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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12

13 ALMA MARTINEZ CRUZ,

14 Petitioner,

15 v.

16 TODD LYONS; *et al.*,

17 Respondents.  
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No. 5:25-cv-02879-MCS-MBK

**RESPONDENTS' OPPOSITION TO  
PETITIONER'S EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

Hearing Date: November 5, 2025  
Hearing Time: 10:30 a.m.  
Location: 7C

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1 **I. INTRODUCTION**

2 Petitioner Alma Martinez Cruz is a 43-year-old Mexican national who entered the  
3 United States in 2012. *See* Dkt. 2-2, Ex. E to TRO Application. In July 2012, Petitioner  
4 was issued a Notice To Appear, charging her with inadmissibility under §  
5 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the INA). *Id.* Removal  
6 proceedings were initiated against Petitioner, but were administratively closed in 2015.  
7 *See* Dkt. 2-2, TRO Ex. F. This past year, removal proceedings resumed, and Petitioner  
8 was detained on September 17, 2025.

9 Respondents oppose Petitioner’s *ex parte* application for a temporary restraining  
10 order [Dkt. 6]. The TRO Application argues that Petitioner should be released from  
11 detention because her recent arrest violated the Fourth and Fifth Amendments. But  
12 Fourth and Fifth Amendment violations during a habeas petitioner’s arrest are not a basis  
13 for habeas claims of unlawful detention, as Magistrate Judge Chooljian recently  
14 explained in detail in a similar case. *See Nora Noemi Marroquin-Salazar v. Kristi Noem,*  
15 *et al.*, 5:25-cv-02367-FLA-JC, Dkt. no. 10 at pp. 19-24 (Oct. 24, 2025) (the “*Marroquin-*  
16 *Salazar R&R*”) (attached as Exhibit AA hereto). Moreover, Petitioner has not  
17 established any irreparable harm justifying emergency injunctive relief, other than what  
18 is common to any habeas corpus petitioner in immigration custody. Therefore, the TRO  
19 Application should be denied.

20 While not raised by Petitioner, should the Court be inclined grant some sort of  
21 relief, it should be limited to what other Judges in this District have issued in similar  
22 cases: Requiring release unless a Section 1226(a) bond hearing is provided within 7  
23 days. *See Marroquin-Salazar R&R*; *see also Gonzalez v. Noem*, 2025 U.S. Dist. LEXIS  
24 206688 (C.D. Cal. Aug. 13, 2025).

25 **II. STATUTORY BACKGROUND**

26 **A. Detention Under 8 U.S.C. § 1225**

27 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]  
28 present in the United States who [have] not been admitted” or “who arrive[] in the

United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien with “a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A).

**B. Detention Under 8 U.S.C. § 1226(a)**

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the

1 government may detain an alien during his removal proceedings, release him on bond, or  
2 release him on conditional parole.<sup>1</sup> By regulation, immigration officers can release aliens  
3 if the alien demonstrates that he “would not pose a danger to property or persons” and  
4 “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also  
5 request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at  
6 any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R.  
7 §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

8 At a custody redetermination, the IJ may continue detention or release the  
9 noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1).  
10 IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*,  
11 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But  
12 regardless of the factors IJs consider, a noncitizen “who presents a danger to persons or  
13 property should not be released during the pendency of removal proceedings.” *Id.*

### 14 **C. Review At The Board of Immigration Appeals (“BIA”)**

15 The BIA is an appellate body within the Executive Office for Immigration Review  
16 (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority  
17 from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the  
18 review of those administrative adjudications under the [INA] that the Attorney General  
19 may by regulation assign to it,” including IJ custody determinations. 8 C.F.R.  
20 §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it,  
21 but also “through precedent decisions, [it] shall provide clear and uniform guidance to  
22 DHS, the immigration judges, and the general public on the proper interpretation and  
23 administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The  
24 decision of the [BIA] shall be final except in those cases reviewed by the Attorney  
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26 <sup>1</sup> Being “conditionally paroled under the authority of § 1226(a)” is distinct from  
27 being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-*  
28 *Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because  
release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible  
for adjustment of status under § 1255(a)).

General.” 8 C.F.R. § 1003.1(d)(7).

### III. STANDARD OF REVIEW

Courts have recognized very few circumstances justifying the issuance of an *ex parte* temporary restraining order. *See Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). A TRO is “an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (emphasis in original). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where a litigant seeks their ultimate relief by preliminary injunctive means, that is improper since “judgment on the merits in the guise of preliminary relief is a highly inappropriate result.” *Senate of California v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992).

