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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

MARINA JIMENEZ GARCIA,

Petitioner,

v.

SERGIO ALBARRAN, *et al.*,

Respondents.[1]

Case No. 4:25-cv-06916-YGR

RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

[1] Sergio Albarran is automatically substituted for Polly Kaiser as the defendant in this case pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

I. Introduction

At the temporary restraining order and preliminary injunction stages of this case, Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). That section requires noncitizens to "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Section 1229a removal proceedings are "full removal proceedings under section 240 of the INA." *Matter of Q. Li*, 29 I. & N. Dec. at 68. Since this Court's preliminary injunction order, however, an immigration judge dismissed Petitioner's regular removal proceedings, and Petitioner is now in expedited removal proceedings; she is thus currently subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Because Petitioner is physically present in the United States without having been admitted, she is treated for constitutional purposes as if stopped at the border. Therefore, as regards her immigration detention, she is entitled only to the process due to her by statute and regulation. Respondents have complied with the process under the applicable statutes and regulations, and the Court should dismiss her habeas petition.

II. Statutory Background

Section 1225 applies to an "applicant for admission," defined as an "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1).[2] "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1), known as "expedited removal," applies to "arriving aliens" and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). An alien is subject to expedited removal if the alien (1) is inadmissible because he or she lacks a valid entry document; (2) has not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 109 (2020). As

[2] This section of the brief uses the term "alien" for the sake of clarity and continuity because that is the term of art used by Congress in the relevant statute. The rest of the brief uses the term "noncitizen," except when quoting statutes or cases that use the term "alien."

relevant here, those designated for expedited removal are, among others, aliens "encountered within 14 days of entry without inspection and within 100 air miles of any U.S. international land border." 69 Fed. Reg. 48879 (2004).[3] These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A).

If an alien placed in expedited removal "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). "If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is "found not to have such a fear," they "shall be detained . . . until removed" from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV). In the meantime, "Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

In *Jennings*, 583 U.S. at 296-303, the Supreme Court interpreted 8 U.S.C. § 1225(b). The Supreme Court stated that "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. Neither § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Court added that the sole means of release for noncitizens detained pursuant to § 1225(b) is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released."). "In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

III. Factual And Procedural Background

Petitioner is a native and citizen of Guatemala who entered the United States without inspection, admission, or parole on November 13, 2023. *See* ECF No. 14-1 ("Martinez Decl.) ¶ 6 & Ex. 1; *see also*

[3] *See also* Pet. ¶ 27 (alleging that in 2004, "the government authorized the application of expedited removal to individuals who entered by means other than sea, but only if they were apprehended within 100 miles of a land border and were unable to demonstrate that they had been continuously physically present in the United States for 14 days") (citing 69 Fed. Reg. 48877) (2004).

Declaration of Thomas Auer filed concurrently herewith ("Auer Decl.") ¶ 5. That same day, within 100 air miles of the United States-Mexican international border, DHS Border Patrol apprehended Petitioner. Martinez Decl. ¶¶ 6-7 & Ex. 1; Auer Decl. ¶ 5. The Border Patrol determined that Petitioner unlawfully entered the United States and that she did not have the necessary legal documents to enter, pass through, or remain in the United States. Martinez Decl. ¶¶ 6-7; Auer Decl. ¶ 5.

On November 14, 2023, DHS issued Petitioner a Notice to Appear (Form I-862), charging Petitioner with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA")—an alien present without admission or parole. Martinez Decl. ¶ 8 & Exs. 2; Auer Decl. ¶ 6. That same day, CBP released Petitioner on her own recognizance for humanitarian reasons pending removal proceedings. Martinez Decl. ¶ 8 & Exs. 1-2; Auer Decl. ¶ 6.

At that time, Petitioner was in regular removal proceedings under Section 1229a, and on August 15, 2025, Petitioner appeared at her master calendar hearing in San Francisco immigration court. Martinez Decl. ¶ 9; Auer Decl. ¶ 9. After the hearing concluded, U.S. Immigration and Customs Enforcement ("ICE") officers detained Petitioner and placed her in ICE's custody. Martinez Decl. ¶ 10; Auer Decl. ¶ 9.

