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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Paula Sofia Ramirez Clavijo,

Petitioner,

v.

POLLY KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No. 5:25-cv-06248-BLF

PETITIONER'S SUPPLEMENTAL BRIEFING IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date Filed: July 25, 2025

Trial Date: Not set

I. INTRODUCTION

At the August 14, 2025 preliminary-injunction hearing, the Court requested supplemental briefing from Petitioner on two issues: (1) the effect of the government's December 6, 2023 election to place Petitioner in full removal proceedings under 8 U.S.C. § 1229a and release her on her own recognizance pursuant to § 1226(a), rather than to initiate expedited removal proceedings under § 1225(b); and (2) whether §§ 1225(b)(1) or (b)(2) applies to Petitioner.

As to both issues, the answer can be gleaned from the Department of Homeland Security's ("DHS") own actions. When DHS detained Petitioner in December 2023, the government did not place her into expedited removal proceedings under § 1225(b). Instead, it issued her a Notice to Appear ("NTA"), which initiated full removal proceedings under § 1229a, and released her on her own recognizance pursuant to § 1226(a). That deliberate election was dispositive for the Court's purposes here, because Petitioner's release from custody conferred on her a liberty interest protected by the Due Process Clause.

Respondents now seek to undo DHS's own decision in their papers by retroactively recasting Petitioner as subject to mandatory detention under §§ 1225(b)(1) and (b)(2). That position is inconsistent with the statutory framework, the record, and constitutional principles. Even as Respondents are saying Petitioner is subject to mandatory detention, for example, they continue to operate in practice as though § 1226(a) applies (because it does). As the Court is aware, the arrest warrant prepared by DHS on July 24, 2025, which was the impetus for the instant habeas petition, was issued under authority granted by § 1226(a), not §§ 1225(b)(1) or (2).

But even if Respondents could establish that Petitioner is subject to detention authority under §§ 1225(b)(1) or (2), the Court should still issue a preliminary injunction preventing DHS from re-detaining her without a pre-deprivation hearing before a neutral decisionmaker, where the government must prove by clear and convincing evidence that circumstances have changed since Petitioner's release such that she is now a danger to the community or a flight risk. Petitioner has due process rights as a result of her prior release on her own recognizance, as set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017), and even mandatory detention statutes do not erase those due process rights, *see Nielsen v.*

Preap, 586 U.S. 392, 420 (2019) (noting that as-applied or constitutional challenges can be made to the application of mandatory-detention statutes). The Court should therefore grant Petitioner's request for a preliminary injunction.

II. ARGUMENT

A. The Government's Election to Release Petitioner and Proceed Under § 1226(a) Conferred a Protected Liberty Interest

U.S. immigration law distinguishes between detention of noncitizens seeking admission under § 1225(b) and detention of those already in the country pending removal proceedings under § 1226. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). A noncitizen detained under § 1226(a) may generally be released on bond or conditional parole. *Id.* at 288.

Here, the government affirmatively placed Petitioner in full removal proceedings under § 1229a and released her under § 1226(a), not § 1225(b). Declaration of Thomas Auer in Support of Respondents' Opposition ("Auer Decl."), Ex. 2, Dkt. No. 19-2 (NTA stating that Petitioner is "[i]n removal proceedings under section 240 of the Immigration and Nationality Act [§ 1229a]"); Declaration of Jonhatan A. Aragon in Support of Petitioner's Supplemental Brief ("Aragon Decl."), Ex. A (Order of Release on Recognizance stating, "[i]n accordance with section 236 of the Immigration and Nationality Act [§ 1226] . . . you are being released on your own recognizance").

That choice reflected an explicit determination that Petitioner posed neither a danger nor a flight risk. *See* 8 C.F.R. § 236.1(8) ("Any officer authorized to issue a warrant of arrest may" release a noncitizen if she "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that [she] is likely to appear for any future proceeding."); *see also Hernandez*, 872 F.3d at 983 ("If the DHS officer or IJ determines that the non-citizen does not pose a danger and is likely to appear at future proceedings, then he may release the non-citizen on bond or other conditions of release."). By releasing Petitioner under § 1226(a), the government recognized that she fell outside the mandatory detention scheme of § 1225(b). *See Lopez Benitez v. Francis*, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025)

("[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under §1226[.]").

