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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**
15

16 **KAROLAINÉ MONTEIRO DE SOUZA**

17 *Petitioner,*

18 *v.*

19 Timothy S. ROBBINS, Field Office Director of the
20 Los Angeles Field Office of U.S. Immigration and
21 Customs enforcement; Todd M. LYONS, Acting
22 Director of U.S. Immigration and Customs
23 Enforcement; U.S. DEPARTMENT OF
24 HOMELAND SECURITY, Kristi NOEM,
25 Secretary of the U.S. Department of Homeland
26 Security, Christopher CHESTNUT, Warden,
27 California City Corrections Center, and Pamela
28 BONDI, Attorney General of the United States

Respondents,

Case No. 1:25-CV-01597-DJC-JDP

**PETITIONER'S REPLY IN SUPPORT
OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

REPLY

In its opposition to the present motion, Respondents claim that Petitioner's motion for a Temporary Restraining Order should be denied because under 8 U.S.C. § 1225, Petitioner must remain detained pending the outcome of her removal proceedings, which may take months or even years to be concluded. (Doc. 8 at 1.) Respondents also argue that Petitioner is not entitled to a bond for the same reasons. (Id.)

As Respondents acknowledge, both arguments have been rejected by a number of courts by multiple district courts—including the present one—when petitioner was previously released by ICE under 8 U.S.C. § 1226. (Id. at 2.) In fact, even when the government argues that a Petitioner is subject to Section 1225, numerous district courts have found that immigrants released on recognizance still have a protected liberty interest requiring due process before re-detention, which requires a pre-deprivation notice and a hearing where the government bears the burden of proof. In addition, due to the recognition of the existence of a protected liberty interest by an individual who was released on recognizance by DHS, courts also have continued to apply the *Mathews* factors when addressing Petitioner's due process claims.

Even if subject to Section 1225, Petitioner is entitled to a pre-deprivation hearing before re-detention or a custody redetermination hearing by an Immigration Court

Even if the government was correct that § 1225, by its terms, could apply to Petitioner, Respondents acknowledge that they released her under 8 U.S.C. § 1226(a) under her own cognizance. In addition, the evidence shows that the government treated her as subject to 8 U.S.C. § 1226(a), which does not mandate detention after it released her in 2024. Petitioner was released on her own recognizance and placed on an Alternative to Detention program. In addition, the Notice to Appear stated that the Notice and Order of Expedited removal which was served on her previously pursuant to Section 235(b)(1) was vacated pursuant to 8 C.F.R. § 208.30. Also, she was provided with an Order of Release on recognizance, which stated that Petitioner was being released pursuant to Section 236 of the Immigration and Naturalization Act. This is clear indication that she was released pursuant to § 1226(a). (See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (It is apparent that the INS used the phrase 'release on

1 recognizance’ as another name for ‘conditional parole’ under §1226(a)”) Federal Courts found that
2 this fact creates “an implicit promise” that one’s release would “be revoked only if [she] fail[ed] to live
3 up to the [release] conditions,” as in *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) and *Johnson v.*
4 *Willford*, 682 F.2d 868, 873 & n.3 (9th Cir. 1982) (holding that it would be “inconsistent with
5 fundamental principles of liberty and justice” to re-incarcerate a mistakenly released prisoner who had
6 readjusted to society and complied with the terms of release).) Thus, the argument that a “mistakenly
7 released [person] does not have a legitimate claim of entitlement to freedom [under the Due Process
8 Clause] cannot be squared with established law.” (*Hurd v. Dist. Of Columbia, Gov’t*, 864 F.3d 671, 682
9 (D.C. Cir. 2017). Even if §1225(b) did apply, Petitioner has a protected liberty interest based on the
10 government’s prior release of her pursuant to §1226. (*Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK
11 (HC), 2025 U.S. Dist. LEXIS 219172, 2025 LX 474205 at 11); also see *Ramirez Clavijo v. Kaiser*, No.
12 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025) (once the government “elect[s]
13 to proceed...under §1226, cannot [] reverse course and institute §1225... proceedings”).) “The liberty
14 interest that arises upon release from immigration detention is inherent in the Due Process Clause” (See
15 *Guillermo M.r. v. Kaiser*, No. 25-CV-054360RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025);
16 *Ortega v. Kaiser* (No. 25-CV-052590JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025)(collecting
17 cases finding that noncitizens who have been released have a strong liberty interest.)

