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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 N.Y.V.D.,

15 Petitioner,

16 v.

17 Ernesto Santacruz, Jr., et al.,
18 Respondents.
19

No. 5:25-cv-03404-WLH-SP

**FEDERAL RESPONDENTS'
OPPOSITION TO TRO APPLICATION**

**[Declaration of Glorimar Alvarez
Vazquez filed herewith]**

Hon. Wesley L. Hsu
U.S. District Judge

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8 C.F.R. 212.5(e)(2)(i) 5

1
2 **I. INTRODUCTION**

3 Petitioner is a native and citizen of Nicaragua who entered the United States
4 without inspection on November 19, 2022. She was apprehended by U.S. Border Patrol
5 officers and paroled into the United States. Petitioner was detained on November 24,
6 2025 and placed in expedited removal proceedings. She was referred to an asylum
7 officer for a credible fear interview in order to make her asylum claim and received a
8 negative determination on December 12, 2025. She requested review of the negative
9 determination an immigration judge, which has not yet occurred.

10 By her Writ for Habeas Corpus [Dkt. no. 1], Petitioner now seeks immediate
11 release from ICE custody. Petitioner has also filed a motion for a temporary restraining
12 order and preliminary injunction [Dkt. no. 2] (the “TRO Application”).

13 Petitioner has failed to establish entitlement to immediate release
14 from ICE custody, and the TRO Application should be denied.

15 **II. STATEMENT OF FACTS**

16 Petitioner is a native and citizen of Nicaragua who entered the United States
17 without inspection and was apprehended by U.S. Border Patrol officials in the Del Rio
18 Sector on November 19, 2022. Alvarez Decl. ¶ 5. She was paroled out of custody
19 because the agency lacked detention capacity at the time. ¶ 5.

20 Petitioner was taken into custody and processed for expedited removal following
21 an interview with ICE officials at her check-in appointment on November 24, 2025. ¶ 8.
22 Because Petitioner asserted a request to apply for asylum, she was referred for a credible
23 fear interview with an asylum officer, which took place on December 10, 2025. ¶ 12.
24 She was issued a negative credible fear determination and requested review by an
25 immigration judge. ¶ 13. The request for review by an immigration judge was submitted
26 to the immigration court on December 16, 2025, and has not yet taken place. ¶ 15.

1 **III. ARGUMENT**

2 **A. Petitioner is Properly Subject to Expedited Removal and Mandatory**
3 **Detention**

4 The TRO Application should be denied because it fails to demonstrate that
5 Petitioner was illegally detained or has received insufficient process. Noncitizens who
6 have not been admitted or paroled into the United States and cannot establish that they
7 have been continuously physically present in the United States for a period of at least
8 two years¹ are subject to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).
9 Petitioner was apprehended by U.S. officials the same day she crossed the Southwest
10 border without authorization. As such, she is properly subject to expedited removal.
11 While she was temporarily paroled into the United States due to a lack of available
12 immigration detention bedspace, noncitizens whose parole has been terminated “on
13 notice” – which includes the issuance of a charging document, such as an expedited
14 removal order – return to the status that they had prior to the issuance of the parole
15 document. *See* 8 C.F.R. § 212.5(e)(2)(i).

16 Noncitizens who assert a fear of persecution or an intention to apply for asylum,
17 as Petitioner did here, are referred to an asylum officer for a credible fear determination
18 and have the opportunity to have a negative credible fear determination reviewed by an
19 immigration judge. *See* 8 U.S.C. § 1225(b)(1)(B). This process is sufficient under the
20 law to address asylum claims.

21 Additionally, Petitioner is properly detained in expedited removal: “Any alien
22 subject to the procedures under this clause shall be detained pending a final
23

24 ¹ Under prior immigration policy, expedited removal was applied only to aliens
25 arriving at a port of entry or who entered without inspection and were apprehended
26 within 14 days of entry and 100 air miles of the border. 69 FR 48877, “Designation
27 Aliens for Expedited Removal,” August 11, 2004. Petitioner in this instance would be
28 amenable to expedited removal processing under either the statutory definition or the
more generous policy which was in effect at the time of her apprehension, which ICE
considered when processing her for expedited removal. *See* Alvarez Decl. ¶ 7.

1 determination of credible fear of persecution and, if found not to have such a fear, until
2 removed.” 8 U.S.C. 1226(b)(1)(B)(iii)(IV). Congress expressly intended for
3 noncitizens in Petitioner’s position to be held in immigration custody pending the
4 outcome of their credible fear claims.

5 In this case, Petitioner has already received a negative credible fear
6 determination, thus indicating she is unlikely to succeed on a request for asylum in the
7 United States, and Congress explicitly provided for the detention of noncitizens in this
8 scenario. Petitioner’s detention is therefore appropriate. She is in the same position
9 that she would have been in at the time of her apprehension if DHS had sufficient
10 bedspace at the time to detain her for processing of her claim.

11 Furthermore, Petitioner was afforded an interview with ICE officials prior to being
12 detained for expedited removal and credible fear processing. Alvarez Decl., ¶ 8.
13 Following the interview, ICE determined that detention pending the outcome of her
14 credible fear interview was appropriate.

15 **B. Petitioner Has Failed to Exhaust Administrative Remedies**

16 Petitioner has received a negative credible fear determination but has not yet received
17 review of that determination by an immigration judge. The appropriate venue to
18 challenge this finding, and therefore her mandatory detention, is by seeking review of the
19 negative credible fear determination. The Ninth Circuit has identified three reasons to
20 require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d
21 812, 815 (9th Cir. 2007). First, the agency’s “expertise” makes its “consideration
22 necessary to generate a proper record and reach a proper decision.” *Id.* (quoting
23 *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing
24 exhaustion encourages “the deliberate bypass of the administrative scheme.” *Id.* (quoting
25 *Noriega-Lopez*). And third, “administrative review is likely to allow the agency to
26 correct its own mistakes and to preclude the need for judicial review.” *Id.* (quoting
27
28

1 *Noriega-Lopez*). Each reason applies here.²

2 **C. The Balance of Hardships Favor the Respondents**

3 Where the moving party only raises “serious questions going to the merits,” the balance
4 of hardships must “tip sharply” in his favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d
5 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981,
6 987 (9th Cir. 2008)). Petitioner fails to do so here. The government has a compelling
7 interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34
8 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a “broad change”
9 in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-
10 DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) (“the public interest in the
11 United States’ enforcement of its immigration laws is high”); *United States v. Arango*,
12 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) (“the Government’s interest in
13 enforcing immigration laws is enormous.”).

14 **IV. CONCLUSION**

15 The Federal Respondents respectfully request that the Court deny the TRO
16 Application.

21 ² Detention alone is insufficient to excuse a lack of exhaustion. *See, e.g., Delgado v.*
22 *Sessions*, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017). Adopting such a
23 rationale “would essentially mandate the release of all detainees while their appeals were
24 pending, and thereby stand the exhaustion requirement on its head.” *Meneses v.*
25 *Jennings*, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021), *abrogated on other*
26 *grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024); *see also Bogle v. DuBois*,
27 236 F. Supp. 3d 820, 823 n. 6 (S.D.N.Y. 2017) (noting that “continued detention . . . is
28 insufficient to qualify as irreparable injury justifying non-exhaustion”) (quotation marks
omitted).

1 Dated: December 17, 2025

Respectfully submitted,

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11
12 **CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2**

13 The undersigned, counsel of record for Respondents, certifies that the
14 memorandum of points and authorities contains 1,240 words, which complies with the
15 word limit of L.R. 11-6.1.

16 Dated: December 17, 2025

/s/ Mallory Lynn

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