This election carries constitutional significance. The Due Process Clause "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see also Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, at *3 (E.D. Cal. Mar. 3, 2025) ("As a person inside the United States, [noncitizen] is entitled to the protections of the Due Process Clause."). As this Court recognized in granting Petitioner's motion for a temporary restraining order, '"[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects."' *Ramirez-Clavijo v. Kaiser*, 2025 WL 2097467, at *2 (N.D. Cal. July 25, 2025) (quoting *Zadvydas*, 533 U.S. at 690); *see also Lopez Benitez*, 2025 WL 2371588, at *9 ("It is well established that such protection extends to noncitizens, including those who are in removal proceedings."). By placing Petitioner in full removal proceedings and releasing her under § 1226(a), the government conferred on her a liberty interest protected by the Due Process Clause. *See Ortega v. Bonner*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [noncitizen] have a liberty interest in remaining out of custody on bond."); *Pinchi v. Noem*, -- F. Supp. 3d. --, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) ("Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody."); *Diaz v. Kaiser*, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) ("Courts have previously found that individuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond."); *Garcia v. Bondi*, 2025 WL 1676855, at *2 (N.D. Cal. June 14, 2025) (same); *Lopez Benitez*, 2025 WL 2371588, at *9 (holding that noncitizen subject to detention under § 1226(a) has protected liberty interest); *Romero v. Kaiser*, 2022 WL 1443250, at *1–2 (N.D. Cal. May 6, 2022) (holding that noncitizen conditionally released after finding of no danger or flight risk "raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); *Vargas v. Jennings*, 2020 WL 5074312, at

*1, 3 (N.D. Cal. Aug. 23, 2020) (finding that noncitizen released on bond pursuant to § 1226(c) "raised serious questions on the merits of his claim that he is entitled to a pre-deprivation hearing before an immigration judge if he is re-arrested").

That liberty interest cannot be withdrawn at will. Once granted, it may be revoked only through procedures that ensure the government's "asserted justification for physical confinement outweighs [Petitioner's] constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990; *see also Doe*, 2025 WL 691664, at *5 ("Governmental actions may create a liberty interest entitled to the protections of the Due Process Clause." (citing *Bd. of Pardons v. Allen*, 482 U.S. 369, 371 (1987))). Respondents' contrary position—that Petitioner somehow remained perpetually "subject to" § 1225(b) despite her release under § 1226(a)—would permit the government to create the illusion of liberty and revoke it at will, without process or justification. Neither statute nor Constitution permit that result.

The record confirms that the government has consistently treated Petitioner as though she falls under § 1226(a). ***First***, Petitioner was served with an Order of Release on Recognizance on December 6, 2023, which stated: "You have been arrested and placed in removal proceedings. In accordance with Section 236 of the Immigration and Nationality Act [§ 1226] . . . you are being released on your own recognizance." Aragon Decl. Ex. A. ***Second***, on July 24, 2025, DHS issued an arrest warrant for Petitioner under § 1226(a). Auer Decl. Ex. 5, Dkt. No. 19-5. ***Third***, Petitioner was served with a Notice of Custody Determination dated July 24, 2025, which affirmed Petitioner was being detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act [§ 1226] and part 236 of title 8, Code of Federal Regulations." Aragon Decl. Ex. B. Indeed, none of the many documents that DHS has served on Petitioner in the past two years have been pursuant to § 1225(b). The fact that DHS ***could have*** placed Petitioner into expedited removal proceedings upon her arrival back in 2023 is of no significance, because that is not the choice the government made.

In similar circumstances, courts have rejected the government's attempts to rewrite its own paperwork after the fact. *See Lopez Benitez*, 2025 WL 2371588, at *4 ("Here, Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to

Respondents' discretionary authority under § 1226(a)."); *Gomes v. Hyde*, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025) ("Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework."); *Dos Santos v. Noem*, 2025 WL 2370988, at *6 (D. Mass. Aug. 14, 2025).

Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), does not require a different result. That case involved a noncitizen placed directly into expedited removal proceedings under § 1225(b), never released, and never governed by § 1226(a)'s discretionary framework. *Thuraissigiam*, 591 U.S. at 114. Petitioner's circumstances are fundamentally different: she was placed in full proceedings and affirmatively released under the § 1226(a) framework. Moreover, the petitioner in *Thuraissigiam* challenged his negative credible-fear determination and sought relief directing the government "to provide [him] with a new opportunity to apply for asylum and other applicable forms of release," but he "made no mention of release from custody." *Id.* at 115 (alteration in original). Petitioner here challenges not a negative credible-fear finding, but the constitutionality of her re-detention without a neutral hearing. *Thuraissigiam* is thus inapposite.

