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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 SALAM MAKLAD,

11 Petitioner,

12 v.

13 RON MURRAY, Warden of Mesa Verde ICE
Processing Center; POLLY KAISER, Acting
14 Field Office Director of the San Francisco
Immigration and Customs Enforcement
15 Office; TODD LYONS, Acting Director of
United States Immigration and Customs
16 Enforcement; KRISTI NOEM, Secretary of
the United States Department of Homeland
17 Security, PAMELA BONDI, Attorney
General of the United States, acting in their
18 official capacities,

19 Respondents.

Case No. 1:25-cv-0946-JLT-SAB

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

Date Filed: August 2, 2025

20
21 **I. INTRODUCTION**

22 Petitioner has met and surpassed the requirements for a temporary restraining order, and
23 her situation grows more dire with each passing hour since being unlawfully detained by ICE on
24 July 9, 2025. Under these circumstances, Respondents' opposition is remarkable for what it does
25 *not* do. Respondents do not contend that Petitioner is a flight risk or a danger to the community.
26 Respondents do not contend that any circumstances have changed since Petitioner was paroled
27 into this country nearly three years ago. Respondents make no argument in response to
28 Petitioner's claim that her due process rights were violated. And Respondents make no effort to

1 respond to binding Supreme Court and Ninth Circuit precedent establishing that unlawful
2 detention is a quintessential form of irreparable harm. Finally, Respondents make no mention at
3 all of the balance of the equities and the public interest that the Court must consider in deciding
4 the motion for a TRO.

5 Instead, the bulk of Respondents' opposition is devoted to arguing (1) that they are
6 authorized to detain Petitioner indefinitely because her detention is for the purpose of "expedited
7 removal"; and (2) that this Court lacks jurisdiction to "enjoin removal" from the United States.
8 Neither of these arguments should prevent entry of a temporary restraining order in this matter.
9 **First**, Petitioner is not subject to expedited removal proceedings under 8 U.S.C. § 1225(b)
10 following her parole in the United States nearly three years ago. In fact, a federal judge has issued
11 an order staying any enforcement of recent agency actions applying expedited removal
12 proceedings to noncitizens who were previously paroled into the United States. *See Coalition for*
13 *Humane Immigrant Rights (CHIRLA) v. Noem*, No. 1:25-cv-00872-JMC, 2025 WL 2192986
14 (D.D.C. Aug. 1, 2025). **Second**, Petitioner does not seek an order from this court preventing
15 Respondents from executing an order of removal under the Immigration and Nationality Act,
16 because no such final order of removal exists. Instead, Petitioner seeks redress for violation of her
17 constitutional rights as a result of illegal re-detention. Therefore, Section 1252(g) of the INA does
18 not deprive this Court of jurisdiction. Moreover, in cases that raise purely legal constitutional
19 challenges to immigration processes, the Ninth Circuit has repeatedly held that Section 1252(g)
20 does not bar courts from temporarily enjoining a petitioner's removal while the case is pending.
21 *See, e.g., United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *Cath. Soc. Servs., Inc.*
22 *v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000) (en banc) (collecting cases).

23 For all of these reasons, and those set forth in Petitioner's opening motion, Petitioner
24 respectfully requests that the Court issue a temporary restraining order immediately requiring her
25 release from detention.
26
27
28

II. ARGUMENT

A. Respondent is not subject to expedited removal.

Because Petitioner was paroled into the United States, she is not eligible for expedited removal under 8 U.S.C. § 1225(b). Instead, she is entitled to the protective procedures of regular removal proceedings under 8 U.S.C. § 1229a, which Respondents are actively denying her.¹ If Petitioner receives an expedited removal order, she will have virtually no avenue to meaningfully challenge such an order. *See, e.g.*, 8 U.S.C. § 1225(b).

By statute, expedited removal can only apply to (1) a noncitizen “arriving in the United States” or (2) a noncitizen “who has not been admitted or paroled into the United States” and cannot affirmatively show that they have been “physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)–(iii). According to Respondents’ opposition, the purported basis for Petitioner’s expedited removal eligibility is the “2004 Expedited Removal Designation,” *see* ECF No. 9-1, Ex. 2, which covers the second category: noncitizens who have not “been admitted or paroled following inspection” and cannot establish that they have been physically present in the United States “for the 14-day period immediately prior to the date of encounter.” Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877, 48880 (Aug. 11, 2004).