Petitioner commenced this action on August 15, 2025, by filing a petition for writ of habeas corpus, (ECF No. 1, "Pet.") and moving this Court *ex parte* for a TRO (ECF Nos. 4-5). On August 17, 2025, the Court granted Petitioner's *ex parte* TRO, ordering Petitioner released and enjoining the government "from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing her from the United States." ECF No. 6 at 5-6. Pursuant to the TRO, the government released Petitioner from custody. ECF No. 7. On August 29, 2025, this Court issued a preliminary injunction, enjoining the government from re-detaining Petitioner without notice and a pre-deprivation hearing. ECF No. 22.

ICE filed, in immigration court, a motion to dismiss the underlying immigration removal proceedings on August 20, 2025. Auer Decl. ¶ 11. On September 3, 2025, an immigration judge granted ICE's motion to dismiss; Petitioner did not appeal that decision. *Id.* ¶ 12. As such, Petitioner is no longer in regular removal proceedings under Section 1229a, and on October 6, 2025, ICE Enforcement and Removal Operations ("ERO") officers processed Petitioner for expedited removal under the 2004

designation because Petitioner was apprehended 100 air miles from the United States-Mexican international border. *Id.* ¶ 13. That same day, ICE ERO served the following documents on Petitioner: (1) Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act; (2) Form I-867B, Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act; (3) Form I-860, Notice and Order of Expedited Removal; (4) I-296, Notice to Alien Ordered Removed/Departure Verification; and (5) Form M-444, Information about Credible Fear Interview. *Id.* On or about October 7, 2025, ICE ERO referred Petitioner's case to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview. *Id.* ¶ 14. Petitioner's underlying immigration case is pending with USCIS, and Petitioner remains out of custody pursuant to this Court's preliminary injunction. *Id.*

IV. Argument

A. Petitioner Is Subject To Mandatory Detention Under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV)

Petitioner claims that her detention without a pre-deprivation hearing violated her substantive and procedural due process rights under the Fifth Amendment. Pet. ¶¶ 59-68. Petitioner argues that as a result of her prior release following her initial apprehension at the border, she has a "profound personal interest in her liberty," and that the Due Process Clause entitles her to a hearing prior to any arrest or detention. *Id.* But Petitioner is currently in expedited removal proceedings. Accordingly, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) is now the proper detention authority in this case, and it mandates Petitioner's detention.

Under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), Petitioner is subject to mandatory detention pending a final determination of credible fear of persecution. An "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). As explained above, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(1)—the provision relevant here—applies because Petitioner is present in the United States without having been admitted and is covered by the Secretary of Homeland Security's 2004 designation of those noncitizens as subject to expedited removal. *See* 69 Fed. Reg. 48879 (2004); Auer Decl. ¶ 13. While Petitioner was amenable to expedited removal at the time the Court entered the preliminary injunction, she was in regular

removal proceedings and, therefore, her detention authority was Section 1225(b)(2). Following the immigration court's dismissal of her regular removal proceedings and the institution of expedited removal proceedings, however, her detention authority shifted to Section 1225(b)(1). The expedited removal statute mandates detention while DHS determines whether Petitioner has a credible fear of persecution in her home country. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Here, Petitioner is an "applicant for admission" (*i.e.*, she is present in the United States and "has not been admitted") and she has been referred to USCIS for a credible fear interview. Auer Decl. ¶¶ 6, 14; Martinez Decl. ¶ 6 & Exs. 1 & 2. This squarely places Petitioner under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which states that she "shall be detained pending a final determination of credible fear of persecution."

B. Petitioner's Right To Due Process Does Not Entitle Her To Procedural Rights Other Than Those Afforded By Statute

Respondents do not dispute that Petitioner has a right to due process of law. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205 (9th Cir. 2022) ("'The Fifth Amendment entitles aliens to due process of law in deportation proceedings'") (quoting *Hussain v. Rosen,* 985 F.3d 634, 642 (9th Cir. 2021). However, Respondents dispute Petitioner's characterization of the extent of her due process rights regarding immigration detention. Petitioner is not owed a pre-deprivation hearing. Pet. ¶¶ 64-68.