In addition, to obtain emergency *ex parte* relief in this District, Petitioner “must show why [she] should be allowed to go to the head of the line in front of all other litigants and receive special treatment.” *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Petitioner fails to do so, as she has not even addressed the *Mission Power* standard.

### IV. ARGUMENT

#### A. Under 8 U.S.C. § 1252(g) The Court Lacks Jurisdiction Over Any Challenge To Petitioner’s Removal Proceedings

To prevent what would otherwise be endless collateral attacks launched in District Court against removal proceedings, 8 U.S.C. § 1252(g) deprives courts of jurisdiction, including habeas corpus jurisdiction, to review “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*, or [3] execute removal orders against any alien under

1 this chapter.”<sup>2</sup> 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates  
2 jurisdiction “[e]xcept as provided in this section and notwithstanding any other provision  
3 of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,  
4 or any other habeas corpus provision, and sections 1361 and 1651 of such title.”<sup>3</sup> Except  
5 as provided in section 1252, courts “cannot entertain challenges to the enumerated  
6 executive branch decisions or actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir.  
7 2021).

8 Section 1252(g) also bars district courts from hearing challenges to the *method* by  
9 which the Secretary of Homeland Security chooses to commence removal proceedings,  
10 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d  
11 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning  
12 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision  
13 to take [plaintiff] into custody and to detain him during removal proceedings”).

14 Here, Petitioner’s detention arose from the decision to resume removal  
15 proceedings against her. *See, e.g., Valencia-Mejia v. United States*, 2008 WL 4286979,  
16 at \*4 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before  
17 the Immigration Judge arose from this decision to commence proceedings[.]”); *Wang v.*  
18 *United States*, 2010 WL 11463156, at \*6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att’y Gen.*  
19 *U.S.*, 975 F.3d 292, 298-99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9)  
20 deprive district court of jurisdiction to review action to execute removal order).

21 As other courts have held, “[f]or the purposes of § 1252, the Attorney General  
22 commences proceedings against an alien when the alien is issued a Notice to Appear  
23

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24 <sup>2</sup> Much of the Attorney General’s authority has been transferred to the Secretary of  
25 Homeland Security and many references to the Attorney General are understood to refer  
26 to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

27 <sup>3</sup> Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat.  
28 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory),  
including section 2241 of title 28, United States Code, or any other habeas corpus  
provision, and sections 1361 and 1651 of such title” after “notwithstanding any other  
provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 before an immigration court.” *Herrera-Correra v. United States*, [2008 WL 11336833](#), at  
2 \*3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the alien against whom  
3 proceedings are commenced and detain that individual until the conclusion of those  
4 proceedings.” *Id.* at \*3. “Thus, an alien’s detention throughout this process arises from  
5 the Attorney General’s decision to commence proceedings” and review of claims arising  
6 from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, [509 F.3d](#)  
7 [947, 949](#) (9th Cir. 2007)); *Wang*, [2010 WL 11463156](#), at \*6; 8 U.S.C. § 1252(g).

8 Petitioner cannot attack that decision, in District Court, by arguing that the  
9 government lacked legitimate grounds to resume removal proceedings against her and  
10 subsequently detain her. To the extent she has arguments, she must attack that issue  
11 within the Immigration Court process and its appeal process.

12 **B. Alleged Fourth And Fifth Amendment Violations During Arrest Are**  
13 **Not A Basis For Granting Petitioner Habeas Relief**

14 Magistrate Judge Chooljian recently issued a report and recommendation (1)  
15 finding that a petitioner should be given a Section 1226(a) bond hearing in 14 days; and  
16 (2) explaining why the petitioner could not maintain a claim that her detention was  
17 unlawful because of alleged Fourth and Fifth Amendment violations during the arrest.  
18 *See Nora Noemi Marroquin-Salazar v. Kristi Noem, et al.*, 5:25-cv-02367-FLA-JC, [Dkt.](#)  
19 [no. 10](#) at pp. 19-24 (Oct. 24, 2025) (the “*Marroquin-Salazar R&R*”) (attached as Exhibit  
20 B hereto). The same fatal defects apply to Petitioner’s parallel effort to assert Fourth and  
21 Fifth Amendment claims in habeas here.