Petitioner is not, however, eligible for expedited removal under this statutory provision and related agency designation. Under a plain reading of the statute, Petitioner *has* been “paroled

¹ Indeed, the need for a TRO is greater now even than when Petitioner filed this action. Respondents are racing to obtain a final removal order before Petitioner can vindicate her rights in court. After detaining her for nearly three weeks without a credible fear interview, Respondent was awoken early in the morning on August 4, 2025 (the next business day after filing her habeas petition) and told she had to attend a credible fear interview that same morning. Her attorneys were given no notice of the interview. Petitioner stated that she wanted the assistance of counsel during her interview, and after making a halfhearted and unsuccessful attempt to contact the attorney who filed Petitioner’s I-589 with USCIS, government officials immediately required Petitioner to go forward with the interview. Petitioner was not asked to review and sign her sworn statement following the interview and was never provided with the Form I-860 explaining the charges against her, all of which are due process violations in addition to those set forth in the TRO motion. *See, e.g., United States v. Guzman-Hernandez*, 487 F. Supp. 3d 985, 992–93 (E.D. Wash. 2020) (finding due process violations in expedited removal proceedings, including because noncitizen did not sign each page of sworn statement, did not sign back of Form I-860, and officer did not review Form I-860 with him).

1 following inspection” and is not subject to 8 U.S.C. § 1225(b). This reading of the statute is
 2 consistent with other case law: on August 1, 2025, a federal court in the District of D.C.
 3 exhaustively examined the language of the expedited removal statute, along with its
 4 implementing regulations, case law, and legislative history, and concluded that 8 U.S.C.
 5 § 1225(b)(1)(A)(iii)(II) “does not authorize designation for expedited removal of any noncitizen
 6 who has, *at any point in time*, been paroled into the United States.” *CHIRLA*, 2025 WL 2192986,
 7 at *27. The *CHIRLA* court’s thorough reasoning should inform this Court’s analysis of the TRO
 8 factors here.

9 The *CHIRLA* court exhaustively engaged with the government’s arguments that various
 10 sources authorized expedited removal of parolees and found them all lacking. *Id.* at *21–30. In
 11 particular, the court concluded that “[t]he Designation Provision forbids the expedited removal of
 12 noncitizens who have been, at any point in time, paroled into the United States.” *Id.* at *22
 13 (referring to 8 U.S.C. § 1225(b)(1)(A)(iii), the provision which the 2004 Designation
 14 implements). This is because once parole has occurred, it has an ongoing legal effect on the
 15 noncitizen’s immigration status, even if it expires or is terminated. *Id.* at *22–27. Accordingly,
 16 the *CHIRLA* court issued a nationwide stay of the three policy memos challenged in that case,
 17 which purported to direct the agency to target parolees for expedited removal.² *Id.* at *39.

18 Respondents argue that Petitioner was placed into expedited removal proceedings upon
 19 arrival in 2022 and that therefore she remains in expedited removal now. Opp. at 4. But she was
 20 never issued an order of expedited removal on Form I-860, *see, e.g.*, ECF No. 9-1, Ex. 3 (showing
 21 incomplete order of removal); she was never provided with a credible fear interview as required
 22 by statute, *see* 8 U.S.C. § 1225(b)(1)(A)(ii), *see also* ECF No. 9-1 ¶ 8; and she has been waiting
 23 for USCIS adjudication of her affirmative asylum application for nearly two years, *see* ECF No.
 24 2-2 ¶ 7. Respondents have refused to comply with the statutory and regulatory requirements for

25 ² Notably, even those *ultra vires* policy memos directed the agency to focus its expedited removal
 26 efforts on parolees who, unlike Petitioner, had *not* filed affirmative asylum applications since
 27 entering the United States on parole. *See* Huffman Memo (Jan. 23, 2025), available at
 28 <https://www.aila.org/dhs-issues-guidance-on-how-to-exercise-enforcement-discretion>; ICE Email
 Directive (Feb. 18, 2025), available at <https://immpolicytracking.org/policies/ice-directs-ero-officers-to-consider-expedited-removal-for-large-categories-of-noncitizens>. Accordingly,
 Petitioner has an even stronger claim that she should not be targeted for expedited removal.

1 expedited removal in Petitioner's case. Their conduct over the past three years is entirely
2 inconsistent with any belief that Respondent is in expedited removal proceedings. They cannot
3 now, nearly three years later, assert that Petitioner is subject to expedited removal.

