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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BRITNEY XIOMARA PRIETO SALAZAR, Petitioner, v. POLLY KAISER, ET AL.,[1] Respondents.	CASE NO. 1:25-CV-01017-JLT-SAB **OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND HABEAS RESPONSE** DATE: August 25, 2025 TIME: 1:30 p.m. COURT: Hon. Jennifer L. Thurston

I. INTRODUCTION

Petitioner Britney Xiomara Prieto Salazar's motion for temporary restraining order ("TRO") should be denied because her motion fails to demonstrate a likelihood of success on the merits or entitlement to her requested relief. The United States also submits this brief as response to the habeas petition itself and respectfully requests that the petition be denied on the merits.

Petitioner is mandatorily detained during her removal proceedings under 8 U.S.C. § 1225(b)(1). The United States acknowledges that this Court recently rejected similar arguments in cases involving

[1] Respondent moves to strike and to dismiss all unlawfully named officials under § 2241. A petitioner seeking habeas corpus relief is limited to name only the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, that the warden of the private detention facility at which a non-citizen alien was held was the proper § 2241 respondent). Here, Petitioner's custodian is the facility administrator at the Mesa Verde Ice Processing Center in Bakersfield, California.

other aliens detained under § 1225(b)(1). *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025); *Maklad v. Murray*, No. 1:25-CV-00946-JLT-SAB (E.D. Cal. Aug. 8, 2025); *Castellon v. Kaiser et. al.*, No. 1:25-CV-00968-JLT-EPG (E.D. Cal. Aug. 14, 2025). Nonetheless, the Government respectfully requests that the Court decline to order Petitioner's release as she is subject to mandatory detention pursuant 8 U.S.C. § 1225(b)(2)(A) because she is an "applicant for admission."

II. BACKGROUND

A. Salazar Entered the United States Unlawfully and is Placed on Expedited Removal.

Petitioner is a native of Colombia, who, entered the United States on January 19, 2024. Declaration of Paul Villigran (Villigran Decl.) at ¶ 6. Petitioner entered the United States without inspection, admission, or parole at El Paso, Texas. *Id.* Petitioner did not enter the United States lawfully. Form I-213, Ex. 1 to Villigran Decl., at 2.

On January 20, 2024, CPB initiated removal proceedings against Petitioner and charged her under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. Notice to Appear, Exhibit 2 to Villigran Decl., at 1. After initiating removal proceedings, CPB released Petitioner on her own recognizance. Exhibit 1 to Villigran Decl., at 4. In July of 2025, given Petitioner's unlawful entry, ICE and Enforcement Removal Operations (ERO) determined that Petitioner is subject to expedited removal under the 2004 Expedited Removal Designation under INA § 235(b)(1) (8 U.S.C. § 1225(b)(1)). Villigran Decl., ¶ 9.

On August 8, 2025, Petitioner appeared for a master calendar hearing at the Executive Office of Immigration Review court in San Francisco, California. Villigran Decl. ¶ 10. At the hearing, DHS orally moved to dismiss Petitioner's case to pursue expedited removal proceedings under INA § 235. *Id.* After the calendar, Petitioner was arrested pursuant and brought to the ERO San Francisco field office. Form I-231, Ex. 4 to Villigran Decl., at 3. On the same day, ERO then transferred Petitioner to Mesa Verde ICE Processing Center. Villigran Decl. ¶ 12.

Petitioner continues to be detained and is presently being held at the Mesa Verde Ice Processing Center in Bakersfield California. She appeared before an Immigration Judge on August 18, 2025.

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III. LEGAL STANDARD

A. Standard for Temporary Restraining Orders.

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a "difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third ... factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

IV. ARGUMENT

On August 13, 2025, Petitioner filed a Petition for Writ of Habeas Corpus asserting two claims for relief: substantive and procedural due process violations under the Fifth Amendment. ECF 1 ¶¶ 67-76. The habeas petition seeks Petitioner's immediate release from custody, an order prohibiting her transfer outside of this District, an order prohibiting her deportation, an order prohibiting her re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker, and to award petitioner her costs and reasonable attorneys' fees. ECF 1, at 16-17, Prayer for Relief. On August 13, 2025, Petitioner filed a TRO reiterating her claims and seeking the same relief on an emergent basis. ECF 2.

A. Petitioner's TRO Should Be Denied Because It Improperly Seeks the Same Relief as Her Habeas Petition

Petitioner's TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits but instead seeks the ultimate relief she demands in this case. Compare ECFs 1 and 2. The purpose of a preliminary injunction "is to preserve the status quo and the

rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Here, Petitioner's TRO and habeas petition both seek the same relief: her immediate release from custody, an order prohibiting her transfer outside of this District, and an order prohibiting her re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. ECF 2, at 7-8 and 20; ECF 2, at 16 (Prayer). By seeking the same relief in both motions, Petitioner was particularly burdening this court and trying to get two bites of the apple: namely a decision from the District Judge on the TRO and findings and recommendations from the Magistrate Judge on the habeas petition through the screening process. EDCA LR 302(c).