22 To summarize the *Marroquin-Salazar R&R*, generally, the remedy for an  
23 unlawful arrest is the suppression of evidence obtained therefrom, not release from  
24 custody. *See INS v. Lopez-Mendoza*, [468 U.S. 1032, 1040-41](#) (1984); *United States v.*  
25 *Garcia-Beltran*, [443 F.3d 1126, 1131-32](#) (9th Cir.), cert. denied, [549 U.S. 935](#) (2006);  
26 *see also Martinez-Medina v. Holder*, [673 F.3d 1029, 1033-34](#) (9th Cir. 2011)  
27 (exclusionary rule applies in civil removal proceedings only when the Fourth  
28 Amendment violation is egregious). “The ‘body’ or identity of a defendant or respondent

1 in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful  
2 arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.”  
3 *Lopez-Mendoza*, 468 U.S. at 1039; *see also Stone v. Powell*, 428 U.S. 465, 485 (1976)  
4 (noting that “judicial proceedings need not abate when the defendant's person is  
5 unconstitutionally seized” (citing *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975); *Frisbie v.*  
6 *Collins*, 342 U.S. 519 (1952))); *Garcia-Beltran*, 443 F.3d at 1132 (“[T]here is no  
7 sanction to be applied when an illegal arrest only leads to discovery of the man’s  
8 identity.” (quotation omitted)).

9 Accordingly, the extent that Petitioner seeks her release from custody based on  
10 the allegedly unlawful arrest, there is no basis for the Court to grant such relief. *See, e.g.,*  
11 *De Oliveira v. Joyce*, 2025 WL 1826118, at \*5 (D. Me. July 2, 2025) (“Petitioner’s  
12 argument that an illegal arrest automatically results in an illegal detention is misguided. .  
13 . . [E]ven if Petitioner’s initial arrest was unlawful, her detention pending removal may  
14 stand.”); *Alonso-Portillo v. Bondi*, 2025 WL 2483393, at \*11 (S.D. Ohio Aug. 28, 2025)  
15 (“Traditional application of the exclusionary rule results in the suppression of evidence,  
16 as ‘fruits of the poisonous tree,’ obtained in violation of the Fourth Amendment. But the  
17 rule does not, as Alonso-Portillo asserts here, dictate his immediate release from  
18 detention.”); *Marvan v. Slaughter*, 2025 WL 1940043, at \*3-4 (D. Mont. July 15, 2025)  
19 (petitioner could not obtain habeas relief on Fourth Amendment violation where  
20 administrative removal proceedings had commenced); *H.N. v. Warden*, Stewart Det. Ctr.,  
21 2021 WL 4203232, at \*5 (M.D. Ga. Sept. 15, 2021) (“even if the Court accepted  
22 Petitioner’s argument that his initial detention was somehow unlawful, he is still not  
23 entitled to habeas relief.”); *Medina v. U.S. Dep’t of Homeland Sec.*, 2017 WL 1101370,  
24 at \*1-2 (W.D. Wash. Mar. 24, 2017) (immigration detainee was not entitled to habeas  
25 relief because “the remedy for an unlawful arrest in violation of the Fourth Amendment  
26 is suppression of evidence,” so if he “desire[d] release from his current detention, his  
27 avenue for seeking such release should occur in the context of his removal proceedings”  
28 (citations omitted)); *Amezcu-Gonzalez v. Lobato*, 2016 WL 6892934, at \*2 (W.D.

1 Wash. Oct. 6, 2016) (dismissing petition challenging immigration detainee’s arrest on  
2 Fourth Amendment grounds where detainee did not dispute that he was subject to final  
3 order of removal, and his “only assertion [was] that he should be released because his  
4 arrest violated the Fourth Amendment”; “even if petitioner’s arrest amounts to an  
5 egregious Fourth Amendment violation, he is not entitled to habeas relief”), report and  
6 recommendation adopted, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016); *Nyuwa v.*  
7 *Gurule*, 2014 WL 12984435, at \*1 (D. Ariz. June 13, 2014) (“It is doubtful that  
8 Petitioner’s arrest was unlawful. But even if it was, his allegedly unlawful arrest does not  
9 invalidate his current immigration detention because ‘the “body” or identity of a  
10 defendant in a criminal or civil proceeding is never itself suppressible as the fruit of an  
11 unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation  
12 occurred.’” (quoting *Lopez-Mendoza*, 468 U.S. at 1039)).