18 Another reason to reject Respondents argument that that Respondents appear to rely in the plain text
19 of Section 235 and the latest designation of individuals whom DHS may refer to expedited removal.
20 (See *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).) Such notice
21 permits DHS “to exercise the full scope of its statutory authority to place in expedited removal
22 individuals who were not otherwise covered by prior designations. (Id. at 8139-90). However,
23 Petitioner challenge to her detention under section 1225 without an individualized review of the
24 necessity of her detention is based on a procedural due process claim, which is clearly recognized by the
25 courts. As previously stated, the fifth Amendment Due Process clause requires “adequate procedural
26 protections” to ensure that the government’s asserted justification for Petitioner’s confinement
27 “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” (*Zadvydas*
28

1 *v. Davis*, 533 U.S. 678, 690, (2001).) A number of courts already have ruled that individuals covered
2 under the January 2025 designation still have a due process right under the Constitution, which includes
3 individuals permitted to enter the United States and whom later were re-detained by DHS under a claim
4 that they were amenable to expedited removal. (See *Make the Rd. New York v. Noem*, No. 25-CV-190
5 (JMC), 2025 U.S. Dist. Lexis 169432, 2025 WL 2494908 (D.D.C. Aug. 29, 2025) (finding that
6 individuals who have effected entry into the United States are entitled to due process); also see *Espinoza*
7 *v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. Lexis 183811, 2025 LX 401958, 2025 WL
8 2675785 (E.D. Cal. Sept. 18, 2025) (agreeing with the analysis on *Make the Road* and adopting its
9 reasoning).) As courts have recognized, although certain constitutional protections do not extend to
10 noncitizens "outside of our geographic borders," once a noncitizen "enters the country, the legal
11 circumstance changes, for the Due Process Clause applies to all 'persons' within the United States,
12 including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." (*Zadvydas*
13 *v. Davis*, 533 U.S., at 693).) Indeed, once they are present in the United States, noncitizens have a
14 "weighty" liberty interest in remaining, as they "stand to lose the right to stay and live and work in this
15 land of freedom," and "may lose the right to rejoin [their] immediate family, a right that ranks high
16 among the interests of the individual." (*Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed.
17 2d 21 (1982).) In addition, detention without individualized review has been deemed to be
18 unconstitutional in cases where a person has established a credible fear of persecution, is pursuing
19 asylum in a §240 removal proceeding and is detained pursuant to §1225. (See *Padilla v. U.S. ICE*, 704
20 F. Supp. 3d 1163 (1172-74) (W.D. Wash. 2023) (denying motion to dismiss procedural and substantial
21 due process claims of class of noncitizens with positive credible fear determinations seeking expeditious
22 bond hearings.

23 Here, Petitioner is an individual who was apprehended by DHS upon her arrived into the United
24 States, but then released into the United States after her spouse underwent a credible fear interview, thus
25 effecting an entry into the United States. She also was provided with an Order of Release on
26 recognizance (Form I-220A), which stated Petitioner was being released pursuant to Section 236 of the
27 Immigration and Naturalization Act. She was also served with a notice to appear, which indicated that
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the Notice and Order of Expedited Removal which was previously served on her pursuant to Section 235(b)(1) was vacated pursuant to 8 C.F.R. §208.30. Petitioner had been living in the United States for an entire year before being called into the ICE San Francisco field office and re-detained without a pre-deprivation hearing. Furthermore, Petitioner in this case was released into the United States months prior to the January 24, 2025 Designation, which further supports a finding that she has a liberty interest which was created at that time and which is protected by the Fifth Amendment. (See *Espinoza*, 2025 U.S. Dist. LEXIS, at *28.) The statutory and regulatory scheme authorizing detention under Section 1225 does not provide for not even a minimally adequate procedural protection. The sole statutory mechanism available for release—parole—consists in a wholly discretionary, unappealable decision after a custody review—not a hearing—by a low level ICE officer who is most likely predisposed to keep an individual detained. This process does not satisfy basic procedural due process, as it does not include a hearing or individualized review by a neutral arbitrator. A habeas petition asserting a procedural due process claim to a §1225 detention would seek such review, likely in the form of a constitutionally-adequate bond hearing before an immigration judge, or a bail hearing in district court. Based on the above, although Section 1225 authorized DHS to detain Petitioner, she still has a due process right to fight her re-detention.

Petitioner is entitled to a bond hearing

Respondents claim that Petitioner is not entitled to a bond hearing because Section 1225 does not provide for that right. “It is well established that certain constitutional protection available to persons inside the United States are unavailable to aliens outside of our geographical borders.” (*Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950).) “But once an alien enters the country, the legal circumstances changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” (Id.; see *Hernandes v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) ([I]t is well-established that the Due Process clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority.”). Recognizing this, courts have found that pre-deprivation bond hearings are

1 required under these circumstances when one's private liberty interest is involved. (See *A.E. v.*
2 *Andrews*, No. 1:25-CV-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) ("the risk
3 of an erroneous deprivation [of liberty] is high" where [the petitioner] has not received any bond or
4 custody redetermination hearing); also see *Vilela*, 2025 LX 474205 at 15).) Due to the importance of
5 the private interest in liberty involved in this matter and the very high risk of deprivation of this liberty
6 interest, this Court should order Petitioner's immediate release and require a pre-deprivation hearing
7 before Petitioner is re-detained by Respondents.

8
9 **CONCLUSION**

10 In view of the arguments and case law included in Petitioner's motion and this Reply, Petitioner
11 respectfully asks for this Court to find that she should be released and undergo a pre-deprivation hearing
12 before re-detention or a custody redetermination hearing by an Immigration Court.

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14 Respectfully submitted,

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16 DATE: 11/22/2025

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 1777 words, in compliance with the Local Civil Rules.

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