The Ninth Circuit has rejected Petitioner's approach stating, "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992). This Court has likewise disallowed this approach. *See, e.g., Keo v. Warden of Mesa Verde Ice Processing Center*, No. 1:24-cv-00919-HBK, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024) (denying the TRO of an in-custody detainee who sought the same relief as in the habeas petition finding "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits."). Other districts agree. *See, e.g., Doe v.* Bostock, No. C24-0326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024) (same). Petitioner's TRO should be denied for the same reasons.

B. Salazar is Not Likely to Succeed on the Merits Because Her Mandatory Detention is Constitutional and Her Due Process Rights Were Not Violated.

The Supreme Court has upheld the Constitutionality of mandatory detention for certain noncitizens while their removal proceedings are pending. Petitioner is currently detained pursuant to 8 U.S.C. § 1225(b)(2)(A)[2] while her removal proceedings are pending, and would be subject to 8 U.S.C.

[2] Also referred to under its Immigration and Nationality Act (INA) provision, Section 235. *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1149 (9th Cir. 2022).

§ 1225(b)(1) should the immigration judge grant the motion to dismiss her removal proceedings and the Department of Homeland security subsequently issues her an expedited removal order. Regardless, Petitioner's detention is both mandatory and constitutionally sound. Section 1225(b) lays out two tracks for people arriving unlawfully in the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Aliens who arrive without proper papers, like Petitioner, enter an expedited removal process under § 1225(b)(1) where detention is required: "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. Detention is mandatory "throughout the completion of applicable proceedings." *Id.* at 302.

The courts have recognized that "there is little question that the civil detention of [noncitizens] during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable … [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [noncitizens] will be successfully removed.'" *Prieto–Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

That statutory mandate can be enforced as written: detention applies throughout removal proceedings. Because detention is required, Petitioner cannot succeed on the merits of her TRO and the Court should therefore deny it. *Lopez Contreras v. Oddo*, No. 3:25-CV-162, 2025 WL 2104428, at *5 (W.D. Pa. July 28, 2025) (denying TRO and habeas corpus petition for mandatorily detained alien). *See also Abdul-Samed v. Warden*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *3 (E.D. Cal. July 25, 2025) (noting that this is the interpretation of the Attorney General regarding § 1225(b)(1); ultimately ordering a bond hearing in a case involving detention under 8 U.S.C. § 1226).

Generally, detention during immigration proceedings is "a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). However, this Court and others have raised the concern that § 1225(b)(1)'s mandatory detention provisions raise constitutional concerns. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025); *Abdul-Samed*, 2025 WL2099343, at *4-5 (noting that the constitutionality of mandatory detention under § 1225(b)(1) is an open question in the Ninth Circuit). Yet here, where Petitioner has not been in custody for a prolonged period, and is detained under § 1225(b)(1), no such constitutional question entitles him to release or to the granting of a TRO. *Lopez Contreras v. Oddo*, 2025 WL 2104428, at *6.

Petitioner's due process rights were not violated. The Supreme Court has long recognized that Congress exercises "plenary power to make rules for the admission of foreign nationals. . ." *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Pursuant to that longstanding doctrine, "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst,* 408 U.S. at 767.

Thus, applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination," *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). In 2020, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" explaining that an individual who illegally crosses the border is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." *DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020). Accordingly, Petitioner's due process rights are limited to whatever statutory rights Congress provides. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographical borders."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (same). None of Petitioner's constitutional or due process rights were violated and his TRO should be denied.

D. Salazar Is Not Likely to Suffer Irreparable Harm.

While the Ninth Circuit has recognized that "[a]n alleged constitutional infringement will often alone constitute irreparable harm," *Goldie's Bookstore, Inc. v. Superior Court* , 739 F.2d 466, 472 (9th Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate "a sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a preliminary injunction." *Assoc'd Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir.1991)). Here, as demonstrated above and as in *Goldie's Bookstore*, Petitioner's purported constitutional claim is "too tenuous" to support an injunction. *Goldie's Bookstore*, 739 F.2d

at 472.

E. The Balance of Equities and the Public Interest.

The balance of the equities and public interest do not automatically tip toward Petitioner simply because she has alleged a due process violation. Even where constitutional rights are implicated, where a petitioner has not shown a likelihood of success on the merits of a claim, a court should not grant a preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The Executive also has an important interest in exercising its enforcement authority. "The government has a strong interest in enforcing immigration laws." *Abdul-Samed v. Warden*, 2025 WL 2099343, at *8 (E.D. Cal. July 25, 2025) (concluding, however, that the government interest in detention "without a bond hearing" was outweighed by petitioner's liberty interest). Here, given Petitioner's mandatory detention, Petitioner cannot establish a likelihood of success on the merits, and the Court should deny her habeas petition and request for TRO. Accordingly, the public interest is best served by denying Petitioner's TRO.