The Supreme Court has been clear that noncitizens similarly situated to Petitioner do not have a constitutional right to procedures beyond those afforded to them by statute. In *Thuraissigiam*, the Supreme Court addressed the procedural due process rights of noncitizens like Petitioner, *i.e.*, those detained shortly after entering the United States without admission that are then placed in expedited removal. 591 U.S. at 138-40. The Supreme Court stated that these noncitizens have "no entitlement to procedural rights other than those afforded by statute." *Id.* at 107. The Supreme Court noted that this principle was not unique to its decision in *Thuraissigiam* but instead was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).[4]

[4] Since *Thuraissigiam*, numerous courts have found that noncitizens detained under § 1225(b)(1)

There is no constitutional rule requiring a finding of flight risk or danger to the community to detain, pending removal proceedings, a noncitizen who was not previously admitted. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court upheld mandatory detention pending removal proceedings under 8 U.S.C. § 1226(c) and rejected the noncitizen's requested relief of an individualized bond hearing to determine whether he posed either a flight risk or a danger to the community. There, the Court held that "Detention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531. The Court cited several cases where it upheld the constitutionality of detention pending deportation proceedings without requiring a finding of flight risk or danger to the community. *See, e.g.*, *Wong Wing v. United States*, 163 U. S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid"); *Carlson v. Landon*, 342 U. S. 524, 538-549 (1952) (denying noncitizens release from detention despite no finding as to flight risk or dangerousness); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings."); *see also Rodriguez Diaz*, 53 F.4th at 1211 ("the Supreme Court has also previously upheld immigration detention schemes that offered no opportunity for a bond hearing, much less one in which the government bore the burden of proof.").

Petitioner's reliance on *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), for a claimed due process right to a pre-detention hearing on flight risk or danger to the community is mistaken.[5] *See* Pet. ¶¶ 20, 24, 60-63. The Supreme Court's introduction in the *Zadvydas* opinion cautions: "We deal here with aliens

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lack a due process right to release or a bond hearing after being detained for a certain period of time. *See Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y. 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *see also Mendoza-Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306, at *2 (S.D. Cal. June 10, 2024); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023) (same).

[5] The Fourth Circuit has held that "the clear takeaway from *Demore* and *Jennings* is that *Zadvydas* should not be expanded beyond the context of the indefinite and potentially permanent detention involved there." *Id.* (cleaned up). The Eighth Circuit agreed in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), which held that what emerges from *Zadvydas* and *Demore* is "a bright-line rule," *i.e.*, "the government can detain an alien" — without an "individualized determination" — for as long as deportation proceedings are still 'pending.'" *Id.* at 933 (quoting *Demore*, 538 U.S. at 527).

who were admitted to the United States but subsequently ordered removed. *Aliens who have not yet gained initial admission to this country would present a very different question*." 533 U.S. at 682 (emphasis added). Accordingly, *Zadvydas* is inapposite because Petitioner's case is distinct from *Zadvydas* in two legally significant ways. First, unlike Zadvydas who was admitted and then ordered removed, Petitioner has not gained admission to this country. As a result, Petitioner, unlike Zadvydas, is treated for due process purposes as if stopped at the border. *See Thuraissigiam*, 591 U.S. at 107, 140. Second, unlike Zadvydas, Petitioner is not subject to an unexecutable final order of removal. In *Zadvydas*, the Court decided whether noncitizens subject to a final order of removal could be detained indefinitely. Petitioner's expedited removal proceeding under Section 1225(b)(1), however, is clearly *not* indefinite; instead, it has a finite end point—the conclusion of removal proceedings. *See Demore,* 538 U.S. at 529 ("'post-removal-period detention, *unlike detention pending a determination of removability* . . . has no obvious termination point.'") (quoting *Zadvydas*, 533 U.S. at 697) (emphasis added). Petitioner's expedited removal proceeding under Section 1225(b)(1) does not raise the same due process concerns as the potentially indefinite detention at issue in *Zadvydas*.

In sum, Petitioner is subject to mandatory detention pursuant to Section 1225(b)(1)(B)(iii)(IV). As neither the applicable detention authority nor the Fifth Amendment's Due Process Clause afford her a right to immediate release or a pre-deprivation hearing, the Court should reject her claim that her detention violated (or would violate) the Constitution.

