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6 Attorneys for *Petitioner* Michelle Montero-Alvarez
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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 Michelle Montero-Alvarez

11 *Petitioner,*

12 v.

13 Sergio ALBERRAN, Acting Field Office
14 Director of San Francisco Office of
15 Detention and Removal, U.S. Immigrations
16 and Customs Enforcements; U.S. Department
of Homeland Security;

17 Todd M. LYONS, Acting Director,
18 Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

19 Kristi NOEM, in her Official Capacity,
20 Secretary, U.S. Department of Homeland
21 Security; and

22 Pam BONDI, in her Official Capacity,
23 Attorney General of the United States;

24 *Respondents - Defendants,*
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CASE NO.: 1:25-CV-01695-AC

PETITIONER'S REPLY TO
RESPONDENT'S OPPOSITION TO
EMERGENCY EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

PETITIONER'S REPLY TO GOVERNMENT'S OPPOSITION TO EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner, Michelle Montero-Alvarez, ("Ms. Montero-Alvarez"), respectfully submits this Reply to Respondent's Opposition to Petitioner's request for temporary restraining order and preliminary injunction.

When Ms. Montero-Alvarez entered the United States without inspection on July 8, 2022, Ms. Montero-Alvarez was detained by Department of Homeland Security ("DHS").

On July 8, 2022, DHS released Ms. Montero-Alvarez on her own recognizance. Since then, Petitioner has done everything the government asked her to do; she has diligently attended every immigration court hearing and ICE check-in. Ms. Montero-Alvarez never missed an ICE appointment. She had failed to report to an ISAP appointment because of car problems not because she was hiding from the government. Ms. Montero-Alvarez immediately contacted her ISAP coordinator to explain that she was having car problems and was informed by ISAP that it would be okay to return the next day. Although she was unable to attend her ISAP appointment due to car trouble on November 19, 2025, she contacted ISAP to inform them of her intent to appear and she attended all appointments with ICE despite DHS's mischaracterization to the contrary.

On August 18, 2022, a Notice to Appear was filed with the immigration court and Ms. Montero-Alvarez was placed in full removal proceedings under § 240.

On August 2, 2023, Ms. Montero-Alvarez filed an asylum application with the asylum office. Ms. Montero-Alvarez attended her biometrics appointment with USCIS.

Over the last three years in which she has lived at liberty, Ms. Montero-Alvarez has complied with all obligations of the I-220B and ICE orders. Although she had car problems on November 19, 2025, she called ISAP to inform them that she would not be able to make it until the following day. ISAP informed Ms. Montero-Alvarez that it was okay for her to return on November 21, 2025 and that she would continue to be in compliance of ISAP.

On November 21, 2025, Ms. Montero-Alvarez *voluntarily* attended her last check-in appointment with ICE in San Francisco.

1 On July 8, 2022, Ms. Montero Alvarez entered the United States without inspection and
2 was released on her own recognizance under an order of supervision I-220B. Ms. Montero
3 Alvarez was not re-detained until November 21, 2025. Well over three years later.

4 Respondents contend that Ms. Montero-Alvarez's parole was terminated under INA
5 Section 8 CFR § 212.5(e)(2)(i) thus she is properly detained under Section 8 U.S.C. § 1225(b)
6 because Ms. Montero Alvarez again became an *alien seeking adjustment* when her parole was
7 terminated by DHS. The Respondents cite *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2019) for
8 the proposition that aliens detained under 8 U.S.C. § 1225(b) can be detained even after they
resided in the United States for many years.

9 As a result, Respondents allege that Petitioner is properly categorized as an "alien seeking
10 admission" and is not eligible for bond under section 235(b)(2)(a) of the Immigration and
11 Nationality Act; 8 U.S.C. § 1225(b). However, just as people on pre-parole, parole, and probation
12 status have a liberty interest, so too does Ms. Montero Alvarez have a liberty interest in remaining
13 out of custody while her asylum case remains pending with the immigration court.

14 Therefore, Petitioner's detention violates both the Immigration and Nationality Act
15 ("INA") and Petitioner's Fifth Amendment right to due process of law.

