

1 Jose F. Vergara 251342
2 Law Office of Jose F. Vergara
3 1990 North California Blvd., 8th Floor
4 Walnut Creek, CA 94596
5 Telephone: (925) 457-2090

6 Attorney for Petitioner
7 Carmen Guachiac Chox

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CARMEN GUACHIAC CHOX

Petitioner,

v.

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

Respondents,

Case No. 1:25-CV-01648-KES-HBK

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

REPLY¹

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(b)(2)(A), Petitioner must remain detained pending the outcome of her removal proceedings, which may take months or even years to be concluded. (Doc. 8 at 3-11.) In addition, Respondents also argue that in regards to an alien who was subject to section 1225(b)(2) when apprehended, DHS has the absolute authority to re-detain her without any the need for any procedural safeguards which would protect her Fifth Amendment Rights under the United States Constitution. (Id. at 12-13.)

Even if Petitioner is subject to Section 1225, numerous district courts have found that immigrants released on recognizance still have a protected liberty interest, which under the due process rights under the Fifth Amendment, requires a pre-deprivation notice and a hearing where the government bears the burden of proof before re-detention occurs. For the same reason, Respondents should not be able to arbitrarily re-detain Petitioner without first permitting her to appear before a neutral decision maker and have the opportunity to present her evidence and argue against any evidence Respondents may have. Basically, this supports Petitioner's claim that she was re-detained for no apparent reason. Once Petitioner was released on recognizance by DHS, she acquired a protected liberty interest, which supports the argument that this court should apply the *Mathews* factors when addressing Petitioner's due process claims.

Even if subject to Section 1225, the Fifth Amendment protects Petitioner from being subject to mandatory detention without a pre-deprivation hearing before re-detention or a custody redetermination hearing by an Immigration Court

Respondents claim that pursuant to U.S.C. §1225, Petitioner must remain detained pending the outcome of her removal proceedings. However, Respondents cite no case law supporting the argument that the Due Process Clause of the Fifth Amendment does not apply to a person whom the Government previously permitted to enter and remain in the United States before deciding to re-detain her. Rather,

¹ Petitioner agrees with Respondents position and is hereby willing to convert the pending motion to one for a preliminary injunction. Petitioner also is willing to have this Court make a decision on the motion without a hearing.

1 Respondents appear to rely in the plain text of Section 235 and the latest designation of individuals
2 whom DHS may refer to expedited removal. (See *Designating Aliens for Expedited Removal*, 90 Fed.
3 Reg. 8139 (Jan. 24, 2025).) Such notice permits DHS “to exercise the full scope of its statutory
4 authority to place in expedited removal individuals who were not otherwise covered by prior
5 designations. (Id. at 8139-90). However, Petitioner challenge to her detention under section 1225
6 without an individualized review of the necessity of her detention is based on a procedural due process
7 claim, which is clearly recognized by the courts. As previously stated, the Fifth Amendment Due
8 Process clause requires “adequate procedural protections” to ensure that the government’s asserted
9 justification for Petitioner’s confinement “outweighs the individual’s constitutionally protected interest
10 in avoiding physical restraint.” (*Zadvydas v. Davis*, 533 U.S. 678, 690, (2001).) A number of courts
11 already have ruled that individuals covered under the January 2025 designation still have a due process
12 right under the Constitution, which includes individuals permitted to enter the United States and whom
13 later were re-detained by DHS under a claim that they were amenable to expedited removal. (See *Make*
14 *the Rd. New York v. Noem*, No. 25-CV-190 (JMC), 2025 U.S. Dist. Lexis 169432, 2025 WL 2494908
15 (D.D.C. Aug. 29, 2025) (finding that individuals who have effected entry into the United States are
16 entitled to due process); also see *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist.
17 Lexis 183811, 2025 LX 401958, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025) (agreeing with the
18 analysis on *Make the Road* and adopting its reasoning).) As courts have recognized, although certain
19 constitutional protections do not extend to noncitizens “outside of our geographic borders,” once a
20 noncitizen “enters the country, the legal circumstance changes, for the Due Process Clause applies to all
21 ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful,
22 temporary, or permanent.” (*Zadvydas v. Davis*, 533 U.S., at 693).) Indeed, once they are present in the
23 United States, noncitizens have a “weighty” liberty interest in remaining, as they “stand to lose the right
24 to stay and live and work in this land of freedom,” and “may lose the right to rejoin [their] immediate
25 family, a right that ranks high among the interests of the individual.” (*Landon v. Plasencia*, 459 U.S. 21,
26 34, 103 S. Ct. 321, 74 L. Ed. 2d 21 (1982).) In addition, detention without individualized review has
27 been deemed to be unconstitutional in cases where a person has established a credible fear of
28

