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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 CAROLINA ORTIZ CALDERON,

15 Petitioner,

16 v.

17 POLLY KAISER, *et al.*,

18 Respondents.

Case No. 3:25-cv-06695-AMO

**TRAVERSE IN SUPPORT OF WRIT OF  
HABEAS CORPUS**

28

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1       **I.       INTRODUCTION**

2               Respondents do not dispute that Petitioner Carolina Ortiz Calderon, a 25-year-old asylum  
3 seeker, poses no flight risk or danger to the community. In their Return, Respondents also did not  
4 add anything further beyond incorporating arguments raised in their opposition to Petitioner’s  
5 motion for preliminary injunction (Dkt. 16), which this Court has already considered and rejected  
6 in its order granting the preliminary injunction (Dkt. 23). Ms. Ortiz Calderon’s claims that her re-  
7 detention violates the Due Process Clause and Fourth Amendment. Instead, Respondents insist  
8 that Ms. Ortiz Calderon’s claims are not justiciable and her detention is mandated by statute,  
9 relying on arguments a large number of courts in this circuit and around the country have  
10 repeatedly rejected. Respondents do not disclaim their intent to re-detain Ms. Ortiz Calderon,  
11 even though—as Respondents acknowledge (Return at 2)—a Court in this District has separately  
12 held that the policy authorizing her re-detention is likely unlawful. *See Garro Pinchi v. Noem*, ---  
13 F. Supp. 3d ---, 2025 WL 3691938, at \*11 (N.D. Cal. Dec. 19, 2025) (“*Garro Pinchi II*”).  
14 Because this Court has jurisdiction and Ms. Ortiz Calderon has established that her re-detention  
15 would violate the Constitution, this Court should grant her petition.

16       **II.       ARGUMENT**

17               **A.       Ms. Ortiz Calderon has established violations of her constitutional rights.**

18               Ms. Ortiz Calderon has established that her re-arrest and detention violate the Due Process  
19 Clause and the Fourth Amendment. Respondents did not add anything further, beyond  
20 incorporating arguments raised in their opposition to Petitioner’s motion for preliminary injunction  
21 (Dkt. 16), which this Court has already considered and rejected in its order granting the  
22 preliminary injunction (Dkt. 23), to contest the merits of Ms. Ortiz Calderon’s constitutional  
23 claims. Instead, they rely exclusively on their faulty interpretation of § 1225 to purportedly justify  
24 Ms. Ortiz Calderon’s re-arrest and detention. Though Respondents’ re-interpretation of § 1225 is  
25 wrong, Ms. Ortiz Calderon prevails on her constitutional claims regardless of the applicable  
26 detention statute.

27               **1.       Ms. Ortiz Calderon’s re-detention violates the Due Process Clause.**

28               This Court should grant Ms. Ortiz Calderon’s due process claims, Respondents do not

1 raise anything, beyond incorporating arguments that have already been ruled on by this court, to  
2 contest this. Respondents do not argue that Petitioner is a flight risk or danger, suggest that they  
3 conducted any individualized analysis in re-detaining her, or offer *any* individualized basis for  
4 her re-detention at all. Thus, this Court should hold that Ms. Ortiz Calderon has established  
5 violations of her due process rights.

6 In analyzing procedural due process claims, courts weigh the strength of the private  
7 interest, the risk of erroneous deprivation absent procedural safeguards, and the government's  
8 interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). This Court has found that Ms. "Ortiz  
9 Calderon is likely to succeed on her claim that the Due Process Clause entitles her to a hearing  
10 before she may be re-detained." PI Order at 3. As this Court held, Ms. Ortiz Calderon has a  
11 "protected liberty interest" and "substantial private interest" in remaining out of custody. *Id.* at 4,  
12 5. In explaining her liberty interest, this Court cited that Ms. Ortiz Calderon "has established  
13 herself in San Jose, found employment, and received critical medical treatment." *Id.* at 4. Her re-  
14 detention deprived her of those "enduring attachments of normal life." *Morrissey v. Brewer*, 408  
15 U.S. 471, 482 (1972).

16 Applying the *Mathews v. Eldridge* factors, this Court also explained that a pre-detention  
17 hearing is required in order for Ms. Ortiz Calderon's re-detention to meet constitutional muster.  
18 PI Order at 3; *Mathews v. Eldridge*, 424 U.S. 319, 331 (1976). As Ms. Ortiz Calderon has attended  
19 every hearing and has no criminal history, and was subsequently arrested without any procedural  
20 safeguards to determine whether her detention was justified, the probable value of additional  
21 procedural safeguards is high. PI Order at 6.