16 LEGAL STANDARD

17 A party seeking a temporary restraining order and preliminary injunction must establish
18 "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in
19 the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an
20 injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S.
21 7, 20 (2008). "If a plaintiff can only show that there are serious questions going to the merits –
22 a lesser showing than likelihood of success on the merits – then a preliminary injunction may
23 still issue if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter*
24 factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir.
25 2014)(internal quotation marks and citations omitted). "When the Government is the opposing
26 party," the final two factors "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

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ARGUMENT

A. Likelihood of Success on the Merits
a. Due Process

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. The Due Process Clause applies equally to noncitizens unlawfully present in the United States, like Mr. Paz Aguilera. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Although Ms. Montero Alvarez’s claim is constitutional, it ultimately turns on whether either section 1225(b) or section 1226(a) provides a valid basis for Ms. Montero Alvarez’s continued detention. Here, since Ms. Montero Alvarez has not been properly detained under either statutory detention authority, a temporary restraining order and preliminary injunction must be issued.

i. Mandatory Detention Under 8 U.S.C. § 1225(b)(2)(A)

The Respondents invoke section 1225(b)(2)(A) as a basis for mandatory detention which provides the following:

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 proceeding under section 1229a of this title.
U.S.C §1225(b)(2)(a).

There is no real dispute that Ms. Montero Alvarez is “an alien seeking admission” who is not “clearly and beyond a doubt entitled to be admitted.” *Id.* However, the mandatory detention provision of 8 U.S.C. 1225(b) does not apply to Ms. Montero Alvarez because Mr. Montero Alvarez is not “an alien seeking admission”.

Respondents argue that Petitioner is again “seeking admission” and subject to removal under 8 U.S.C. § 1225(b)(2) because her parole was terminated. For these reasons, Respondents argue is subject to mandatory detention as an alien seeking admission. Respondents’ theory repeats arguments that have been uniformly rejected by many district courts. See, e.g., *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025); *Salcedo Aceros v. Kaiser*, 25-cv-06924-EMC, 2025 WL 2637503, at *8–12 (N.D. Cal. Sep. 12, 2025); *Jimenez Garcia v. Kaiser et al.*, 25-cv-06916-YGR, at *8–9 (N.D. Cal. Aug. 29, 2025); *Calderon v. Kaiser*, No. 5:25-cv-06695-

1 AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-
2 cv-06248-BLF, 2025 WL 2419263, at *3–4 (N.D. Cal. Aug. 21, 2025).

3 After initiating removal proceedings under § 1229(a), the government chose to release
4 Ms. Montero Alvarez on conditional parole under §1226(a). In doing so, the government placed
5 Ms. Montero Alvarez into a normal removal proceeding, not an expedited one, and it also chose
6 not to detain her under § 1225(b). “Sections 1226(a) and 1225(b) cannot be applied
7 simultaneously.” *Salcedo Aceros*, 2025 WL 2637503, at *8; see also *Valencia Zapata v. Kaiser*,
8 -- F. Supp. 3d --, No. 25-cv-07492-RFL, 2025 WL 2741654, at *9 (N.D. Cal. Sept. 26, 2025);
9 *Pablo Sequen v. Albarran*, --F. Supp. 3d --, No. 25-cv-06487-PCP, 2025 WL 2935630, at *1–2
10 (N.D. Cal. Oct. 15, 2025). Like other District Courts, this court must find that the government
11 cannot simply switch tracks and purport to subject Ms. Montero Alvarez to mandatory detention
12 under § 1225(b) after it already released her under § 1226(a).

13 Ms. Montero Alvarez has a liberty interest that was created by the government after
14 immigration officials released her on own recognizance under § 1226(a) when they determined
15 she posed little if any danger to the community. By deciding to release Ms. Montero Alvarez
16 from custody after she was initially apprehended and placing her in § 240 proceedings, the
17 government created “an implicit promise,” on which she has reasonably relied, that her liberty
18 “will be revoked only if [s]he fails to live up to the parole conditions [of her release].” *Morrissey*,
19 408 U.S. at 482. “The liberty of a person released from government custody is valuable and must
20 be seen as within the protection of the Due Process Clause.” *Pinchi*, 792 F. Supp. 3d at 1032
21 (quoting *Morrissey*, 408 U.S. at 482); see also *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025
22 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025) (petitioner’s release under § 1226 created
23 “protected liberty interest in remaining out of custody, which has only become more significant
24 in the years since then”). Petitioner’s private interest in her continued freedom from detention is
25 therefore weighty.