persecution, is pursuing asylum in a §240 removal proceeding and is detained pursuant to §1225. (See *Padilla v. U.S. ICE*, 704 F. Supp. 3d 1163 (1172-74) (W.D. Wash. 2023) (denying motion to dismiss procedural and substantial due process claims of class of noncitizens with positive credible fear determinations seeking expeditious bond hearings); also see *Savane v. Francis*, 1:25-cv-666-GHW, 2025 WL2774452 at *15 (S.D.N.Y. 2025) (“Even assuming that §1225 [mandatory detention provision] applies, as [r]espondents contend, [p]etitioner’s due process rights were violated because [r]espondents did not afford [p]etitioner any process at all before detaining him.”).) By releasing one on her own cognizance, the government makes an implicit promise that one’s release will be revoked only if she fails to live up to her release condition. (See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).) By releasing one on her own recognizance, the government basically represents to Petitioner that she was being released pursuant to §1226. (See *Ortega Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is apparent that the INS used the phrase ‘release on recognizance’ as another name for ‘conditional parole under §1226(a)’.”).)

Here, Petitioner is an individual who was apprehended by DHS upon her arrived into the United States, but then released into the United States by means of a parole. By releasing Petitioner on her own recognizance, Respondents basically represented to Petitioner that she was being released pursuant to §1226. This was an implicit promise that her release would be revoked only if she failed to live up to the release conditions, as in *Morrissey*. In addition, her Notice to Appear indicate that the NTA was being issued after an asylum officer found Petitioner to have demonstrated a credible fear of persecution or torture. (Doc. 8-3, at 2.) The same document also indicated that the Section 235(b)(1) order was vacated pursuant to 8 CFR § 208.30. (Id.) Petitioner had been living in the United States for over three years before being re-detained without a pre-deprivation hearing, and worse, without the Deportation Officer providing any concrete facts in support of the decision to re-detain her². Furthermore, Petitioner in this case was released into the United States more than two and a half years prior to the

² It should be noted that other than the statements in the declaration of Robert Munoz, there is no documentary evidence that Petitioner violated the terms of her monitoring program. However, they appear to support the version of events described by Petitioner.

1 January 24, 2025 Designation, which further supports a finding that she has a liberty interest which was
2 created at that time and which is protected by the Fifth Amendment. (See *Espinoza*, 2025 U.S. Dist.
3 LEXIS, at *28.) The statutory and regulatory scheme authorizing detention under Section 1225 does not
4 provide for not even a minimally adequate procedural protection. The sole statutory mechanism
5 available for release—parole—consists in a wholly discretionary, unappealable decision after a custody
6 review—not a hearing—by a low level ICE officer who is most likely predisposed to keep an individual
7 detained. This process does not satisfy basic procedural due process, as it does not include a hearing or
8 individualized review by a neutral arbitrator. A habeas petition asserting a procedural due process claim
9 to a §1225 detention would seek such review, likely in the form of a constitutionally-adequate bond
10 hearing before an immigration judge, or a bail hearing in district court. Based on the above, although
11 Section 1225 authorized DHS to detain Petitioner, she still has a due process right to fight her re-
12 detention and this Court should make an analysis under *Mathews*.