22 Ms. Ortiz Calderon's due process rights as a person who has entered the United States are  
23 constitutional and are not limited to what Congress has provided by statute. *Zadvydas v. Davis*,  
24 533 U.S. 678, 693 (2001) (once a person has entered the United States, the Due Process Clause  
25 imposes constitutional limits on the government's authority to detain them, regardless of whether  
26 the person's presence in the country is "lawful, unlawful, temporary, or permanent"). Ms. Ortiz  
27 Calderon thus prevails on her procedural due process claim regardless of whether she is detained  
28 under § 1225(b)(2) or § 1226(a). In the context of procedural due process analysis, the key

1 distinction between detention under § 1225(b)(2) and § 1226(a) is that only § 1226(a) allows for  
2 post-deprivation bond hearing, whereas § 1225(b)(2) provides no right to review *at all*. *Pablo*  
3 *Sequen v. Kaiser*, 800 F. Supp. 3d 998, 1013 (N.D. Cal. 2025). If Respondents were correct that  
4 Ms. Ortiz Calderon is detained under § 1225(b)(2)—for the reasons explained below, they are  
5 not—she would have no opportunity for review of her custody even after being deprived of her  
6 liberty, which would “*strengthen* her due process claim”—not weaken it. *Id.* As Respondents  
7 have not offered any caselaw or facts that would disrupt this Court’s prior holding, this Court  
8 should hold that Ms. Ortiz Calderon’s re-detention violates procedural due process.

9 In this context, Respondents note that the Ninth Circuit appeal in *Rodriguez Vazquez v.*  
10 *Bostock*, No. 25-6842 (9th Cir.), is pending. Return at 3. However, besides the fact that *Rodriguez*  
11 *Vazquez* presents due process claims related to prolonged detention not at issue here, this Court  
12 need not decide whether the applicable detention provision is § 1225 or § 1226 to resolve the  
13 constitutional questions in this case. *See J.O.L.R. v. Wofford*, 2025 WL 2908740, at \*3 n.4 (E.D.  
14 Cal. Oct. 14, 2025) (Sherriff, J.) (granting habeas petition on procedural due process grounds  
15 without deciding statutory question).

16 As to substantive due process, though this Court previously did not decide this claim, it  
17 can readily do so now. Whereas procedural due process “promotes fairness” in government  
18 decisions to deprive persons of their liberty by “requir[ing] the government to follow proper  
19 procedures,” substantive due process “prevent[s] governmental power from being used for  
20 purposes of oppression” by “barring certain actions regardless of the fairness of the procedures  
21 used to implement them.” *Daniel v. Williams*, 474 U.S. 327, 331 (1986).

22 Freedom from detention “lies at the heart of liberty” protected by the Due Process Clause.  
23 *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to the  
24 community, immigration detention serves no legitimate government purpose and becomes  
25 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*  
26 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the  
27 government’s interests in preventing flight and danger); *see also Valencia Zapata v. Kaiser*, 2025  
28 WL 2741654, at \*11-12 (N.D. Cal. Sep. 26, 2025) (holding that a similarly situated petitioner

1 demonstrated serious questions going to the merits of their substantive due process claim); *Leiva*  
 2 *Flores v. Albarran*, 2025 WL 3228306, at \*5 (N.D. Cal. Nov. 19, 2025) (same); *Bautista Pico v.*  
 3 *Noem*, 2025 WL 3295382, at \*3 (N.D. Cal. Nov. 26, 2025) (same).

4 As the Ninth Circuit has held, “the government has no legitimate interest in detaining  
 5 individuals who have been determined not to be a danger to the community and whose  
 6 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or  
 7 alternative conditions.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Immigration  
 8 agents determined that Ms. Ortiz Calderon was not a flight risk or danger when they released her  
 9 from custody in 2024. *See* 8 C.F.R. § 236.1(c)(8) (2016) (allowing release only after  
 10 determination that noncitizen does not pose a danger and will appear for future hearings); Pet.  
 11 ¶¶1, 54. It is undisputed that Ms. Ortiz Calderon has complied with all conditions of release, did  
 12 not miss any hearing, and has no criminal history at all. Pet. ¶¶ 57, 58. Because the government  
 13 cannot show that Ms. Ortiz Calderon’s re-detention would advance the only accepted rationales  
 14 for civil detention—flight risk or danger—Ms. Ortiz Calderon has demonstrated her re-detention  
 15 would violate her substantive due process rights. *Zadvydas*, 533 U.S. at 690. Where, as here, the  
 16 government does not even make bare allegations of flight risk or danger to justify detention,  
 17 detention violates the Constitution regardless of the procedural protections involved.