26 **a. DHS may not subject an immigrant in**
27 **§ 240 removal proceedings to**
28 **mandatory detention under 8 U.S.C. §**
1225(b) based solely on termination of
parole under 8 C.F.R. § 212.5(e)(2)(i)

There is no statutory authority permitting DHS to apply § 1225(b) detention after

1 initiating § 240 proceedings absent a new placement in expedited removal. 8 C.F.R. §
2 212.5(e)(2)(i) governs parole termination only. It is not a detention statute and cannot create
3 mandatory detention where Congress did not. See *Jennings*, 583 U.S. at 521.

4 Respondents argue that termination of parole mandates detention. 8 U.S.C. Section
5 1182(d)(5)(A) does not require mandatory detention. It only authorizes parole and its
6 termination. Any detention after termination must be justified under Section 8 CFR § 1225 or §
7 1226. Termination of parole under 8 CFR § 212.5(e)(2)(i) does not convert § 1226 detention
8 back into § 1225(b) mandatory detention. The regulation says nothing about mandatory
9 detention, 1225(b) custody, nor elimination of bond jurisdiction. To lawfully apply § 1225(b)
10 after parole termination, DHS must place the person in expedited removal again or treat them as
11 an “arriving alien” at inspection. That cannot happen after DHS has already released the person
and chosen to place them in § 240 proceedings, absent statutory authority.

12 Once in § 240 proceedings, § 1226(a) is the default custody statute and bond jurisdiction
13 lies with the Immigration Judge. Mandatory detention applies only if § 1226(c) is satisfied.
14 Congress separated these statutes intentionally: § 1225 governs inspection “pending a
15 determination of admissibility primarily before DHS elects to place the person in § 240
16 proceedings. Once DHS issues and files a Notice to Appear in immigration court initiating § 240
17 proceedings, as is the case here, the § 1225 inspection/admission framework is no longer
18 operative and § 1226 governs. See *Jennings v. Rodriguez*, 583 U.S. 513 (2018) stating that §
1225 and § 1226 are distinct detention regimes.

19 Respondents’ construction of the § 1225 mandatory detention statute would also seem to
20 shrink the discretionary detention provision, section 1226, beyond recognition. Section 1226
21 provides that “on a warrant issued by the Attorney General, an alien may be arrested and detained
22 pending a decision on whether the alien is to be removed.” 8 U.S.C. § 1226(a). That provision
23 also permits the Attorney General to “release the alien...on conditional parole.” *Id.* §
24 1226(a)(2)(B). The implementing regulations permit an ICE officer to release the alien in the
25 officer’s discretion “provided that the alien must demonstrate to the satisfaction of the officer
26 that such release would not pose a danger to property or persons, and that the alien is likely to
27 appear for any future proceedings.” 8 U.S.C. § 236.1(c)(8). Under Respondents rationale, all
28 immigrants who have not yet been admitted could be considered applicants for
admission/arriving aliens because they are in the same status as when they entered the United

1 States and thus subject to § 1226(b) mandatory detention. However, this is not the case.

2 For many years, the understanding – shared by the Executive and the Supreme Court –
 3 was that section 1226, not section 1225, governed immigration arrests conducted within the
 4 interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being
 5 applicants for admission, aliens who are present without having been admitted or paroled ... will
 6 be eligible for bond and bond redetermination.”): *Jennings v. Rodriguez*, 583 U.S. 281, 289
 7 (2018) (“In sum, U.S. Immigration law authorizes the Government to detain certain aliens seeking
 8 admission into the country under §§ 1226(a) and (b)(2). It also authorizes the Government to
 9 detain certain aliens *already in the country pending the outcome of removal proceedings* under
 10 §§ 1226(a) and (c).”)(emphasis added). Since Ms. Montero Alvarez was placed in § 240 removal
 11 proceedings before an immigration judge over three years ago, her detention while in § 240
 proceedings is governed by § 1226(a) and (c) regardless of the status of her parole.