4 Because Petitioner has been paroled into the United States, she is ineligible for expedited
5 removal, and she has (at minimum) raised serious questions going to the merits of her claim that
6 subjecting her to the expedited removal process violates her due process rights. *See United States*
7 *v. Mayren*, 591 F. Supp. 3d 692, 697–98 (C.D. Cal. 2022) (holding that an expedited removal
8 order violated due process because petitioner was not legally eligible for expedited removal).
9 Each day brings her closer to an expedited removal order that she will have no path to appeal.
10 That illegitimate order will at best complicate, or at worst destroy, her ability to obtain the legal
11 status of derivative asylum for which she immediately qualifies. If Respondents choose to place
12 Petitioner in removal proceedings, they must place her in Section 240 proceedings that include
13 the procedural protections required for those who have been paroled into the United States.

14 **B. Respondents offer no lawful basis for Petitioner's re-detention.**

15 Regardless of whether Petitioner has been placed in expedited removal proceedings,
16 however, her re-detention has resulted in an unconstitutional violation of her rights. Respondents
17 have not even attempted to respond to Petitioner's arguments and case law citations establishing
18 that her re-detention constitutes substantive and procedural due process violations. *See* ECF No.
19 2-1 at 8-14. For example, Respondents do not attempt to distinguish *Zadvydas v. Davis*, 533 U.S.
20 678, 690 (2001), which holds that the government's deprivation of an individual's liberty through
21 immigration detention must be justified by either dangerousness or flight risk, neither of which
22 are present in this case. Nor do Respondents attempt to distinguish the cases Petitioner cites
23 establishing that "the Constitution requires some kind of a hearing *before* the State deprives a
24 person of liberty or property," *Zinerman v. Burch*, 494 U.S. 113, 127 (1990), including in cases
25 where noncitizens have been conditionally released from immigration custody, *see, e.g., Ortega*
26 *v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Galindo Arzate v. Andrews*, No. 1:25-cv-
27 00942-KES-SEO, 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025).

28 Instead, Respondents argue only that "[t]here is no hearing requirement before

immigration authorities decide to re-detain an individual.” Opp. at 4 (citing *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022)). But in *Arteaga-Martinez*, the Supreme Court was neither deciding constitutional challenges nor a challenge to ICE’s re-detention following parole. It only considered whether 8 U.S.C. § 1231(a)(6) requires a bond hearing in the case of a noncitizen detained for longer than six months after issuance of a final removal order. *Id.* at 580. The Supreme Court specifically noted that “[t]he courts below did not reach *Arteaga-Martinez*’s constitutional claims because they agreed with him that the statute required a bond hearing. We leave [the constitutional claims] for the lower courts to consider in the first instance.” *Id.* at 583. Accordingly, the Respondents’ citation to *Arteaga-Martinez* does not obviate the constitutional principles set forth in *Zadvydas*.

The reality is that Respondents do not and cannot explain why detention would be necessary to effect Petitioner’s removal. Petitioner is not subject to a final removal order (expedited or otherwise), and she has no immigration or criminal history. She previously was released on parole, which necessarily required a determination that she was neither a danger to the community nor a flight risk. *See, e.g., Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 1236(c)(8) (“Any [authorized] officer . . . may . . . release [a noncitizen] not described in section 236(c)(1) of the Act . . . provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.”). Petitioner has complied with all routine ICE check-ins for years, and before her illegitimate placement in expedited removal proceedings, she was well on the path to permanent legal status in the United States via her own asylum claim as well as her application for derivative asylum status based on her husband’s recently granted asylum petition. Because Respondents do not even attempt to argue that Petitioner is a flight risk or danger to the community—and the evidence overwhelmingly establishes the opposite—Petitioner raises serious questions³ and is likely to succeed in showing

³ In the Ninth Circuit, Petitioner need only demonstrate that she has raised “serious questions going to the merits” of whether detention violates her due process rights in order to satisfy the TRO standard. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

that her detention serves no legitimate immigration purpose and violates her due process rights. *See Zadvydas*, 533 U.S. at 690; *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017); *see also, e.g., Galindo Arzate*, 2025 WL 2230521, at *7 (granting TRO for immediate release and ordering that government may not redetain petitioner without a bond hearing); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025) (granting request for preliminary injunction and ordering that the government may not re-detain the petitioner without a bond hearing); *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (same); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (same); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2097467, at *4 (N.D. Cal. July 25, 2025) (granting TRO for immediate release and ordering government to show cause why preliminary injunction should not issue).