C. Petitioner's Previous Release Does Not Create A Protected Liberty Interest

The government's citation of 8 U.S.C. § 1226(a) in connection with its release or re-arrest of a noncitizen subject to 8 U.S.C. § 1225 does not alter a noncitizen's status as an "applicant for admission" under Section 1225. To the contrary, Petitioner's release into the country was expressly subject to an order to appear for removal proceedings based on unlawful entry. Martinez Decl. ¶ 8 & Ex. 2. Thus, even where DHS cites Section 1226(a) in connection with a noncitizen's release, the release is still expressly not the type of "lawful entry into this country" that is necessary to "establish[] connections" that could form a liberty interest requiring additional process. *Thuraissigiam*, 591 U.S. at 106–07 ("While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this

country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.").

Respondents recognize that courts have found that a noncitizen released on her own recognizance cannot later be placed into expedited removal proceedings. *See, e.g.*, *Zapata v. Kaiser*, 801 F. Supp. 3d 919, 935 n.4 (N.D. Cal. 2025). But that position is incorrect in light of the Ninth Circuit's decision in *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111 (9th Cir. 2007). There, the Ninth Circuit held that being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

Moreover, Petitioner mistakenly analogizes her claimed liberty interest in remaining out of immigration custody following her release on interim parole to the recognized liberty interest of U.S. citizens facing redetention. *See* Pet. ¶ 65 (citing to *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release)). The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522 (citing *Reno v. Flores*, 507 U. S. at 305-306; *Fiallo v. Bell,* 430 U.S. 787, 792 (1977); *Mathew v. Diaz,* 426 U.S. 67, 79-80 (1976); *United States v. Verdugo–Urquidez,* 494 U.S. 259, 273 (1990)). The Ninth Circuit has also acknowledged that it has "not previously held that cases involving heightened burdens of proof for the deprivation of liberty interests of U.S. citizens apply coextensively to alien detainees who have been subject to § 1226(a) and its procedures throughout the period of their detention." *Rodriguez Diaz*, 53 F.4th at 1211; *see also Miranda v. Garland*, 34 F.4th 338, 359 & n.9 (9th Cir. 2022) (agreeing that the Supreme Court's civil commitment cases are inapposite because they "involved detention of United States citizens whereas § 1226(a) involves detention of aliens awaiting removal hearings"). Thus, the applicable line of authority is the Supreme Court's immigration cases holding that the process due noncitizens like Petitioner is limited to the process afforded under the statute.[6]

[6] To the extent Petitioner relies on *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011), for the claim that "due process requires that the government justify re-detention of Petitioner by clear and

D. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon A Final Administrative Removal Order

Petitioner's habeas petition asks this Court to categorically enjoin her re-detention without a pre-detention hearing before a neutral arbiter. Pet. at 14. But any indefinite injunction would interfere with Respondents' ability to execute a valid order of removal and would both exceed the Court's jurisdiction and contravene the Supreme Court's unambiguous holding in *Zadvdas v. Davis* that mandatory detention without a bond hearing during the removal period is constitutionally permitted.

Petitioner's immigration proceedings will continue even after the Court rules on her habeas petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, her detention is mandatory under the INA. *See* 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both the mandatory 90-day detention during the removal period and the presumptively reasonable six-month discretionary detention period following the removal period, both without the requirements of any bond hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of removal, her detention will be both constitutionally permissible and statutorily required. Any ruling by this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025) (denying motion for preliminary injunction in petition seeking pre-detention hearing after petitioner's detention authority shifted to Section 1231(a)(2)).

V. Conclusion

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1). Accordingly, Respondents respectfully request that the Court deny Petitioner's habeas petition. To the extent the Court grants Petitioner relief, it should limit any injunction to permit the execution of a future final order of

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convincing evidence that he poses a flight risk or danger" (Pet. ¶ 66), the Ninth Circuit has cast doubt on whether *Singh* remains good law. *See Rodriguez-Diaz*, 53 F.4th at 1202 n.4.

removal.

Dated: January 20, 2026

Respectfully submitted,

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