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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARINA JIMENEZ GARCIA,

Petitioner,

v.

SERGIO ALBARRAN[1], Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

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

PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

[1] Sergio Albarran is Automatically Substituted as a Defendant in This Matter Pursuant to Rule 25(D) of the Federal Rules of Civil Procedure.

INTRODUCTION

Petitioner Maria Jimenez Garcia ("Petitioner"), a Maya Indigenous asylum seeker from Guatemala, went to her routine immigration court hearing on August 15, 2025. Dkt. 1 (Petition for writ of habeas corpus) at 1. The immigration judge rescheduled the hearing because the court could not find a Mam interpreter. Dkt. 5-1 (Declaration of Diana Mariscal) at 1. As Petitioner exited the courtroom, ICE agents detained her. Return at 3. Petitioner filed the present petition for writ of habeas corpus and motion for temporary restraining order the same day. *Id.* Two days later, the Court granted the TRO motion and ordered Respondents to release Petitioner, which they did. *Id.* On August 20, 2025, ICE submitted a motion to dismiss Petitioner's removal proceedings. *Id.* ICE did so as part of its broader campaign to strip individuals like Petitioner of their procedural rights, forfeit their asylum applications, and pressure them into fast-track removal proceedings called expedited removal under 8 U.S.C. § 1225(b)(1). Dkt. 1 at 2. The Immigration Judge granted ICE's motion to dismiss on September 3, 2025, as the Justice Department has been pressuring immigration judges to do.[2] On August 29, 2025, a federal district court stayed the government's application of § 1225(b)(1)'s expedited removal proceedings to "people living in the interior of the country who have not previously been subject to expedited removal," which includes Petitioner. *See Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 U.S. Dist. LEXIS 169432 (D.D.C. Aug. 29, 2025). On October 6, 2025, ICE processed Petitioner for expedited removal in violation of the *Make the Rd. N.Y.* stay. *See* Return at 3. Petitioner has a credible fear interview scheduled on February 24, 2026 at 7:45 a.m. Ex. 2 in San Francisco. Ex. B (Notice of Credible Fear Interview).

Respondents do not dispute that Petitioner poses no flight risk or danger to the community. Nor could they; she has complied with every requirement the immigration system has asked of her.

[2] Julia Ainsley, *Trump admin tells immigration judges to dismiss cases in tactic to speed up arrests*, NBC News, June 11, 2025, https://www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138.

Indeed, she was arrested at an immigration court hearing that she dutifully attended. Instead, Respondents insist that Petitioner's detention is mandated by statute because she is in expedited removal proceedings. However, Respondents ignore that they placed Petitioner in expedited removal in violation of the *Make the Rd. N.Y.* stay. Respondents' statutory argument also cannot insulate them from Petitioner's constitutional claims. Because Petitioner has established that her re-detention violates due process, the Court should grant her petition.

ARGUMENT

I. The stay in *Make the Road New York v. Noem* precludes expedited removal.

On August 29, 2025, a federal district court stayed the government's 2025 notice "Designating Aliens for Expedited Removal," which expanded § 1225(b)(1)'s expedited removal proceedings to "people who had been living in the United States for over 14 days but less than two years." *Make the Rd. N.Y.*, No. 25-cv-190 (JMC), at *15. ICE placed Petitioner in expedited removal proceedings on October 6, 2025, which was after the stay was issued. *Id.* Petitioner was thus protected by the stay on October 6, 2025, because she had been living in the United States for between 14 days and 2 years and had never been in expedited removal proceedings before. *Make the Rd. N.Y.*, No. 25-cv-190, at *15. Although the stay is on appeal, it is currently still in effect. Respondents thus plainly violated the stay in processing Petitioner for expedited removal. *See id.*

Respondents had notice that they violated the stay, yet still chose not to rescind the expedited removal order. On January 16, 2025, Petitioner's immigration counsel e-mailed the Office of the Principal Legal Advisor (OPLA), San Francisco to inform them of the violation. *See* Ex. 1 (E-mails to OPLA) at 3. The duty attorney replied that the counsel's "question" appeared better directed to ICE Enforcement and Removal Operations. *Id.* at 2. Counsel responded on January 21, 2026: "Can you confirm whether OPLA is designated advisory/legal counsel for ICE-ERO and, if not, who the appropriate agency legal contact would be?" *Id.* at 1. As of the date of this

filing, OPLA has not responded. The Court should thus find Respondents are prohibited from pursuing expedited removal proceedings against Petitioner in light of the *Make the Rd. N.Y.* stay.

I. Re-detention without a pre-deprivation hearing before a neutral decisionmaker violates Petitioner's procedural due process rights.