12 **ii. Discretionary Detention under 8 U.S.C. § 1226(a)**

13 Though most of Respondents’ submission is dedicated to arguing that Ms. Montero
 14 Alvarez was properly detained under section 1225(b) mandatory detention requirements, they
 15 seem to justify Ms. Montero Alvarez’s detention under section 1226(a) as well. Section 1226(a)
 16 provides that an “alien may be arrested and detained pending a decision on whether the alien is
 17 to be removed.” It further provides that the Attorney General “may continue to detain the arrested
 18 alien” or “may release the alien on a bond ...or conditional parole.” 8 U.S.C. § 1226(a).

19 This justification is problematic. Though Ms. Montero Alvarez admits to missing a
 20 check-in with the ISAP program on November 19, 2025, she called ISAP to clarify that she had
 21 car trouble and that she could appear the following day. ISAP informed her that it was not a
 22 problem and that it was okay for her to just appear at the ICE office on November 21, 2025. Ms.
 23 Montero Alvarez never missed an ICE appointment. Ms. Montero Alvarez *voluntarily* attended
 her ICE appointment on November 21, 2025.

24 Even if Respondents’ allegations that Ms. Montero Alvarez violated her release
 25 conditions were credited, her detention would remain improper. Section 1226(a)’s implementing
 26 regulations require release of a detained noncitizen unless the noncitizen poses a danger to the
 27 community or is a flight risk. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir.
 28 2022). When the noncitizen is initially detained, 8 C.F.R. § 236.1(c)(8) provides for release if

the noncitizen “demonstrate(s) to the satisfaction of the [ICE] 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.” See *id.* If the ICE officer determines that the noncitizen should not be released, the regulations permit the noncitizen to request a bond hearing before an immigration judge at any time before a removal order becomes final. See 8 C.F.R. §§ 236.1(d)(1), 1003.19; *Rodriguez Diaz*, 53 F.4th at 1197. In this hearing, too, the inquiry is whether the noncitizen is “a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.” In *re Guerra*, 245 I&N Dec. 37, 40 (BIA 2006). Though the immigration judge may “consider various factors in making this determination, including the individual’s ties to the United States as well as his employment history, criminal record, history of immigration violations, and manner of entry into this country,” those factors are considered to assess dangerousness and flight risk. *Rodriguez Diaz*, 53 F.4th at 1197.

Thus, detention is permitted under section 1226(a) only if Ms. Montero Alvarez is dangerous or a flight risk. Respondents have not come close to showing that, and in fact, have hardly even tried. Though they point to a minor technical violation, they have not explained how this violation makes Ms. Montero Alvarez dangerous or a flight risk. The Respondents do not address flight risk nor safety because those factors clearly weigh in favor of Ms. Montero Alvarez’s immediate release.

As explained, the determination that Ms. Montero Alvarez’s detention is not authorized under section 1225(b)(2)(A) or section 1226(a) resolves her Due Process claim in her favor. There is no need to delineate when her liberty interest arose or what the scope of that liberty interest now is because the government may never detain individual that enjoys the protection of the Due Process Clause without a legal basis to do so. Regardless, the remaining factors weigh heavily in Ms. Montero Alvarez’s favor.

B. Petitioner Is Likely to Suffer Irreparable Harm Absent Injunctive Relief

There can be no question that Ms. Montero Alvarez is likely to suffer irreparable harm in the absence of a preliminary injunction. “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

1 deprivation of a constitutional right is involved, most courts hold that no further showing of
2 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005).
3 Ms. Montero Alvarez was arrested without any pre-detention hearing, she is currently out of ICE
4 custody only because of a court order, and there is no reason to believe that the government will
5 not immediately re-detain her as soon as the TRO expires. She thus has shown a clear likelihood
6 of irreparable harm. Illegal detention is an unquestionably serious impingement on an
7 individual’s constitutional rights. Since Respondents lack a basis to detain her, she suffers from
8 irreparable harm.

9 **C. The remaining preliminary injunction factors – the balance of**
10 **equities, and the public interest – weigh in favor of Ms. Montero**
11 **Alvarez.**

12 The final two factors – which merge here because the government is the opposing party
13 – weigh in Ms. Montero Alvarez’s favor. While the government has a compelling interest in
14 enforcing the immigration laws, granting relief to Ms. Montero Alvarez will not seriously
15 impinge its ability to do so. The government has already placed Ms. Montero Alvarez in full
16 removal proceedings under section 1229a, thus granting Ms. Montero Alvarez’s immediate
17 release will not delay its ability to prosecute her removal. Moreover, her immediate release does
18 not preclude the government from detaining Ms. Montero Alvarez if it can convince a neutral
19 arbiter that she is subject to detention under section 1226(a) – that is, that she is a danger or a
20 flight risk. Therefore, at worst, immediate release imposes a minor delay on the government’s
21 execution of the immigration laws.