Because the government elected to proceed under § 1226(a) and released Petitioner on her own recognizance, Petitioner is entitled to due process before ***any*** re-detention (regardless of what authority DHS purports to be exercising). At a minimum, that requires a hearing before a neutral adjudicator where the government bears the burden of proving, by clear and convincing evidence, that she is now a danger or flight risk.[1] *See Al-Sadeai v. U.S. Immigr. & Customs Enf't*, 540 F. Supp. 3d 983, 988–99 (S.D. Cal. 2021) ("In the § 1226(a) custody hearing context, however, the Ninth Circuit has held that the Constitution requires placing the burden of proof on the Government to show, by clear and convincing evidence, that detention is justified.").

[1] On August 14, 2025, the immigration judge presiding over Petitioner's case granted, without prejudice, the government's oral motion to dismiss her removal proceedings. Aragon Decl. Ex. D. Petitioner filed an appeal to the Board of Immigration Appeals the following day, when she received notice. *Id.* Ex. E. For purposes of this Court's analysis, however, Petitioner remains in § 1229a removal proceedings as a result of her pending appeal. *See, e.g.*, *Singh v. Andrews*, 2025 WL 1918679, at *4 (E.D. Cal. July 11, 2025) (noting the government's position that noncitizen remained in § 1229a proceedings as a result of appeal to Board of Immigration Appeals challenging immigration court's order granting motion to dismiss).

B. Sections 1225(b)(1) and (b)(2) are not Applicable Here

Respondents argue that Petitioner nonetheless remains "subject to" the mandatory detention requirements of §§ 1225(b)(1) and (b)(2). That theory fails for two reasons: Petitioner does not fit within either subsection, and the government never invoked them in the first place.

1. Section 1225(b)(1) does not apply because Petitioner is not subject to expedited removal after parole.

Expedited removal under § 1225(b)(1) applies to two categories of noncitizens: (1) noncitizens "arriving in the United States" and (2) those not admitted or paroled who cannot prove two years' continuous presence. 8 U.S.C. § 1225(b)(1)(A)(i)–(iii); *see also Coalition for Humane Immigrant Rights v. Noem* ("*CHIRLA*"), 2025 WL 2192986, at *5 (D.D.C. Aug. 1, 2025). Respondents contend that Petitioner could fall into the second category because she has not been admitted or paroled and cannot prove two years' continuous presence. Resp. Opp. at 7, Dkt No. 20. But the facts of Petitioner's case do not support Respondents' argument.

Following this Court's issuance of a temporary restraining order on July 25, 2025, requiring Petitioner's immediate release from detention, DHS provided Petitioner with a letter stating that "U.S. Immigration and Customs Enforcement (ICE) has decided to grant you parole at this time." Aragon Decl. Ex. C. That letter specifically stated that discretionary parole may only be granted if a noncitizen meets "the statutory requirements outlined in 8 CFR §212.5" and that "parole is granted case by case only for urgent humanitarian reasons or significant public benefit, provided the individual does not pose a security risk or risk of absconding."[2] *Id.* DHS has thus "paroled" Petitioner into the United States, such that she is no longer eligible to be placed into expedited removal proceedings under § 1225(b)(1). As other courts have held, § 1225(b)(1) "forbids the expedited removal of noncitizens who have been, ***at any point in time***, paroled into

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[2] 8 C.F.R. § 212.5 is the implementing regulation for 8 U.S.C § 1182(d)(5)(A), which describes circumstances under which parole may be granted.

the United States." *CHIRLA*, 2025 WL 2192986, at *22 (emphasis added). Petitioner's parole, therefore, categorically forecloses the government's reliance on subsection (b)(1).[3]

2. Section 1225(b)(2) is likewise inapplicable.

Section 1225(b)(2) authorizes detention during removal proceedings under § 1229a when an officer determines that a noncitizen seeking admission "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). But here, the government explicitly found that Petitioner "does not appear to be a threat to national security, border security, or public safety," and released her on conditional parole under § 1226(a). Auer Decl. Ex. 1, Dk. No. 19-1; Aragon Decl. Ex. A The government later re-arrested Petitioner on an arrest warrant issued under § 1226(a).[4] Auer Decl. Ex. 5. Thus, "the question is whether [§] 1225(b)(2) continues to mandate the detention of a noncitizen, like [Petitioner], who has been conditionally paroled into the United States pursuant to [§] 1226, is in the midst of standard removal proceedings, and is otherwise subject to [§] 1226(a)'s discretionary detention framework." *Gomes*, 2025 WL 1869299, at *5.