Over 50 years ago, in *Morrissey v. Brewer*, the Supreme Court recognized that individuals released from government custody have a protected liberty interest in their continued freedom. 408 U.S. 471, 482 (1972). The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482. Since then, the Supreme Court has repeatedly affirmed that *Morrissey*'s holding applies to every form of conditional release it has considered. *See, e.g, Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

These principles apply with at least equal force to people like Petitioner, who was conditionally released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2017) And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). After Petitioner entered the country in 2023, immigration officials classified her as subject to 8 U.S.C. § 1226(a) and released her on an Order of Recognizance, which is a type of conditional parole. *See* Return at 3; *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) finding "release on recognizance" synonymous with conditional parole); 8 C.F.R. § 236.1(c)(8) (setting standard for conditional parole). That release created a liberty interest that "can be taken away only if the government's procedure for doing so accord[s] with due process." *See Tellez v. Bondi*, No. 25-cv-

08982-PCP, 2025 U.S. Dist. LEXIS 262261, at *12 (N.D. Cal. Dec. 18, 2025).

Respondents argue that the liberty interested identified in *Morrissey*—and repeatedly extended to other groups—does not apply to noncitizens. Return at 8. That is wrong. "[D]ecisions defining the constitutional rights of prisoners establish a floor for [noncitizens'] constitutional rights." *Doe v. Kelly*, 878 F.3d 710, 714 (9th Cir. 2017) (holding that civil immigration detention conditions violated due process); *see also Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (acknowledging that "criminal detention cases provide useful guidance in determining what process is due non-citizens in immigration detention."). Moreover, because Petitioner faces civil detention, "h[er] liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Respondents do not acknowledge these well-established principles and offer no reason for this Court to depart from them. *See R.A.N.O.*, 2026 U.S. Dist. LEXIS 1963, at *n.5 ("To the extent respondents argue that reliance on *Morrissey* is misplaced simply because it arose in the criminal context rather than the immigration context, that argument is unpersuasive.").

Respondents argue that "noncitizens similarly situated to Petitioner do not have a constitutional right to procedures beyond those afforded to them by statute." Return at 5. However, Respondents mischaracterize Petitioner's procedural posture. *Id.* Unlike the petitioner in *Thuraissigiam*, Petitioner was not placed in expedited removal at the border; she was released subject to conditional parole under § 1226(a). Respondents fail to acknowledge the liberty interest created by this conditional release. *See* Dkt. 22 at 8.

In addition, "the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez*, 872 F.3d at 981. *DHS v. Thuraissigiam* does not hold differently. *See* 591 U.S. 103 (2020). That case concerned due process rights related to determinations of eligibility for *admission* into the United States, not detention. *See Jaraba Oliveros v. Kaiser*, No. 25-cv-07117-BLF, at *7–8 (N.D. Cal. Sept. 18, 2025) (accepting

Respondents' request at the preliminary injunction hearing to consider the applicability of *Thuraissigiam* and finding it does not apply). Indeed, this Court already found that *Thuraissigiam* does not apply. Dkt. 22 at 7. Respondents offer no new arguments for why *Thuraissigiam* should limit Petitioners' due process right to challenge her detention.

The out-of-district cases Respondents cite in a footnote are also unavailing. Return at 5, n4. None of them address a situation, like here, where a petitioner was re-arrested after being released on conditional parole.[3]

A. The *Mathews* Test Applies

Because Petitioner has established a protected liberty interest, the *Mathews* test determines what process is due. *See Johnson v. Ryan*, 55 F.4th 1167, 1179–80 (9th Cir. 2022) (holding that *Mathews* applies to procedural due process claims). Under that test, the court weighs: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and (3) the government's interest. *Id.*

B. Petitioner is entitled to a pre-deprivation hearing in which the government bears the burden of proof.

Here, *Mathews* factors weigh heavily in favor of prohibiting Petitioner's re-detention without a pre-deprivation hearing at which the government bears the burden of proof. *First*, the private interest affected in this case is profound. When considering this factor, courts look to "the degree of potential deprivation." *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation here is high. Petitioner has resided in the United States for over two years. *See* Dkt. 1. She filed an asylum

[3] *See generally Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122 (W.D.N.Y. 2021) (petitioner was initially detained under § 1225(b)(1) and never released under § 1226(a)); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329 (W.D.N.Y. 2021) (same); *St. Charles v. Barr*, 514 F. Supp. 3d 570, 572 (W.D.N.Y. 2021) (same); *Petgrave v. Aleman*, 529 F. Supp. 3d 665 (S.D. Tex. 2021) (same); *Mendoza- Linares v. Garland*, No. 21-CV-1169 BEN (AHG), 2024 WL 3316306 (S.D. Cal. June 10, 2024) (same); *Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS (KSC), 2023 WL 3103811 (S.D. Cal. Apr. 25, 2023) (same). Petitioner is also challenging the constitutionality of her initial re-detention; not her "due process right to release or a bond hearing after being detained for a certain period of time." Return at 5, n4.

application. *Id.* She attended all of her ICE check-ins and immigration court hearings. As this Court has already found in granting the preliminary injunction, she "has a protectable liberty interest she is entitled to defend." Dkt. 22 at 8.