## 18 2. Ms. Ortiz Calderon’s re-detention violates the Fourth Amendment.

19 Respondents do not dispute that the Fourth Amendment prohibits re-seizure without a new  
 20 or intervening cause. Nor do Respondents even try to argue that an intervening cause justifies Ms.  
 21 Ortiz Calderon’s re-arrest. They cannot. As explained in *Saravia*, new probable cause for re-arrest  
 22 in the immigration context refers to probable cause to believe that *the petitioner* is a danger or a  
 23 flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017) (emphasis added).<sup>1</sup>  
 24 The reasons Respondents offer for detention—namely, their meritless re-interpretation of the

25 <sup>1</sup> Courts regularly apply Fourth Amendment principles derived from criminal cases to the  
 26 immigration context. *See e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975)  
 27 (applying Fourth Amendment principles from the criminal context to “limit” the scope of  
 28 immigration agents’ seizure authority); *Gonzalez v. ICE*, 975 F.3d 788, 817 (9th Cir. 2020)  
 (explaining that Fourth Amendment limits on seizures apply equally to the criminal and civil  
 immigration context). Respondents do not cite any case law that disapproves of, or even  
 questions, this frequent practice.

1 detention statutes—are not related to *Ms. Ortiz Calderon's* flight risk or danger and cannot justify  
2 a further seizure of Ms. Ortiz Calderon.

3 **3. Ms. Ortiz Calderon is not subject to § 1225(b)(2)(A).**

4 Rather than respond to Ms. Ortiz Calderon's constitutional claims, Respondents  
5 repeatedly focus on their mistaken position that Ms. Ortiz Calderon is subject to detention under  
6 § 1225(b).

7 The government's proposed interpretation of § 1225(b)(2)(A)—that it applies to all  
8 noncitizens present in the United States present without admission—fails for at least four reasons:  
9 it “(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship  
10 between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c)  
11 superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.”  
12 *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*4 (E.D. Cal. Sept.  
13 23, 2025). Respondents do not meaningfully engage with this Court's prior holding and none of  
14 their arguments otherwise unsettle this Court's analysis.

15 The phrase “seeking admission” in § 1225(b)(2)(A) refers to a “present-tense action” and  
16 narrows the statute's application only to those applicants for admission who are actively seeking  
17 lawful entry. *Garro Pinchi II*, 2025 WL 3691938, at \*26. Indeed, “if every applicant for  
18 admission was necessarily a noncitizen ‘seeking admission,’ ... then the phrase ‘an alien seeking  
19 admission’ in § 1225(b)(2) would have no meaning.” *Id.*<sup>2</sup> Respondents' insistence that the  
20 statute's plain language compels their contrary reading is undermined by the fact that the  
21 government has taken close to 30 years to claim that this is what the statute means. *See Util. Air*  
22 *Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (“When an agency claims to discover in a long-  
23 extant statute an unheralded power . . . [the courts] typically greet its announcement with a  
24 measure of skepticism.”).

25 Respondents cite three cases in this circuit that have gone their way, Return at 2, but fail

26 \_\_\_\_\_  
27 <sup>2</sup> Respondents also argue that applicants for admission may only be released on an § 1182(d)(5)  
28 parole.” Opp. at 4. However, Ms. Ortiz Calderon was clearly designated as subject to § 1226  
when she entered the country and was released on her own recognizance. *See* ECF 16-1. As  
explained, her release into the United States imparted a liberty interest. *Morrissey*, 408 U.S. at  
482.

1 to acknowledge the hundreds of other decisions of district courts nationwide that have rejected  
2 their statutory interpretation arguments. *Barco Mercado v. Francis*, 2025 WL 3295903, at \*3  
3 (S.D.N.Y. Nov. 26, 2025) (documenting over 300 cases in which courts have rejected the  
4 government’s new interpretation of § 1225). Respondents’ cases in this circuit are also  
5 distinguishable from this one; all involve requests for bond hearings following initial detention,  
6 whereas Ms. Ortiz Calderon had already been classified as § 1226(a) by the government and  
7 challenges *re*-detention following an initial release from custody.

8 Respondents have also not provided an explanation of how the recent amendments made  
9 by the Laken Riley Act fit into their statutory interpretation. Their interpretation of § 1225(b)(2)  
10 would “have the effect of nullifying” those amendments. *Garro Pinchi II*, 2025 WL 3691938, at  
11 \*27. The “more satisfactory explanation” for the passage of the Laken Riley Act is that Congress  
12 “understood that not all noncitizens present in the United States who entered without lawful  
13 admission were subject to mandatory detention under section 1225(b)(2)(A).” *Lepe v. Andrews*,  
14 2025 WL 2716910, at \*7 (E.D. Cal. Nov. 17, 2025). Respondents’ reading of § 1225(b)(2) to  
15 require detention of all noncitizens who are inadmissible would thus render all of § 1226(c)  
16 superfluous, not just the Laken Riley Act amendments.