The answer is no. Courts to have considered this issue have found that the government's position lacks merit, including one decision issued on August 14, 2025 following the preliminary-injunction hearing in this case. *See Dos Santos*, 2025 WL 2370988. Where, as here, the government has opted to proceed under the § 1226(a) discretionary framework, it cannot later reverse that decision and opt to invoke § 1225(b)(2). *See, e.g.*, *Dos Santos*, 2025 WL 2370988, at *7; *Gomes*, 2025 WL 1869299, at *6–8. Moreover, as the *Gomes* court explained, the government's proposed interpretation of these statutory provisions should be rejected because it would render a provision of the recently passed Laken Riley Act superfluous:

> The government's interpretation of Section 1225(b)(2) would also render a recent amendment to Section 1226 superfluous. Section 1226(c)(1)(E)—added to Section

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[3] Courts have recognized that "[w]hen an immigrant is placed into parole status after having been detained, a protected liberty interest may arise." *Maklad v. Murray*, 2025 WL 2299376, at *7 (E.D. Cal. Aug. 8, 2025). Petitioner's parole thus provides an independent basis for concluding that she holds a constitutionally protected liberty interest in remaining out of custody.

[4] Section 1225(b)(2) is also inapplicable because Petitioner was not "seeking admission" when re-detained on July 24, 2025. By then, she was already residing in the United States. Accordingly, "she was not 'seeking admission' at that time, and therefore, '[§] 1225(b)(2)(A) . . . simply ha[s] no application to her case.'" *Lopez Benitez*, 2025 WL 2371588, at *5 (quoting *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025)).

> 1226 in 2025 by the Laken Riley Act—makes a noncitizen subject to mandatory detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (the "inadmissibility criterion"); "***and***" (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes (the "criminal conduct criterion"). 8 U.S.C. § 1226(c)(1)(E) (emphasis added). By using the conjunction "and," the provision mandates detention only where the inadmissibility criterion and the criminal conduct criterion are both satisfied. Thus, when a noncitizen is arrested on a warrant, his inadmissibility on one of the three grounds specified in Section 1226(c)(1)(E)(i) is not by itself sufficient to except him from Section 1226(a)'s discretionary detention framework. Only where the criminal conduct criterion is also satisfied has Congress determined that such a noncitizen must be subject to mandatory detention. *See Zadvydas v. Davis*, 533 U.S. 678, 696 (2001) ("[I]f 'Congress has made its intent' in the statute 'clear, we must give effect to that intent.'" (quoting *Miller v. French*, 530 U.S. 327, 336 (2000))).

Gomes, 2025 WL 1869299, at *6–7. In other words, if the government's position—that someone like Petitioner who presented at the border without being admitted or paroled, or who lacked requisite documentation, is subject to mandatory detention under § 1225(b)(2) at any time notwithstanding prior treatment under § 1226(a)—were correct, the provision of the recently passed Laken Riley Act requiring mandatory detention for certain noncitizens who engaged in criminal conduct would be entirely unnecessary. Such an interpretation would be improper. *See, e.g.*, *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). Having elected to proceed under § 1226(a), the government must now honor the constitutional safeguards attached to that framework. Any attempt to rely belatedly on § 1225(b)(2) is both legally foreclosed and constitutionally impermissible.

Even if, however, the government were able to backtrack and proceed under § 1225(b)(2), that would have ***no impact*** on the constitutional due process rights that attached to Petitioner upon her release into this country in December 2023.

III. CONCLUSION

In sum, Petitioner is likely to succeed on the merits. The government's election to place her in full removal proceedings under § 1226(a) conferred a liberty interest and forecloses reliance on §§ 1225(b)(1) or (b)(2). She faces irreparable harm from imminent unlawful re-detention. The equities and public interest also decisively favor preserving her liberty and preventing arbitrary government action.

For these reasons, the Court should grant Petitioner's motion for a preliminary injunction and enjoin Respondents from re-detaining her absent a pre-deprivation hearing before a neutral decisionmaker, where the government bears the burden of proving, by clear and convincing evidence, that changed circumstances render her a danger to the community or a flight risk.

Dated: August 18, 2025

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