Second, "the risk of an erroneous deprivation [of liberty] is high" where "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No. 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)).

Third, the government has no cognizable interest in detaining the Petitioner without a hearing. As explained below, the only two constitutionally permissible reasons to detain a non-citizen in civil immigration proceedings is if they are a flight risk or danger to the community. And immigration courts routinely conduct custody hearings, which impose a "minimal" cost to the government. *See A.E.*, 2025 WL 1424382, at *5. The harm to the government is therefore negligible at most. *See Florez v. Robbins*, No. 1:25-cv-1897, 2025 U.S. Dist. LEXIS 265346 at *22 (E.D. Cal. Dec. 23, 2025).

Normally, an individual subject to U.S.C. § 1226(a) would be entitled to a post-deprivation bond hearing, which is provided for by the statute. As courts have recognized, the key distinction between detention under § 1225(b) and § 1226(a) is that § 1226(a) allows for post-deprivation bond hearing, whereas § 1225(b) provides no right to review *at all*. *Pablo Sequen v. Kaiser*, 800 F. Supp. 3d 998, 1013 (N.D. Cal. 2025). If Respondents are correct that Petitioner is detained under § 1225(b), it would "*strengthen* her due process claim"—not weaken it. *Id.* (emphasis added).

In this case, a post-deprivation hearing also does not provide sufficient process, because by the time that the Petitioner is arrested, the constitutional violation re-detention without changed circumstances—will have already occurred. *See E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *16 (W.D. Wash. Aug. 19, 2025) (holding that a "post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an

erroneous deprivation of liberty"); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) (same); *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB, 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (same, collecting cases); *R.A.N.O.*, No. 1:25-cv-01535-KES-EPG, 2026 U.S. Dist. LEXIS 1963, at *14–15 (same). Petitioner thus prevails on her *Mathews* claim regardless of the underlying detention statute.

Finally, the government bears a clear-and-convincing burden of proof to remedy a due process violation. The Ninth Circuit so held many years ago. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011). Contrary to Respondents' argument, Return at 8–9, n.6, the Ninth Circuit has made clear that "*Singh*'s constitutional holding . . . remains binding law of our court." *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179 (9th Cir. 2023) (Paez, J., respecting the denial of rehearing en banc); *see Martinez v. Clark*, 124 F.4th 775, 784-86 (9th Cir. 2024) (confirming the government bears the "clear-and-convincing burden of proof" at an immigration bond hearing ordered pursuant to the Due Process Clause). The government bears the burden of proof here. For these reasons, this Court should join the numerous district courts in this circuit and hold that Petitioner prevails on her procedural due process claim. *See, e.g.*, *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 U.S. Dist. LEXIS 171892, at *9–10 (N.D. Cal. Sept. 3, 2025). *Cardenas Castellanos, et al. v. Kaiser*, 5:25-cv-07962-NW, 2025 U.S. Dist. LEXIS 183957, at *8–9 (N.D. Cal. Oct. 14, 2025).

C. Reclassifying Petitioner from § 1226(a) to § 1225(b)(1) violates procedural due Process.

Even though Petitioner is no longer in immigration removal proceedings, re-detaining her under § 1225(b)(1) and subjecting her to expedited removal proceedings would violate due process. *See Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 U.S. Dist. LEXIS 163056, *11 (N.D. Cal. Aug. 21, 2025); *Zapata v. Kaiser*, No. 25-cv-07492-RFL, 2025 U.S. Dist. LEXIS 190934, at *25 (N.D. Cal. Sept. 26, 2025) ("[E]ven if the immigration judge dismisses Petitioners' cases in their full removal proceedings, that alone would be insufficient to justify the government subjecting

them to expedited removal proceedings.") Respondents argue that, because Petitioner is in expedited removal proceedings, her detention is now mandatory. Return at 4. However, Respondents "fail to contend with the liberty interests created by the fact that the Petitioner[] in this case w[a]s released on recognizance. *See Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025) (emphasis in original). Petitioner does not lose that liberty interest "simply because [s]he is a noncitizen subject to expedited removal." *Otero v. Kaiser*, No. 25-cv-06536-NC, 2025 U.S. Dist. LEXIS 232899, at *20 (N.D. Cal. Nov. 26, 2025). "Having elected to proceed with full removal proceedings under § 1226, Respondents cannot now declare they are overwriting the record and institute § 1225 expedited removal proceedings." *Jaraba Oliveros v. Kaiser*, No. 25-cv-07117-BLF, at *11. Respondents thus cannot "switch[] tracks" mid-litigation and subject Petitioner to expedited removal without any regard for her due process rights. *Salcedo Aceros*, 2025 U.S. Dist. LEXIS 179594, at *21. To do so would amount to an impermissible post hoc rationalization. *See Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025).