13 As Magistrate Judge Chooljian thus concluded:

14 In sum, the only relief that may be awarded here concerns Petitioner’s right  
15 to a bond determination hearing under Section 1226(a). To the extent that  
16 Petitioner otherwise challenges the circumstances of her arrest or detention,  
17 the Petition should be denied. While Petitioner to an extent remains able to  
18 raise such challenges in her administrative proceedings and, should the matter  
19 reach that point, in a petition for review in the Ninth Circuit, no further relief  
20 lies here.

21 *Marroquin-Salazar R&R*, p. 24 (Exhibit B hereto).

22 **C. Petitioner Has Not Shown That The Government Lacked Authority To**  
23 **Detain Her Or Revoked Her Release Improperly, And That The Only**  
24 **Remedy For Such A Procedural Deficiency Would Be Her Immediate**  
25 **Release**

26 Petitioner argues that she should not now be detained, but the INA governs the  
27 detention and release of noncitizens during and following their removal proceedings. *See*  
28 *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a

1 pre-detention hearing. *See, e.g., 8 U.S.C. § 1231*. Petitioner claims that “this district”  
2 requires a pre-detention hearing before someone is re-detained in immigration detention,  
3 but cites no cases from this Court for that point. *See Dkt. 2-1 at p.5*. The cases Petitioner  
4 does rely on are not binding on this Court. *See id.* What other Judges in this District have  
5 actually done is order release unless a Section 1226(a) bond hearing is provided within 7  
6 days. *See below § D; see also Marroquin-Salazar R&R.*

7 Petitioner also argues that there does not appear to be a good reason for her recent  
8 re-detention, given that she was previously released and allegedly complied with “her  
9 immigration obligations.” *Dkt. 1* (Petition), ¶ 7. But the government’s authority to re-  
10 detain individuals previously released by ICE is discretionary, and it does not require the  
11 pre-detention hearing that Petitioner demands. The government is allowed to revoke for  
12 nearly any reason, and the process for any objections is exceedingly limited. “While the  
13 regulation provides the detainee some opportunity to respond to the reasons for  
14 revocation, it provides no other procedural and no meaningful substantive limit on this  
15 exercise of discretion as it allows revocation “when, in the opinion of the revoking  
16 official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or  
17 any other circumstance, indicates that release would no longer be appropriate.”  
18 *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and*  
19 *superseded*, 591 F.3d 1105 (9th Cir. 2010), citing §§ 241.4(l)(2)(i), (iv) (emphasis in  
20 original).

21 The government is thus broadly authorized to exercise its discretion to revoke  
22 such release pursuant to 8 C.F.R. § 241.1(l)(1), and 8 CFR § 241.4(l)(2). *See Moran v.*  
23 *U.S. Dep’t of Homeland Sec.*, 2020 WL 6083445, at \*9 (C.D. Cal. Aug. 21, 2020)  
24 (dismissing petitioners’ claim that § 241.4(l) was a violation of their procedural due  
25 process rights and noting, “[Petitioners] fail to point to any constitutional, statutory, or  
26 regulatory authority to support their contention that they have a protected interest in  
27 remaining at liberty in the United States while they have valid removal orders.”).

1           Importantly, the appropriate remedy for any such procedural deficiency would not  
2 be automatic release from custody, but rather to remedy the specific procedural  
3 deficiency that might be established. Injunctive relief must be narrowly tailored to the  
4 wrong. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (“And we  
5 note that even when there are deficiencies in individual § 1226(a) proceedings, they may  
6 be redressable through means short of major changes to the burden of proof.”).

7           Other District Courts have correctly applied this point of remedy law. *In Ahmad v.*  
8 *Whitaker*, for example, the government revoked the petitioner’s release but did not  
9 provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at \*6 (W.D.  
10 Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019).  
11 The petitioner argued the revocation of his release was unlawful because, he contended,  
12 the federal regulations prohibited redetention without, among other things, an  
13 opportunity to be heard. *Id.* In rejecting his claim, the court held that although the  
14 regulations called for an informal interview, petitioner could not establish “any  
15 actionable injury from this violation of the regulations” because the government had  
16 procured a travel document for the petitioner, and his removable was reasonably  
17 foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of  
18 Massachusetts held that even if the ICE detainee petitioner had not received a timely  
19 interview following her return to custody, there was “no apparent reason why a violation  
20 of the regulation ... should result in release.” *Doe v. Smith*, 2018 WL 4696748, at \*9 (D.  
21 Mass. Oct. 1, 2018). The court elaborated, “[I]t is difficult to see an actionable injury  
22 stemming from such a violation. Doe is not challenging the underlying justification for  
23 the removal order.... Nor is this a situation where a prompt interview might have led to  
24 her immediate release—for example, a case of mistaken identity.” *Id.*

