TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
KAREN E. SMITH (Md. Bar No. 0712120288)
Special Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 917-0138
E-mail: karen.smith@usdoj.gov

Attorneys for Federal Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

DIANA CAROLINA RIVERA MENDOZA,
Petitioner,

v.

PAMELA BONDI, et al.,

Respondents.

No. 5:25-cv-03227-MWF-AGR

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

Honorable Michael W. Fitzgerald
United States District Judge

I. INTRODUCTION AND SUMMARY

Petitioner Diana Carolina Rivera Mendoza, an immigrant detained at the Adelanto facility since August 25, 2025, has filed a motion for a temporary restraining order [Dkt. No. 2] (the "TRO Application") asking the Court to release her from custody. The Application should be denied for the following reasons.

First, Petitioner argues that the government previously released her, and that her re-detention violates her procedural and substantive due process rights under the Fifth Amendment, Fourth Amendment, and the Administrative Procedures Act ("APA"). However, Petitioner fails to make any evidentiary showing of a putative re-detention violation that would justify immediate habeas release.

Second, the Petitioner does not yet have a judicially final removal order. She is being detained pending resolution of her immigration proceedings. Accordingly, the government's position is that Petitioner falls within the statutory definition of aliens in § 1225(b)(2), i.e., aliens present in the United States who have not been admitted. As the BIA determined in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Immigration Judges lack authority to hear bond requests or to grant bond to such aliens who are present in the United States without admission.

Petitioner argues that continuing to request a bond hearing before an immigration judge would, therefore, be futile. *See* TRO Application, p. 10. But Respondents acknowledge that most Judges who have considered this issue to date in this District have generally disagreed with the BIA's interpretation, and ruled that similar individuals are instead being detained under § 1226(a) and may receive prompt bond hearings. Such cases include *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS, and *Miguel Portillo, et al. v. Kristi Noem, et al.*, 5:25-cv-02892-JFW-PVC; but *cf. Altamirano Ramos v. Lyons et al.*, 2:25-cv-09785-SVW-AJR (C.D. Cal. Nov. 12, 2025) (denying application for bond hearing by TRO) [Dkt. no. 8]. As the appropriate remedy, such decisions have consistently ordered that the Respondents either provide the petitioner

with a bond hearing pursuant to § 1226(a) within seven (7) days or else release them. The timely provision of such a bond hearing then moots the Petition, which is dismissed.

Third, Petitioner argues that she needs access to medical care for an injury to her back. While access to medication for detainees is indeed important, it is not a basis for release. Detention centers are able to provide extensive medical services to detainees, including medication, and including outpatient services for particular extraordinary needs if that is warranted. *See, e.g.,* https://www.ice.gov/detain/detention-management/2025. More importantly here, the remedy for any such deficiency would be to provide the treatment, not to order release. It is well-established that habeas claims cannot be premised on complaints about conditions of confinement. *See Pinson v. Carvajal*, 69 F.4th 1059, 1073 (9th Cir. 2023). As the Ninth Circuit held, such claims lie outside the historic core of habeas corpus, for which the only available remedy is release, and thus the district court lacked jurisdiction to hear the petition regarding conditions of confinement. *Id.* at 1075. *See also Rhodes v. Pfeiffer,* No. CV 14-7687-JGB-KK, 2020 WL 4018608, at *2 (C.D. Cal. May 6, 2020) ("Petitioner's Motion essentially presents a challenge to the conditions of his confinement, which may not be addressed in this habeas corpus action.").

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

II. 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). 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).

III. ARGUMENT

A. Petitioner Has Not Shown That the Government Lacked Authority to Detain Her, That the Government Revoked Her Release Improperly, Or That the Remedy Would Be Her Immediate Release

Showing a likelihood of success on the merits is a requisite threshold issue. Indeed, "when a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (cleaned up). To succeed on a habeas petition, Petitioner must show that she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. Although Petitioner is being detained in this district, she has not shown, and indeed cannot show, that hers current custody is unlawful.