22 Respondents have offered no evidence that Ms. Montero Alvarez’s detention would serve
23 any purpose. The evidence before the Court does not suggest that Ms. Montero Alvarez presents
24 any danger to the community or any flight risk. After all, she has no criminal history and was
25 detained after dutifully attending her ICE appointment. “Under these circumstances, there is
26 significant risk that [the] curtailment of liberty” that Ms. Montero Alvarez’s would suffer by her
27 re-detention by ICE “w[ould] not [be] justified by any valid interest.” *Pinchi*, 792 F. Supp. 3d at
28 1035.

Respondents have not shown any persuasive countervailing interest in choosing not to
provide a pre-detention hearing at this stage. If Respondents wish to detain Ms. Montero Alvarez
notwithstanding her release over three years ago, they can provide a hearing before a neutral

1 decisionmaker. It is undisputed that “[i]n immigration court, custody hearings are routine and
2 impose a ‘minimal’ cost.” *Salcedo Aceros*, 2025 WL 2637503 at *12 (citing *Singh*, 2025 WL
3 1918679, at *8). Ms. Montero Alvarez is already subject to full removal proceedings, and
4 Respondents conceded at the preliminary injunction hearing that those proceedings remain
5 active. A pre-deprivation bond hearing will not interfere with those proceedings. Moreover,
6 detention for its own sake is not a legitimate governmental/public interest. *Pinchi*, 792 F. Supp.
7 3d at 1036 (“Detention for its own sake, to meet an administrative quota, or because the
8 government has not yet established constitutionally required pre-detention procedures is not a
legitimate government interest.”).

9 The risk of erroneous deprivation also weighs in Ms. Montero Alvarez’s favor. “Once a
10 liberty interest is established, the question is whether process—a hearing—would lessen the risk
11 of an erroneous detention.” *Salcedo Aceros*, 2025 WL 2637503 at *12. Where the petitioner “has
12 not received any bond or custody . . . hearing,” “the risk of an erroneous deprivation [of liberty]
13 is high.” *Singh v. Andrews*, -- F. Supp. 3d --, No. 1:25-cv00801-KES, 2025 WL 1918679, at *7
14 (E.D. Cal. July 11, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES, 2025 WL 1424382,
15 at *5 (E.D. Cal. May 16, 2025)). Civil immigration detention is permissible only to protect
16 against danger to the community or to prevent a flight risk. See *Zadvydas*, 533 U.S. at 690.

17 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,
18 no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const.
19 amend. V. “Freedom from imprisonment—from government custody, detention, or other forms
20 of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
21 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)) favor. “Once a liberty
22 interest is established, the question is whether process—a hearing—would lessen the risk of an
23 erroneous detention.” *Salcedo Aceros*, 2025 WL 2637503 at *12. Where the petitioner “has not
24 received any bond or custody . . . hearing,” “the risk of an erroneous deprivation [of liberty] is
25 high.” *Singh v. Andrews*, -- F. Supp. 3d --, No. 1:25-cv00801-KES, 2025 WL 1918679, at *7
26 (E.D. Cal. July 11, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES, 2025 WL 1424382,
27 at *5 (E.D. Cal. May 16, 2025)). Civil immigration detention is permissible only to protect
28 against danger to the community or to prevent a flight risk. See *Zadvydas*, 533 U.S. at 690. Under
the Due Process Clause of the Fifth Amendment to the United States Constitution, no person
shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend.

1 V. “Freedom from imprisonment—from government custody, detention, or other forms of
2 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
3 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))

4
5 Date: December 16, 2025

Respectfully Submitted,

6
7 /s/ Emilio Parker
8 Emilio Parker
9 Attorney For Petitioner
10 Michelle Montero Alvarez
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 16, 2025, in Oakland, CA.

/s/ Emilio Parker
Emilio Parker
Attorney for Petitioner
Michelle Montero Alvarez