F. Petitioner Qualifies for Expedited Removal

Petitioner's TRO fails because ICE has discretion to change her removal procedure. Expedited removal can be applied at any time for an alien who fits within specified criteria. 8 C.F.R. § 235.3(b)(1). Here, Petitioner falls within the designation that applies to aliens who have "not been admitted or paroled into the United States" and have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Id.* Specifically, Petitioner unlawfully entered the United States in January of 2024, and was determined inadmissible on January 20, 2024. Villigran Dec. ¶ 8. Petitioner has not shown that she has been physically present in the United States continuously for the 2-year prior immediately prior to January 20, 2024. Petitioner admittedly did not have the necessary documents to enter, pass through or remain in the United States. Villigran Dec. ¶ 5. Petitioner also falls under the 2004 designation, which applies to aliens who (i) "are physically present in the U.S. without having been admitted or paroled," (ii) "are encountered by an immigration officer within 100 air miles of any U.S. international land border," and (iii) cannot establish "that they have been physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter." 2004 Designation, 69 Fed. Reg. at 48,880.

Because she was a qualifying noncitizen, Petitioner was subject to expedited removal proceedings.

G. Petitioner Seeks Unlawful Relief

Petitioner's request for relief goes beyond what is permissible by statute. This Court cannot issue an order prohibiting Petitioner's re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. *Phan v. Moises Becerra*, 2:25-cv-01757-DC-JDP (June 30, 2025). Petitioner is also not entitled "to immediate release from custody" as requested. ECF 1, at 19, Prayer for Relief. Petitioner is also not entitled to "an order prohibiting ICE from re-detaining petitioner" or "transferring Petitioner outside of this District". ECF 1, at 16. The Court has no jurisdiction to bar execution of a future removal order. 8 U.S.C. § 1252(g). The INA Act grants the discretion over the placement and housing of detained aliens to the executive branch. Specifically, 8 U.S.C. § 1231(g)(1) "gives both 'responsibility' and 'broad discretion' to the Secretary 'to choose the place of detention for deportable aliens.'" *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 751 (9th Cir. 2022) (citing *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986), amended by 807 F.2d 769 (9th Cir. 1986)); *Y.G.H. v. Trump*, No. 1:25-CV-00435-KES-SKO, 2025 WL 1519250, at *9 (E.D. Cal. May 27, 2025). As such, the Court should deny Petitioner's requested relief.

Finally, if any relief is granted, pursuant to Rule 65(c), "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). If the Court grants a TRO or preliminary injunctive relief, the United States respectfully requests that the Court require Petitioner to post security during the pendency of the Court's order in an amount that the Court considers appropriate under Rule 65(c).

H. Should the Court Order a Bond Hearing, the Burden is on Petitioner

Should the Court order a bond hearing, Petitioner is mistaken that the burden should be on the government to justify her detention by clear and convincing evidence. The Constitution does not require the government to bear the burden of establishing that the noncitizen will be a flight risk or danger—much less that the government be subject to a clear-and-convincing-evidence standard—to justify temporary detention pending removal proceedings. The Supreme Court has consistently affirmed the

constitutionality of detention pending removal proceedings, notwithstanding that the government has never borne the burden to justify that detention by clear and convincing evidence. *See Demore*, 538 U:S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538; *Zadvydas*, 533 U.S. at 701. In fact, the Supreme Court has repeatedly upheld detention pending removal proceedings on the basis of a categorical, rather than individualized, assessment that a valid immigration purpose warranted interim custody. *See Demore*, 538 U.S. at 531; *Flores*, 507 U.S. at 306; *Carlson*, 342 U.S. at 538. And in *Zadvydas*, the Court placed the burden on the noncitizen, not the government, to show that his detention was unjustified. *Zadvydas*, 533 U.S. at 701 (noncitizen must first "provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," only after which "the Government must respond with evidence sufficient to rebut that showing").

Indeed, the Ninth Circuit questioned (in the § 1226(a) context) how the burden-shifting and standard of proof that Petitioner demands could be constitutionally required:

> Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases. There is no reason to believe that, as a general proposition, the government will invariably have more evidence than the alien on most issues bearing on alleged lack of future dangerousness or flight risk.

Rodriguez Diaz, 53 F.4th at 1211 (9th Cir. 2022). Accordingly, if the Court grants Petitioner a bond hearing, the burden at any such bond hearing is properly placed on her.

V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Petitioner's application for a TRO and deny Petitioner's Habeas petition.

Dated: August 20, 2025

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