Petitioner argues she should not be detained, because ICE previously released her on her own recognizance. However, the government's authority to re-detain individuals that ICE previously released on parole does not require an intensive evidentiary procedure.

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The INA does not provide for a pre-detention hearing. *See, e.g.*, 8 U.S.C. § 1231.

Petitioner argues that there does not appear to be a good reason for her detention in August of 2025, given that she was previously paroled. But the government's authority to re-detain individuals previously released on parole by ICE is discretionary, and it does not require the type of intensive threshold evidentiary procedure that Petitioner suggests. By law, such parole can be terminated by, *inter alia*, serving the noncitizen with a charging document, including a notice to appear.

> In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian

> reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified.

8 C.F.R. § 212.5(e)(2)(i).

Here, Petitioner was placed into removal proceedings via a notice to appear served on her on August 29, 2025, as her TRO Application concedes. The government is authorized to revoke the parole it had previously granted under 8 C.F.R. § 212(d)(5). *See Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010). Petitioner does not submit evidence demonstrating that her parole could not be revoked or was improperly revoked relative to her removal proceedings.

B. Even If a Parole Revocation Problem Were Established, Immediate Habeas Relief Would not Be the Narrowly Tailored Remedy

In habeas jurisdiction, as in other contexts, preliminary injunctive relief must be *narrowly tailored* to the wrong asserted. *See e.g. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022). Here, if there were some defect in the revocation of Petitioner's parole status—which the TRO Application does not establish—then the narrowly tailored remedy would not be immediate release, but rather (1) rectifying that procedural deficiency; or (2) Petitioner simply seeking a bond hearing consistent with her rights as a detainee—which are adequately protected, like other detainees, by the existing bond hearing regime.

Other District Courts have correctly applied this point of remedy law. In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of her release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an

opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation … should result in release." *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order…. Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

Petitioner suggests there must be some sort of detailed evidentiary proceeding before the government may detain her, and any allegedly lacking aspect of revocation procedure or documentation means she should be immediately released. But that demand is not consistent with the government's broad authority to revoke discretionary parole.

The Hon. Judge Blumenfeld recently denied a preliminary injunction motion in a somewhat similar case alleging a lack of sufficient re-detention process, noting that the evidentiary burden and had not been met, and also that it was unclear that release would be the appropriate remedy for any violations of revocation procedure. *See Long Ton v. Kristi Noem, et al.*, 5:25-cv-02033-SB-AGR [Dkt. no. 17] (September 3, 2025) (Order Denying Application for Preliminary Injunction). The burden is on the moving party to show that ordering release via a TRO would be narrowly tailored to rectifying a deficiency that was proven under the heavy standard for preliminary injunctive relief. Speculating that the revocation of release process was not fully satisfactory in all possible respects and all documents is insufficient to carry that burden.

C. Petitioner Has Not Shown She Will Suffer Irreparable Harm Absent A TRO.

Petitioner has not demonstrated that she will suffer irreparable injury absent his immediate release by TRO. To show irreparable harm, he must demonstrate "immediate threatened injury." *Carribean Marine Servs. Co., Inc. v. Baldridge*, 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. 7 at 22 (2008).

Petitioner contends that being subjected to a continuing unjustified detention itself inherently constitutes irreparable injury. Her asserted injury by detention is not itself inherently irreparable; it is an injury inherent in lawful immigration detention.

D. The Balance of Interests Favors the Government

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *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) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases). This public interest outweighs Petitioner's private interest here.

IV. CONCLUSION

Petitioner's TRO Application should be denied.

Dated: December 3, 2025

Respectfully submitted,

TODD BLANCHE
Deputy Attorney General
BILAL A. ESSAYLI
First Assistant United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ Karen E. Smith
Karen E. Smith
Special Assistant United States Attorney

Attorneys for Federal Respondents

CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondents, certifies that the memorandum of points and authorities contains 1982 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 3, 2025

/s/ Karen E. Smith
Karen E. Smith
Special Assistant United States Attorney