17 Respondents’ additional argument that the passage of the Illegal Immigration Reform and  
18 Immigrant Responsibility Act of 1996 (“IIRIRA”) indicates that § 1226 does not apply to  
19 applicants for admission is inconsistent with the congressional record. As a threshold matter,  
20 Respondents’ claim that Congress expanded § 1225(b) when it enacted IIRIRA in 1996 is wrong.  
21 *Opp.* at 9. When Congress enacted § 1225 in 1996, the legislative history made clear that § 1226  
22 still applied to inadmissible noncitizens who enter the country without inspection. H.R. Rep. No.  
23 104-469, pt.1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996). In passing IIRIRA,  
24 Congress sought to resolve the disparity in the processes for removing people who entered with  
25 inspection and those who entered without inspection, and it did so by eliminating “exclusion  
26 proceedings.” *Torres v. Barr*, 976 F.3d 918, 927-28 (9th Cir. 2020) (describing changes). The  
27 changes that IIRIRA made to the removal process do not extend to the detention statutes; had  
28 Congress intended to subject all inadmissible noncitizens to mandatory detention, it would have

1 said so. Respondents' arguments offer no reason for this Court to depart from its prior holding  
2 that Ms. Ortiz Calderon is subject to § 1226(a), not § 1225(b)(2).

3 **4. The Court has jurisdiction to enter the relief Ms. Ortiz Calderon**  
4 **seeks.**

5 Respondents' objections to Ms. Ortiz Calderon's prayer for relief, which Respondents  
6 phrase as her asking "this Court categorically to enjoin [Ms. Ortiz Calderon's] re-detention  
7 without a pre-detention hearing before a neutral arbiter," and claim that this would "interfere with  
8 Respondents' ability to execute a valid order of removal," are unavailing. Return at 3.

9 *First*, a habeas court has the power to order that a petitioner not be moved from the  
10 judicial district or deported pending habeas proceedings—which is all Ms. Ortiz Calderon seeks.  
11 *See* 28 U.S.C. §§ 1651(a), 2243. This includes "the inherent authority and responsibility to protect  
12 the integrity of its proceedings which [are] undoubtedly impacted" when a habeas petitioner is  
13 transferred or deported. *Ozturk v. Trump*, 779 F. Supp. 3d 462, 496 (D. Vt. 2025). Contrary to  
14 Respondents' position, "§ 1231(g) does not address transfers [of noncitizen detainees] *at all*, and  
15 it surely does not *explicitly* grant the Attorney General or the Secretary of Homeland Security  
16 discretion with respect to transfers." *Id.* (citation omitted); *see Oliveros v. Kaiser*, 2025 WL  
17 2677125, at \*8 (N.D. Cal. Sep. 18, 2025). Respondents' cited authority does not hold otherwise.  
18 *See* Opp. at 10. In *Milan-Rodriguez v. Sessions*, the district court expressly held that it *had*  
19 jurisdiction to review a challenge to a custody transfer. 2018 WL 400317, at \*8 (E.D. Cal. Jan.  
20 12, 2018).

21 *Second*, the government bears a clear-and-convincing burden of proof to redress a due  
22 process violation. The Ninth Circuit so held many years ago. *Singh v. Holder*, 638 F.3d 1196,  
23 1203-05 (9th Cir. 2011). "*Singh's* constitutional holding . . . remains binding law of our court."  
24 *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179 (9th Cir. 2023) (Paez, J., respecting the denial of  
25 rehearing en banc); *see Martinez v. Clark*, 124 F.4th 775, 784-86 (9th Cir. 2024) (confirming the  
26 government bears the "clear-and-convincing burden of proof" at an immigration bond hearing  
27 ordered pursuant to the Due Process Clause).

