather they analyzed only the question of whether
21 the petitioners were detained under 8 U.S.C. § 1226. *See Mosqueda*, 2025 WL
2591530 at *4-5; *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285, *2 (C.D. Ca.
Aug. 15, 2025) (unpub).

liberty interest against being re-detained and finding he had a right to a bond hearing before being re-detained) (citing similar decisions in *Garcia v. Andres*, 2025 WL 1927596, *2 (E.D. Ca. July 14, 2025) (unpub); *Pinchi v. Noem*, 2025 WL 1853763, *3-4 (N.D. Ca. July 4, 2025)(unpub); *Ortega v. Bonnar*, 415 F.Supp.3d 963, 970 (N.D.Ca. 2019), *Singh v. Andrews*, 2025 WL 1918679, *8-9 (E.D. Ca. July 11, 2025) (unpub); *Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, *6 (E.D. Ca. March 3, 2025); *Diaz v. Kaiser*, 2025 WL 1676854, *2 (N.D. Ca. June 14, 2025); *Romero v. Kaiser*, 2022 WL 1443250, *4 (N.D. Ca. May 6, 2022); *Vargas v. Jennings*, 2020 WL 5074312, *4 (N.D. Ca. Aug. 23, 2020)); *see also Mata Valesquez*, 2025 WL 1953796 at *10-11 (finding that DHS must give a non-citizen notice of a parole revocation and the opportunity to be meaningfully heard on the revocation *before* re-detaining him). The *Hernandez* decision determined that the government should bear the burden of proof at any pre-deprivation hearing and ordered the petitioner's release to restore the status quo ante. *Hernandez*, 2025 WL 2420390 at *7-8; *see also Martinez*, 2025 WL at *9 (ordering release of Petitioner to restore her "to the state of freedom she enjoyed . . . just prior to her arrest"); *Mata Valesquez*, 2025 WL 1953796 at *18; *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, *9 (ordering non-citizen's release and prohibiting re-detention without notice and a pre-deprivation hearing at which the government bears the burden of proof by clear and convincing evidence that the non-citizen is a flight risk or danger

1 to the community); *Singh*, 2025 WL 1918679 at *10 (ordering immediate release of
2 non-citizen who was released on his own recognizance after initial entry and
3 subsequently re-detained at his immigration court hearing and enjoining the
4 government from re-detaining him without first conducting a pre-deprivation bond
5 hearing at which the government bears the burden of proof).

6 **III. Conclusion**

7 For these reasons and those specified in the initial moving papers, Petitioner
8 respectfully requests that this Court order her immediate release and enjoin
9 Respondents from re-detaining her without a pre-deprivation hearing.

10 **RESPECTFULLY SUBMITTED this 5th day of October, 2025**

11 **/s/ Sabrina Damast**

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22 **Table of Exhibits**

23 **Exhibit D:** “Interim Guidance Regarding Detention Authority for Applicants for
24 Admission,” (July 8, 2025))