II. Petitioner's re-detention violates substantive due process.

Whereas procedural due process "promotes fairness" in government decisions to deprive persons of their liberty by "require[ing] the government to follow proper procedures," substantive due process "prevent[s] governmental power from being used for purposes of oppression" by "barring certain actions regardless of the fairness of the procedures used to implement them." *Daniel v. Williams*, 474 U.S. 327, 331 (1986). Freedom from detention "lies at the heart of liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to the community, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Valencia Zapata v. Kaiser*,

2025 WL 2741654, at *11 –12 (N.D. Cal. Sep. 26, 2025) (holding that a similarly situated petitioner demonstrated serious questions going to the merits of their substantive due process claim); *Leiva Flores v. Albarran*, 2025 WL 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (same); *Bautista Pico v. Noem*, 2025 WL 3295382, at *3 (N.D. Cal. Nov. 26, 2025) (same); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may succeed on claim that the government lacks any legitimate reason to detain him").

As the Ninth Circuit has held, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Hernandez,* 872 F.3d at 994. When immigration officials released Petitioner on an Order of Recognizance in 2024, they made a determination that she was not a danger to the community or a flight risk. *See 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. § 236.1(c)(8) (allowing release only after making such findings).

Because the government does not even argue that Petitioner's re-detention would advance the only accepted rationales for civil detention—flight risk or danger—Petitioner has demonstrated her re-detention would violate substantive due process. *Zadvydas*, 533 U.S. at 690. The Supreme Court's holding in *Zadvydas* is not limited to admitted noncitizens. Return at 7; *Zadvydas*, 533 U.S. at 690, 716 (Kennedy J., dissenting).

Respondents assert that § 1225(b)(1)'s mandatory detention framework controls Petitioner's constitutional claim.[4] Return at 4. However, mandatory detention is subject to constitutional

[4] In their brief, Respondents cite to *Demore v. Kim*, Return at 6, in which the Supreme Court upheld 8 U.S.C. § 1226(c) because that statute covered people with criminal histories that were related to flight risk and danger to the community. 538 U.S. 510, 527–28 (2003). Nothing in *Demore*, or any other precedent, endorses Respondents

limitations. *See Zadvvdas*, 533 U.S. at 701. Courts regularly order the government to release noncitizens subject to mandatory detention on substantive due process claims. *See, e.g., Doe v. Chestnut*, No. 1:24-cv-00943-EPG, 2025 U.S. Dist. LEXIS 232754, at *72 (E.D. Cal. Nov. 26, 2025); *Doe v. Becerra*, 732 F. Supp. 3d 1071 (N.D. Cal. 2024). Although the Supreme Court has upheld facial challenges to mandatory detention, such as 8 U.S.C. § 1226(c), it has not "foreclose[d] as-applied challenges—that is, constitutional challenges to applications of the statute." *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019). An as-applied challenge, like Petitioner's substantive due process claim, require a petitioner to show only that "the application of the statute to a specific factual circumstance" is unconstitutional. *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, at * 4 (E.D. Cal. Aug. 21, 2025). Therefore Petitioner has still established that re-detention in *her* case, where she inarguably poses no risk of flight or danger to the community, violates substantive due process. *See id.*

III. Any potential post-final removal order detention cannot be excessive.

Petitioner acknowledges that by statute, Respondents may detain her for the 90-day period following a final removal of order. *See* Return at 9. However, a final removal order is not grounds for Respondents to detain Petitioner excessively. *See Zadvvdas*, 533 U.S. at 701. Petitioner thus asks the Court to closely scrutinize any post-90 day detention in the unlikely event that Petitioner receives a final order of removal, should Petitioner bring it to the Court's attention.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Date: February 6, 2026

Respectfully Submitted,

/s/ Jordan Weiner
Jordan Weiner

attempts to "switch[] tracks" and dismiss removal proceedings purely to strip a noncitizen of their procedural rights. *See Salcedo Aceros*, 2025 U.S. Dist. LEXIS 179594, at *21.