25           Here, Petitioner argues that any allegedly lacking aspect of revocation procedure  
26 or documentation means she should be immediately released. But that demand is not  
27 consistent with the relatively limited nature of the regulatory provisions at issue, nor  
28 with the Ninth Circuit authority quoted above construing the government’s very broad

1 authority to revoke supervised release.

2 The Honorable Judge Blumenfeld recently denied a preliminary injunction motion  
3 in a somewhat similar case alleging a lack of sufficient re-detention process, noting that  
4 the evidentiary burden had not been met, and also that it was unclear that release would  
5 be the appropriate remedy for any violations of revocation procedure. *See Long Ton v.*  
6 *Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [[Dkt. no. 17](#)] (Sept. 3, 2025) (Order  
7 Denying Application for Preliminary Injunction) ([Exhibit BB](#) attached hereto).

8 The Honorable Judge Birotte Jr. likewise recently denied a TRO seeking to assert  
9 such a re-detention procedure challenge. *See Sanchez v. Bondi*, No. 5:25-cv-02530-AB-  
10 DTB, [2025 U.S. Dist. LEXIS 196639](#), at \*13 (C.D. Cal. Oct. 3, 2025) (order denying  
11 TRO). Indeed, much like Petitioner's argument here regarding the authority to revoke  
12 supervised release, the court noted that "[p]etitioner has not produced evidence showing  
13 that the SDDO lacked authority to revoke supervision or that ICE's procedures were  
14 fundamentally flawed. Even more, the absence of additional details regarding the  
15 identity of the SDDO or a formal interview, while potentially imperfect under the  
16 regulations, does not negate the statutory authority provided by § 1231(a)(2)–(6)." *Id.* at  
17 \*7.

18 **D. Should Petitioner Demand A § 1226(a) Bond Hearing In Her Reply**  
19 **Brief, The Request Should Be Denied**

20 Petitioner's TRO Application does not request a Section 1226(a) bond hearing.  
21 However, that is the relief that the USC Immigration Clinic ([Petitioner's counsel](#)) has  
22 asked for in other recent habeas petitions. *See, e.g., Gonzalez v. Noem*, [2025 U.S. Dist.](#)  
23 [LEXIS 206688](#) (C.D. Cal. Aug. 13, 2025) (order release or an individualized bond  
24 hearing; three days after the order, action was voluntarily dismissed). For that reason,  
25 Respondents address the issue here.

- 26 1. Under the plain text of § 1225, Petitioner must be detained pending  
27 the outcome of her removal proceedings

28 The Court should reject the argument that § 1226(a) governs Petitioner's detention

1 instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then  
2 “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862  
3 F.3d 1006, 1015 (9th Cir. 2017). § 1226(a) “applies to aliens “arrested and detained  
4 pending a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See*  
5 8 U.S.C. § 1225. It applies only to “applicants for admission”; that is, as relevant here,  
6 aliens present in the United States who have not be admitted. *See id.*; *see also Florida v.*  
7 *United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls  
8 within that category, the specific detention authority under § 1225 governs over the  
9 general authority found at § 1226(a).

10 The BIA recently analyzed and decided this legal issue in its order issued on  
11 September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA  
12 2025). After detailed analysis, the BIA determined that based on the plain language of  
13 section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A)  
14 (2018), Immigration Judges lack authority to hear bond requests or to grant bond to  
15 aliens who are present in the United States without admission.

16 “[T]he BIA is the subject-matter expert in immigration bond decisions.” *Aden v.*  
17 *Nielsen*, 2019 WL 5802013, at \*2 (W.D. Wash. Nov. 7, 2019). The BIA is well-  
18 positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225  
19 and 1226. *See Delgado v. Sessions*, 2017 WL 4776340, at \*2 (W.D. Wash. Sept. 15,  
20 2017) (noting a denial of bond to an immigration detainee was “a question well suited  
21 for agency expertise”); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing  
22 interplay of §§ 1225(b)(1) and 1226).

