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

MAIKELLYS LUSEIDY REYES SOLANO

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 States¹

Respondents,

Case No. 1:25-CV-01823-EPG (HC)

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

¹ The court should not dismiss any Respondent in this matter. The cases cited by Respondents relate to issues relating to the lack of jurisdiction by a district court due to the party's failure to name a facility warden as a respondent, not as to whether DHS officials and/or the Attorney General were improperly named as respondents. In addition, the cases cited by Respondent are limited to challenges to a detainee's present physical confinement. Here, Petitioner is attacking both her present confinement as well as the risk of a future detention by DHS without a hearing before a neutral factfinder. (See e.g. *Dunn v. Hennan*, 875 F.2d 244, 249 (9th Cir. 1989); also see *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (explaining that *Dunn* was not applicable because petitioner was not attacking a future sentence; rather, he was only attacking his present physical confinement).) In addition, in order for the warden to authorize the release of a detainee, the court order must be provided to an DHS official, who will then contact the detention facility and request for a detainee to be released.) The decision to detain Petitioner was made by DHS and arguably by the Attorney General of the United States. It is doubtful that Respondent Christopher Chestnut would have the authority to order the release of Petitioner without DHS and its officers instructing him to do so. Lastly, the motion and the Petition for a Writ of Habeas Corpus is also requesting for the court to enjoin DHS from re-detaining Petitioner without a pre-detention hearing by a neutral decisionmaker.

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(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. 9 at 6.) 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.) Respondents basically contend that immigration official's release of petitioner pursuant to §1226(a) was based on the government's prior incorrect interpretation of that statute, and that the government has since determined that §1225(b) applies. (Id.)

However, this case is indistinguishable from this court's decision in *Labrador-Prato*, where this Court rejected the new interpretation of section 1225 as the applicable immigration detention authority for all inadmissible non-citizens. (*Labrador-Prato v. Noem, et al.*, 1:25-cv-01598-DC-SCR, 2025 WL 3458802, at *10 (E.D. Cal. Dec. 2, 2025).) The fact remains that even if the government was correct that §1225, by its terms, could apply to Petitioner, the evidence presented shows that Respondents released her under 8 U.S.C. § 1226(a) under her own cognizance. (See Doc. 9-1, at 6, 9.) Federal Courts found that this fact creates "an implicit promise" that one's release would "be revoked only if [she] fail[ed] to live up to the [release] conditions," as in *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) and *Johnson v. Willford*, 682 F.2d 868, 873 & n.3 (9th Cir. 1982) (holding that it would be "inconsistent with fundamental principles of liberty and justice" to re-incarcerate a mistakenly released prisoner who had readjusted to society and complied with the terms of release).) Thus, the argument that a "mistakenly released [person] does not have a legitimate claim of entitlement to freedom [under the Due Process Clause] cannot be squared with established law." (*Hurd v. Dist. Of Columbia, Gov't*, 864 F.3d 671, 682 (D.C. Cir. 2017). Even if §1225(b) did apply, Petitioner has a protected liberty interest based on the government's prior release of her pursuant to §1226. (*Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172, 2025 LX 474205 at 11); also see *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025) (once the

government “elect[s] to proceed...under §1226, cannot [] reverse course and institute §1225... proceedings”).) “The liberty interest that arises upon release from immigration detention is inherent in the Due Process Clause” (See *Guillermo M.r. v. Kaiser*, No. 25-CV-054360RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025); *Ortega v. Kaiser* (No. 25-CV-052590JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025)(collecting cases finding that noncitizens who have been released have a strong liberty interest.)

Furthermore, Respondents argument that Petitioner does not have a liberty interest because 8 U.S.C. §1225 mandates that she be detained should be rejected because the government treated her as subject to 8 U.S.C. §1226(a), which does not mandate detention after it released her on November 2024. The evidence shows that Petitioner—a Venezuelan citizen²—was released on her own recognizance and placed on an Alternative to Detention program. (Doc. 9-1, at 9.) This means that he 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 recognizance’ as another name for ‘conditional parole’ under §1226(a)”) Even the order of release served on Petitioner on November 9, 2024 states she is being released pursuant to Section 236. (Id.) Moreover, Respondents was paroled or released pursuant to 8 U.S.C. § 1182(d)(5)(A), which is the only mechanism by which “aliens detained under §1225(b) may be released.” (*Jennings v. Rodriguez*, 583 U.S. 281. 300 (2018).) Respondents’ attempt to switch course and say that §1225(b) is the appropriate detention authority fails, as it is contradicted by their own statements, arguments, and exhibits in the record. (See *Vilela*, 2025 U.S. Dist. LEXIS 219172, at *9.)

Furthermore, Respondents rely on the new guidance by DHS--and by implication, the BIA adoption of the new guidelines in *Matter of Yajure Hurtado*—to support the claim that in regards to an alien who was subject to section 1225(b)(2) when apprehended, DHS has the absolute authority to re-detain him without any the need for any procedural safeguards which would protect her Fifth Amendment Rights

² Respondent states in its Opposition to the Motion that Petitioner stated she is a citizen of Colombia through her father. However, there is really no documentary evidence other than Petitioner’s statement supporting that assertion. There is no evidence that Petitioner legally acquired Colombian citizenship. On the other hand, there is amply documentary evidence indicating that Petitioner was born in Venezuela and has Venezuelan citizenship. (Doc. 2-2, at 7-16, 20, 25; Doc. 9-1, at 5.)