13 Respondents also argue, citing, *Barrera-Echavarria*, *Thuraissigiam*, and *Matter of Yajure Hurtado*,
14 that Petitioner has no due process rights and that her rights are limited to those provided by statute based
15 in the doctrine of “entry fiction”. (Doc. 8, at 3-4) (citing *DHS v. Thuraissigiam*, 591 U.S. 103, 139
16 (2020); *Barrera-Echavarria v. Bison*, 44 F.3d 1441, 1450-1449 (9th Cir. 1995); *Matter of Yajure*
17 *Hurtado*, 29 I&N Dec. 216, 221 (BIA 2025).) *Thuraissigiam* held that a petitioner who was stopped at
18 the border did not have a due process right regarding admission into the United States, (*Thuraissigiam*,
19 591 U.S. at 107; see also *Landon*, 459 U.S. at 32 (“[A]n alien seeking initial admission to the United
20 States requests a privilege and has no constitutional rights regarding his application...”).) However,
21 here, Petitioner challenges her re-detention without a hearing, she does not challenge in this habeas
22 action any determination regarding her admissibility. (See *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170-
23 72 (W.D. Wash. 2023) (Discussing *Thuraissigiam* and explaining the distinction between a challenge to
24 admission and a challenge to detention); *Hernandez* 872 F.3d at 981 (“[T]he government’s discretion to
25 [detain] non-citizens is always constrained by the requirements of due process.”) As for Respondents
26 reliance on *Barrera-Echavarria*, the Ninth Circuit indicated that *Barrera-Echavarria* applied to
27 “excludable aliens” as defined under pre-IIRIRA law, and that there was no indication that the class of
28

aliens to whom *Barrera-Echavarria* applied was the same as “inadmissible aliens” covered by §1225(b). (*Rodriguez v. Robbins*, 715 F.3d 1127, 1140 (9th Cir. 2013).) Furthermore the Court in *Rodriguez* went on to state that aliens subject to §1225(b) have a due process right to a bond hearing and a determination to justify their detention. (*Id.* at 1143.) Lastly, District Courts have rejected the applicability of the “entry fiction” doctrine for cases not involving an expedited removal process. (See *Porras Castillo v. Wofford*, No. 1:25-CV-01585-JLT-HBK, 2025 U.S. Dist. LEXIS 235113*, 2025 LX 536359, at *22 (E.D. Cal. Dec. 2, 2025); also see *Immigrant Defs. L. Ctr. v. Mayorkas*, No. CV 20-9893-JGB (SHKx), 2023 U.S. Dist. LEXIS 75206, 2023 LX 78430, 2023 WL 3149243, at *29 (C.D. Cal. Mar. 15, 2023) (finding that the entry fiction body of law did not address the regular removal process for people like petitioner).) As for *Yajure*, that case deals with aliens who entered the United States without inspections and were apprehended for the first time years after having arrived into the United States. (See *Yajure*, 29 I&N Dec., at 217.) This is simply not the case in here, where Petitioner was initially detained by immigration authorities and then released pursuant to Section 236. In the end, this Court should find that case law and the Due Process clause of the Constitution provides that Petitioner has a protected liberty interest in her release.

Petitioner should be released immediately rather than remain detained and wait for a custody determination by an immigration court

Respondents may argue that in case this court grants the present motion, Petitioner’s due process rights will be protected even if she remains detained, as long as the Immigration Court holds a hearing to determine that her custody is warranted. However, Petitioner’s immediate release is required to return her to the status quo ante—“the last uncontested status which preceded the pending controversy.” *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *Kuzmenko v. Phillips*, No. 2:25-cv-00663-DJC-AC, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025); see also *Valdez v. Joyce*, 25 Civ. 4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (ordering immediate release of unlawfully detained noncitizen); *Ercelik v. Hyde*, No. 1:25-CV-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025) (same); *Günaydin v. Trump*, No. 25-CV-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025) (same).

1 Here, Pettioner was enjoying a productive life in liberty before being re-detained by the
2 government. In order to return Respondent to the status quo ante, Respondents should be ordered to
3 release petitioner immediately, and be barred from re-detaining petitioner unless the government holds a
4 bond hearing before a neutral decisionmaker and proves by clear and convincing evidence that petitioner
5 is a flight risk or danger to the community.

6 **CONCLUSION**

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

10
11 Respectfully submitted,

12
13 DATE: 12/05/2025

/S/ Jose F. Vergara

Jose F. Vergara
CA Bar No. 251342
vergarajf@hotmail.com

16 COUNSEL FOR PETITIONER
17
18
19
20
21
22
23
24
25
26
27
28

WORD COUNT CERTIFICATION

I certify that this memorandum contains 2203 words, in compliance with the Local Civil Rules.

/S/ Jose F. Vergara

Jose F. Vergara

CA Bar No. 251342

vergarajf@hotmail.com

COUNSEL FOR PETITIONER