23 The BIA’s decision in *Matter of Yajure* is based upon and consistent with the  
24 governing statutory language. Under 8 U.S.C. § 1225(a), an “applicant for admission” is  
25 defined as an “alien present in the United States who has not been admitted or who  
26 arrives in the United States.” Applicants for admission “fall into one of two categories,  
27 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at  
28 287. Section 1225(b)(2)—the provision relevant here—is the “broader” of the two. *Id.* It

1 “serves as a catchall provision that applies to all applicants for admission not covered by  
2 § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* And § 1225(b)(2)  
3 mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N  
4 Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant  
5 while arriving in the United States, whether or not at a port of entry, and subsequently  
6 placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C.  
7 § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of  
8 the INA, 8 U.S.C. § 1226(a).”). Section 1225(b) therefore applies because Petitioner is  
9 present in the United States without being admitted.

10 The BIA has long recognized that “many people who are not *actually* requesting  
11 permission to enter the United States in the ordinary sense are nevertheless deemed to be  
12 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N.  
13 Dec. 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.”  
14 *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v.*  
15 *United States*, 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in  
16 § 1225(b)(2)(A) must be read in the context of the definition of “applicant for  
17 admission” in § 1225(a)(1). Applicants for admission are both those individuals present  
18 without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1).  
19 Both are understood to be “seeking admission” under § 1225(a)(1). *See* *Lemus-Losa*, 25 I.  
20 & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens  
21 “who are applicants for admission or otherwise seeking admission” to be inspected by  
22 immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an  
23 appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or  
24 Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45  
25 (2013).

- 26 2. Congress did not intend to treat individuals who unlawfully enter the  
27 country better than those who appear at a port of entry

28 When the plain text of a statute is clear, “that meaning is controlling” and courts

1 “need not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d  
2 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing  
3 “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d  
4 726, 730 (9th Cir. 2011). Section 1225 was added by Congress under the IIRIRA to  
5 correct “an anomaly whereby immigrants who were attempting to lawfully enter the  
6 United States were in a worse position than persons who had crossed the border  
7 unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to*  
8 *extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to  
9 replace certain aspects of the [then] current ‘entry doctrine,’ under which illegal aliens  
10 who have entered the United States without inspection gain equities and privileges in  
11 immigration proceedings that are not available to aliens who present themselves for  
12 inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court  
13 should reject any interpretation that would put aliens who “crossed the border  
14 unlawfully” in a better position than those “who present themselves for inspection at a  
15 port of entry.” *Id.* Aliens who presented at port of entry would be subject to mandatory  
16 detention under § 1225, but those who crossed illegally would be eligible for a bond  
17 under § 1226(a).

18 3. Prior agency practices are not entitled to deference under *Loper*  
19 *Bright*

20 The asserted longstanding agency practice carries little, if any, weight under *Loper*  
21 *Bright*. The weight given to agency interpretations “must always ‘depend upon their  
22 thoroughness, the validity of their reasoning, the consistency with earlier and later  
23 pronouncements, and all those factors which give them power to persuade.’” *Loper*  
24 *Bright Enters. v. Raimondo*, 603 U.S. 369, 432-33 (2024) (quoting *Skidmore v. Swift &*  
25 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis  
26 to support its reasoning. See 62 Fed. Reg. at 10323. To be sure, “when the best reading  
27 of a statute is that it delegates discretionary authority to an agency,” the Court must  
28 “independently interpret the statute and effectuate the will of Congress.” *Loper Bright*,

1 603 U.S. at 395 (cleaned up). But read most naturally, §§ 1225(b)(1) and (b)(2) mandate  
2 detention for applicants for admission until certain proceedings have concluded.  
3 *Jennings*, 583 U.S. at 297. Petitioner thus cannot show a likelihood of success on the  
4 merits.