Respondents' reference to the mandatory detention provisions of 8 U.S.C. § 1225(b) do not change the analysis here. The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called mandatory detention. *See, e.g., Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our decision today on the meaning of [mandatory detention provision § 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

Petitioner's sudden, arbitrary detention serves no legitimate purpose. She is undisputedly neither a flight risk nor a danger to the community, and indeed, as explained above, she is not even subject to the expedited removal statute that Respondents assert authorizes her detention. The Court should order her immediate interim release.

C. This Court has jurisdiction to order the relief Petitioner seeks.

Respondents mischaracterize Petitioner's motion as a request to "enjoin removal" in an effort to shield their violation of Petitioner's constitutional rights from scrutiny. Opp. at 5. Petitioner does not ask this Court to assess the merits of her eligibility for immigration relief or to forbid the government from issuing a removal order in her case. She asks that the Court order her release from arbitrary detention pending the development of the issues in this case and require the Government to conform to constitutionally required procedures before again depriving her of her

liberty, whether through detention or through removal.

None of the INA's jurisdictional bars apply here. To start, 8 U.S.C. § 1252(g) is a "narrow" provision that applies "only to [the] three discrete actions" listed: the decisions to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis omitted). Because Petitioner's motion challenges only her unconstitutional re-detention, which is not a covered action, this Court plainly has jurisdiction. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (Section 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions"). To the extent Respondents object to Petitioner's request for an order temporarily enjoining Petitioner's transfer or removal to preserve jurisdiction over the petition, that argument also fails. Petitioner does not challenge the execution of a final order of removal; she does not *have* a final order of removal. Even if she did, in cases that raise purely legal constitutional challenges to immigration processes, the Ninth Circuit has repeatedly held that Section 1252(g) does not bar courts from temporarily enjoining a plaintiff's removal while the case is pending. *See, e.g., Hovsepian*, 359 F.3d at 1155; *Cath. Soc. Servs.*, 232 F.3d at 1150 (collecting cases).⁴

Indeed, courts in this District and throughout the Ninth Circuit routinely grant habeas petitioners' TRO motions seeking release and/or a pre-deprivation hearing. *See, e.g., Pinchi*, 2025 WL 1853763, at *4; *Ortega v. Kaiser*, 2025 WL 1771438, at *6 (N.D. Cal. June 26, 2025); *Kuzmenko v. Phillips*, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025); *Doe v. Becerra*, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3–*4 (N.D. Cal. June 14, 2025); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3–*4 (N.D. Cal. Mar. 1, 2021); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4–*5 (S.D.N.Y. June 18, 2025).

D. The scope of relief Petitioner seeks is procedurally appropriate.

Respondents' contention that the TRO should be denied because Petitioner seeks "judgment on the merits in the guise of preliminary relief" fails. *Opp.* at 3 (citation omitted). In

⁴ Respondents' citation to *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022), is inapposite. *Rauda* sought to enjoin the *discretionary* decisions of "*whether*" and "*when*" the government could execute an *existing* order of removal against the petitioner, which does not exist here. *Id.* at 777.

the context of habeas petitions brought by noncitizens in immigration detention, courts routinely grant habeas petitioners' TRO motions seeking the same relief sought in the petition, including release and/or a pre-deprivation hearing. *See, e.g., Pinchi*, 2025 WL 1853763, at *4; *Ortega*, 2025 WL 1771438, at *6; *Kuzmenko*, 2025 WL 779743, at *2; *Doe*, 2025 WL 691664, at *8.

Respondents are also wrong to argue that Petitioner's requested TRO "seeks to alter the status quo." Opp. at 3. The status quo is "the last uncontested status which preceded the pending controversy." *Doe*, 2025 WL 691664, at *2 (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)). Put differently, "the status quo is 'the legally relevant relationship between the parties *before* the controversy arose,'" not merely the situation "at the time of the lawsuit." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir. 2023) (emphasis added). Here, the last uncontested status was "the moment prior to the Petitioner's likely illegal detention." *Pinchi*, 2025 WL 1853763, at *3; *see Doe*, 2025 WL 691664, at *2. Petitioner's requested TRO would restore the status quo and preserve it while the issues are fully briefed. Interim relief is designed to prevent further irreparable harm while the parties develop the issues; in no way does it "deprive[] the Court of complete and considered briefing on the merits of Petitioner's claim." Opp. at 4.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant Petitioner's motion for a temporary restraining order and order Respondents to show cause why a preliminary injunction should not issue.

Dated: August 6, 2025

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