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**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**
**SAN FRANCISCO DIVISION**

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| LESLIE HERNANDEZ NIEVES,<br><br>Petitioner,<br><br>v.<br><br>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,<br><br>Respondents. | CASE No. 3:25-cv-06921-LB<br><br>**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

Respondents do not dispute that Petitioner Leslie Hernandez Nieves ("Petitioner"), an asylum seeker from Mexico, 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. Indeed, she was arrested at an immigration check-in that she dutifully attended. Respondents also do not respond to Petitioner's claim that her re-detention would violate the Due Process Clause. Instead, Respondents ask the Court to deny the petition as moot. However, Respondents offer no assurances that they will not again unlawfully Petitioner once the case is dismissed. Respondents' conduct also falls squarely within the voluntary cessation exception to the mootness doctrine. The Court should thus deny Respondents' request and grant the petition.

## I. Petitioner's petition for writ of habeas corpus is not moot.

In asking the Court to deny the petition as moot, Respondents claim that "Department of Homeland Security ("DHS") can no longer assert detention authority over Petitioner due to the dismissal of her removal proceedings." Return at 1. However, Respondents concede that "Petitioner's removal proceedings were dismissed so that ICE could pursue Expedited Removal pursuant to 8 U.S.C. § 1225(b)(1)." Return at 3. Respondents offer no assurances that they will not place Petitioner in expedited removal proceedings and re-detain her under 8 U.S.C. § 1225(b)(1) once this petition is dismissed, as they originally intended.

Respondents only explanation for why Petitioner is purportedly not at risk of future detention is because "ICE has declined to" pursue expedited removal "in the more than four months since the immigration judge granted dismissal." Return at 2. However, Respondents' explanation does not account for the fact that this Court issued a preliminary injunction prohibiting the government from re-detaining Petitioner without a pre-detention bond hearing. *See* Dkt. 23 at 9. As

such, Respondents refraining from re-detaining Petitioner under § 1225(b)(1) during the course of this litigation says nothing about their intentions once this case is dismissed.

Respondents' above reasoning also fits within the voluntary cessation exception to the mootness doctrine. It is well-established, "a defendant cannot automatically moot a case simply by ending its unlawful conduct once sued." *Brach v. Newsom*, 38 F.4th 6, 12 (9th Cir. 2022). Respondents point to no authority that would prevent them from placing Petitioner in expedited removal once this case is dismissed other than their own actions. Their conduct thus fits squarely within the voluntary cessation exception. *See id.*

Respondents are also wrong that "Petitioner has not presented any possible collateral consequences that can be redressed by the habeas petition." Return at 3. Petitioner is asking the Court to enjoin Respondents from re-detaining her without a pre-deprivation bond hearing. Dkt. 1 (Petition for writ of habeas corpus) at 14. Since Petitioner is even more vulnerable now that her immigration proceedings were dismissed, a pre-deprivation bond hearing is essential to safeguard her liberty interest in her continued freedom.

Respondents cite to this Court's decision in *Meza v Bonnar* as an example of a noncitizen's habeas petition being moot after the removal proceedings are dismissed. *See* No. 18-cv-02708-BLF, 2022 U.S. Dist. LEXIS 132969, at *14 (July 26, 2022); Return at 3. However, there, Ms. Meza's requested relief only concerned her "due process rights during the pendency of her removal proceedings." *See Meza*, No. 18-cv-02708-BLF, at *21. Here, however, Petitioner is challenging Respondents' conduct that is set to occur *after* her removal proceedings were dismissed, since Respondents concede that their motive in moving to dismiss Petitioner's removal proceedings was to place her in expedited removal. Return at 3. Unlike the petitioner in *Meza*, therefore, Petitioner's relief is not "tethered to [her] removal proceedings." *See* No. 18-cv-02708-BLF at *14.

Moreover, in *Meza*, the voluntary cessation except did not apply because Ms. Meza was the one who moved to dismiss her removal proceedings. *See id.* The infringement of her due process rights therefore ceased "not because of any voluntary conduct on the part of DHS." *Id.* at *20. Here, in contrast, Respondents are the ones who moved to dismiss Petitioner's immigration case to place her in expedited removal. Return at 3. The infringement of Petitioner's due process rights is thus ongoing. *See* No. 18-cv-02708-BLF at *20.

In sum, the Court should deny Respondents' request to find this case is moot.

## II. 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 2024, 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 1; *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).

**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.*

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 nearly two years. *See* Return at 1. She fled to the United States from Mexico after members of an organized criminal group threatened and attacked her. Dkt. 8 (Memorandum in support of TRO motion) at 8–9. She attended all of her immigration court hearings and ICE check-ins. *Id.* at 9. Now that her immigration removal proceedings have been dismissed, she may apply for asylum affirmatively at United States Citizenship and

Immigration Services (USCIS), which gives her a pathway to citizenship. As this Court has already found in granting the preliminary injunction, "petitioner has a private interest in remaining out of custody." Dkt. 23 (Order granting preliminary injunction) 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).

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).

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' arguments, 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.*, *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).

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

Any attempts to unilaterally reclassify Petitioner as subject to § 1225(b) 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). Respondents "fail to contend with the liberty interests created by the fact that the Petitioner[] in this case w[a]s released on recognizance *prior to the manifestation*" of the § 1225(b) classification. *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). Respondents thus cannot now "switch[] tracks" mid-stream. *See Salcedo Aceros*, 2025 U.S. Dist. LEXIS 179594, at *21; *See also Otero v. Kaiser*, No. 25-cv-06536-NC, 2025 U.S. Dist. LEXIS 232899, at *20 (N.D. Cal. Nov. 26, 2025). 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).

**III. Petitioner's re-detention would violate substantive due process.**

As to substantive due process, though this Court previously did not decide this claim, it can readily do so now. 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). As an initial matter, Respondents do not attempt to argue that Petitioner is a flight risk or danger to society, the only two constitutionally permissible reasons to detain a noncitizen. *See Zadvydas*, 533 U.S. at 690. They thus waive any opposition to Petitioner's argument that her re-detention violates her substantive due process rights. *See Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

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, 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).

Respondents have presented no evidence that Petitioner has since become a flight risk or danger to the community. It is undisputed that she has complied with all conditions of release, including attending all check-ins and immigration court hearings, and has no criminal history at all. Because the government cannot show 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 her substantive due process rights. *Zadvydas*, 533 U.S. at 690. Where, as here, the government does not even make bare allegations of flight risk or danger to justify detention, detention violates the Constitution regardless of the procedural protections involved.

Section 1225(b)'s mandatory detention framework is also subject to constitutional 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, even if Petitioner were subject to expedited removal under § 1225(b)(1), she 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.*

## IV. 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 3–4. 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.

## V. CONCLUSION

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

Date: February 4, 2026

Respectfully Submitted,

*/s/ Jordan Weiner*

Jordan Weiner