5 **E. Alleged Violations Of The APA Are Not Grounds For Release**

6 Petitioner's argument that she should be released for violations of the APA should  
7 be rejected. Only final agency action is reviewable under the APA. *See Bennett v Spear*,  
8 520 U.S. 154, 177-78 (1997). A court may set aside such final agency action that is  
9 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5  
10 U.S.C. § 706. Under this standard, "[t]he scope of [the Court's] review is narrow; ... 'a  
11 court is not to substitute its judgment for that of the agency.'" *Judulang v. Holder*, 565  
12 U.S. 42, 52-53 (2011) (citation omitted). For a district court to review an agency's action  
13 pursuant to 5 U.S.C. § 706(2), there must be a "final agency action" that can be  
14 reviewed. Two conditions must be met for there to be a "final agency action" sufficient  
15 for APA review: "First, the action must mark the consummation of the agency's decision  
16 making process . . . it must not be of a merely tentative or interlocutory nature. And  
17 second, the action must be one by which rights or obligations have been determined, or  
18 from which legal consequences will flow." *Gallo Cattle Co. v. U.S. Dep't of Agric.*, 159  
19 F.3d 1194, 1198-99 (9th Cir. 1998) (internal quotation and citations omitted); *see also*  
20 *FTC v. Standard Oil Co.*, 449 U.S. 232, 241 (1980) (action must be a definitive  
21 statement of the agency's position).

22 The Honorable Judge Blumenfeld rejected a similar APA argument denied in *Ton*  
23 *v. Noem, et al.*, 5:25-cv-02033-SB-AGR (Ex. BB). Like here, the petitioner Ton  
24 "provide[d] little more than conclusory assertions about the facts and the law" in support  
25 of the APA argument. *Id.* at p.6. The Court concluded that "Plaintiff has not shown in  
26 these circumstances that there is a final agency action subject to APA review, much less  
27 that the government failed to observe its own procedures in reaching its decision." *Id.* at  
28 p.7. The Court should reach the same conclusion here.

**F. Petitioner Has Not Shown She Will Suffer Irreparable Harm**

Petitioner has not demonstrated that she will suffer irreparable injury absent her release. To show irreparable harm, she must demonstrate “immediate threatened injury.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22.

Petitioner suggests that being subjected to unjustified detention itself constitutes irreparable injury, but Petitioner’s detention is “common to all [noncitizens] seeking review of their custody or bond determinations.” *See Resendiz v. Holder*, 2012 WL 5451162, at \*5 (N.D. Cal. Nov. 7, 2012). Petitioner faces the same alleged irreparable harm as any habeas corpus petitioner in immigration custody, and she has not shown extraordinary circumstances warranting the emergency relief requested. Petitioner’s son has submitted a declaration explaining that he has lived with Petitioner for years and that she took him and his two siblings to school, cooked, and took care of the home. Dkt. No. 2-2, TRO Ex. I, ¶ 1. But Petitioner’s three children are now adults, having reached the ages of 23, 21, and 18. *Id.* Petitioner has offered no other evidence of “immediate threatened injury” justifying a TRO.

**G. The Balance Of Hardships Favors Respondents**

Where the moving party only raises “serious questions going to the merits,” the balance of hardships must “tip sharply” in her favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)). Petitioner fails to do so here.

The public interest in enforcement of the immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (same); *Noem v. Vasquez Perdomo*, No.

25A169, 2025 WL 2585637, at \*2 (U.S. Sept. 8, 2025) (Kavanaugh, J. concurrence) (finding the equities favor the government in enforcing its current immigration priorities “given the millions of individuals illegally in the United States, the myriad ‘significant economic and social problems’ caused by illegal immigration, and the Government’s efforts to prioritize stricter enforcement of the immigration laws enacted by Congress.”) (internal citation omitted). *See also Miranda v. Garland*, 34 F.4th 338, 365-66 (4th Cir. 2022) (vacating an injunction that required a “broad change” in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at \*4 (C.D. Cal. Dec. 20, 2020) (“the public interest in the United States’ enforcement of its immigration laws is high”); *see also Cf. Sanchez v. Bondi*, No. 5:25-cv-02530-AB-DTB, 2025 U.S. Dist. LEXIS 196639, at \*13 (C.D. Cal. Oct. 3, 2025) (denying TRO seeking release even though the balance of equities and public interest favored petitioner).

Here, the balance of equities and the public interest favor Respondents.

## **V. CONCLUSION**

Petitioner’s TRO Application should be denied. Should the Court nonetheless grant the TRO Application, however, the relief should be limited to what other Judges in this District have issued in similar cases: Requiring release unless a Section 1226(a) bond hearing is provided within 7 days.

Dated: November 3, 2025

Respectfully submitted,

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1           \* The undersigned, counsel of record for the Respondents, certifies that this brief  
2 contains 5,893 words, which complies with the word limit of L.R. 11-6.1.