28 *Third*, this Court has jurisdiction to determine whether Ms. Ortiz Calderon's re-detention  
becomes warranted in the future. District courts have jurisdiction to order release from custody,

1 bar re-detention, and make findings regarding changed circumstances, consistent with their broad  
 2 equitable powers to remedy constitutional violations. *See Zepeda Rivas v. Jennings*, 845 Fed.  
 3 App’x 530, 534-35 (9th Cir. Feb. 18, 2021) (district court had authority to issue bail orders to  
 4 detained noncitizens); *Hernandez Roman v. Wolf*, 829 Fed. App’x 165, 174 (9th Cir. 2020)  
 5 (describing district courts’ “broad equitable authority to remedy a likely constitutional violation”  
 6 and upholding district court order requiring release of noncitizens from custody). In exercising  
 7 that authority, district courts—including this one—regularly weigh evidence and make  
 8 determinations related to danger and risk of flight. *See Doe v. Chestnut*, --- F. Supp. 3d ---, 2025  
 9 WL 3240400, at \*10 (E.D. Cal. Nov. 20, 2025) (making “independent assessment” of flight risk  
 10 and danger in substantive due process challenge to immigration detention); *Doe v. Becerra*, 723  
 11 F. Supp. 3d 688, 692 (N.D. Cal. 2024) (ordering production of evidence in immigration habeas to  
 12 evaluate, among other factors, flight risk and danger to the community); *Doe v. Becerra*, 732 F.  
 13 Supp. 3d 1071, 1083-87 (N.D. Cal. 2024) (weighing flight risk and danger to the community,  
 14 among other factors, and ordering release to remedy constitutional violation).

15 Respondents invoke the administrative immigration system, but its adjudicators do *not*  
 16 have authority to address constitutional violations. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 804  
 17 n.2 (BIA 2020) (“We do not have the authority to entertain constitutional challenges to the  
 18 statutes and regulations we administer”); *Liu v. Waters*, 55 F.3d 421, 425 (9th Cir. 1995) (“the  
 19 BIA lacks jurisdiction to adjudicate constitutional questions”). Moreover, there is ample reason to  
 20 believe that the immigration court cannot provide the neutral review that the Constitution  
 21 demands. *See Pablo Sequen*, 800 F. Supp. 3d at 1010 (holding that due process likely required  
 22 pre-deprivation hearing before a “neutral decisionmaker”). The San Francisco Immigration Court  
 23 will be shut down by the end of the year.<sup>3</sup> Most judges in that court have been fired, leaving a  
 24 tremendous backlog of cases.<sup>4</sup> Those who remain, and are being hired to replace them, are now

25  
 26  
 27 <sup>3</sup> Ximena Bustillo & Anusha Mathur, *Trump administration to shutter an immigration court,*  
 adding to judges’ backlog, NPR (Jan. 13, 2026), <https://www.npr.org/2026/01/13/g-s1-105679/san-francisco-immigration-court-closure>.

28 <sup>4</sup> *Id.*

1 titled “deportation judges.”<sup>5</sup> This Court should exercise its equitable authority to adjudicate any  
 2 future effort to re-detain Ms. Ortiz Calderon.

3 *Fourth*, Contrary to Respondents’ contention, Ms. Ortiz Calderon does not seek to enjoin  
 4 the execution of a future final removal order (which has not and may never issue). Return at 3, 4.  
 5 She sought to bar her transfer or unlawful removal pending these proceedings, a temporary form  
 6 of relief that she does not seek to make permanent. *See* Pet. At 21 (limiting relief to “pending  
 7 these proceedings.”). Respondents do not dispute that they cannot lawfully remove Ms. Ortiz  
 8 Calderon unless she becomes subject to a final order of removal. And there is no reason for the  
 9 possible—but by no means certain—future issuance of a removal order against Ms. Ortiz  
 10 Calderon to disturb the relief she seeks. Regardless of the underlying statute, “the government’s  
 11 discretion to incarcerate non-citizens is always constrained by the requirements of due process.”  
 12 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). A final removal order may constitute a  
 13 materially changed circumstance warranting Ms. Ortiz Calderon’s re-detention, but its issuance  
 14 does not outweigh constitutional considerations, and the *possibility* that she may ultimately be  
 15 subject to a removal order does not undermine her current claims for relief.

16 **B. Ms. Ortiz Calderon is entitled to fees.**

17 Should Ms. Ortiz Calderon prevail and should the parties be unable to reach a negotiated  
 18 fee award, Ms. Ortiz Calderon intends to file a motion for attorneys’ fees following the procedure  
 19 set forth by the Equal Access to Justice Act.

20 **III. CONCLUSION**

21 For the foregoing reasons and those stated in her Petition, Ms. Ortiz Calderon respectfully  
 22 requests that the Court issue a writ of habeas corpus and otherwise grant the relief requested in  
 23 her Petition.

24 Dated: February 13, 2026

25  
 26 /s/ Nikolas De Bremaeker  
 Nikolas De Bremaeker (FL Bar 98372)  
 PRO HAC VICE  
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28 \_\_\_\_\_  
<sup>5</sup> *Id.*

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