1 under the United States Constitution. (Doc 9, at 6-7.) Numerous District Courts have rejected the new
2 interpretation by DHS, based in the plain meaning of Section 1225 and the fact that the interpretation
3 provided by DHS, would render aspects of the statutory scheme superfluous. (See *Villa v. Normand*,
4 5:25-cv-89, 2025 U.S. DIST. LEXIS 217348*, 2025 LX 442534, at *17-28)(finding that DHS'
5 interpretation that Section 1225 applied to all aliens who entered the United States without inspection
6 and admission failed under the plain meaning of the statute and that the same interpretation failed after
7 applying the canon against surplusage); also see *Martinez v. Hyde*, No. CV-25-11613, 2025 WL
8 2084238, at *7 (D. Mass. July 24, 2025).) As for *Matter of Yajure Hurtado*, many Federal Courts have
9 found that BIA case unpersuasive, finding that the BIA decision in Yajure Hurtado "conflicts with the
10 implementing regulations for §1225(b) by adopting a more expansive interpretation of §1225(b) than the
11 regulation. (*Ortiz Donis v. Chestnut*, No. 1:25-CV-01228, 2025 U.S. Dist. LEXIS 200565, 2025 WL
12 2879514, at *5 (E.D. Cal. Oct. 9, 2025); *Martinez*, 2025 U.S. Dist. LEXIS 141724, 2025 WL 2084238,
13 at *6; *J.A.M. v. Streeval, et al.*, No. 4:25-CV-342 (CDL, 2025 WL 3050094, at *4 (M.D. Ga, Nov. 1,
14 2025)("The BIA's novel interpretation that any alien present in the United States is 'seeking admission'
15 distorts the plain meaning of the statute).)

16 Respondents also argue, citing, *Thuraissigiam*, that Petitioner has no due process rights and that her
17 rights are limited to those provided by statute. (Doc. 9, at 10) (citing *DHS v. Thuraissigiam*, 591 U.S.
18 103, 139-140 (2020).) However, Respondents fail to appreciate the distinction between persona already
19 located inside the United States, like Petitioner, and persons attempting to enter the United States, like
20 the petitioners in *Thuraissigiam*. "It is well established that certain constitutional protection available to
21 persons inside the United States are unavailable to aliens outside of our geographical borders."
22 (*Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259,
23 269 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950).) "But once an alien enters the country,
24 the legal circumstances changes, for the Due Process Clause applies to all 'persons' within the United
25 States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." (Id.;
26 see *Hernandes v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) ([I]t is well-established that the Due
27 Process clause stands as a significant constraint on the manner in which the political branches, any
28

exercise their plenary authority.”). Respondents’ argument is ignoring the nature of the challenge that Petitioner brings in the present case. *Thuraissigiam* held that a petitioner who was stopped at the border did not have a due process right regarding admission into the United States, (*Thuraissigiam*, 591 U.S. at 107.) However, here, Petitioner challenges his re-detention without a hearing, he does not challenge in this habeas action any determination regarding her admissibility. (See *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170-72 (W.D. Wash. 2023) (Discussing *Thuraissigiam* and explaining the distinction between a challenge to admission and a challenge to detention); *Hernandez* 872 F.3d at 981 (“[T]he government’s discretion to [detain] non-citizens is always constrained by the requirements of due process.”) 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.

Respondents also claim that Respondent is not entitled to a pre-deprivation bond hearing because section 1225 does not provide for one in its text. (Doc. 9 at 11.) However, courts have found that pre-deprivation bond hearings are required under these circumstances when one’s private liberty interest is involved. (See *A.E. v. Andrews*, No. 1:25-CV-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (“the risk of an erroneous deprivation [of liberty] is high” where [the petitioner] has not received any bond or custody redetermination hearing); also see *Vilela*, 2025 LX 474205 at 15).) Petitioner’s immediate release is required in order to return him to the status quo ante—“the last uncontested status which preceded the pending controversy.” (See *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 noncitizens); *Ercelik v. Hyde*, No. 1:25-CV-11007-AK, 2025 WL 1361543, at *15-16 (D. Mass. May 8, 2025).) Due to the importance of the private interest in liberty involved in this matter and the very high risk of deprivation of this liberty interest, this Court should order Petitioner’s immediate release and require a pre-deprivation hearing before Petitioner is re-detained by Respondents.

RESPONDENT’S REQUEST FOR ABEYANCE

Due to Petitioner’s claims that her due process rights under the fifth amendment are being violated due to her current detention, and that she is currently suffering irreparable harm, Petitioner does not

1 believe that this Court should hold this matter in abeyance for the next 6-8 weeks. (See *Goldie's*
2 *Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984) (“[a]n alleged constitutional
3 infringement will often alone constitute irreparable harm”).) In addition, Respondent is also suffering
4 due to her separation from her cancer-stricken mother and her young, which is also an irreparable harm.
5 (See e.g. *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding “separated
6 families” to be a “substantial injur[y] and even irreparable harm[.]”).)

7 **CONCLUSION**

8 In view of the arguments and case law included in Petitioner’s motion and both Replies, Petitioner
9 respectfully asks for this Court to grant the Motion for a Temporary Restraining Order.³

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11 Respectfully submitted,

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13 DATE: 12/18/2025

/S/ Jose F. Vergara

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16 COUNSEL FOR PETITIONER
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27 ³ In its minute order of December 12, 2025, the Court instructed the parties to indicate their amenability to the converting the
28 pending motion to one for a preliminary injunction without further briefing. Petitioner is amenable to such conversion in this
case. Petitioner also is willing to have this Court make a decision on the motion without a hearing.

WORD COUNT CERTIFICATION

I certify that this memorandum contains 1825 words, in compliance with the Local Civil Rules.

/S/ Jose F. Vergara

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