

1 JORDAN WEINER (SBN 356297)
2 Jordan@LRCL.org
3 La Raza Centro Legal
4 474 Valencia St., Ste 295
5 San Francisco, CA 94103
6 Telephone: (415) 553-3435

7 *Attorney for Petitioner*

8
9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**
13

14 MARIA JOSE JARABA OLIVEROS,

15 Petitioner,

16 v.

17 SERGIO ALBARRAN¹, Field Office Director of
18 the San Francisco Immigration and Customs
19 Enforcement Office; TODD LYONS, Acting
20 Director of United States Immigration and
21 Customs Enforcement; KRISTI NOEM,
22 Secretary of the United States Department of
23 Homeland Security, PAMELA BONDI,
24 Attorney General of the United States, acting in
25 their official capacities,

26 Respondents.
27

CASE No. 5:25-cv-07117-BLF

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

28 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

1
2 Respondents do not dispute that Petitioner Maria Jose Jaraba Oliveros (“Petitioner”), an
3 asylum seeker from Colombia, poses no flight risk or danger to the community. Nor could they;
4 she has complied with every requirement the immigration system has asked of her. Indeed, she
5 was arrested at an immigration check-in that she dutifully attended. Respondents also do not
6 respond to Petitioner’s claim that her re-detention would violate the Due Process Clause. Instead,
7 Respondents ask the Court to deny the petition as moot. However, Respondents offer no
8 assurances that they will not again unlawfully Petitioner once the case is dismissed. Respondents’
9 conduct also falls squarely within the voluntary cessation exception to the mootness doctrine. The
10 Court should thus deny Respondents’ request and grant the petition.
11

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

12
13 In asking the Court to deny the petition as moot, Respondents claim that “Department of
14 Homeland Security (“DHS”) can no longer assert detention authority over Petitioner due to the
15 dismissal of her removal proceedings.” Return at 1. However, Respondents concede that
16 “Petitioner’s removal proceedings were dismissed so that ICE could pursue Expedited Removal
17 pursuant to 8 U.S.C. § 1225(b)(1).” Return at 3. Respondents offer no assurances that they will not
18 place Petitioner in expedited removal proceedings and re-detain her under 8 U.S.C. § 1225(b)(1)
19 once this petition is dismissed, as they originally intended.
20

21 Respondents only explanation for why Petitioner is purportedly not at risk of future
22 detention is because “ICE has declined to” pursue expedited removal “in the more than four months
23 since the immigration judge granted dismissal.” Return at 2. However, Respondents’ explanation
24 does not account for the fact that this Court issued a preliminary injunction prohibiting it. *See* Dkt.
25 17. at 5 (“Having elected to proceed with full removal proceedings under § 1226, Respondents
26 cannot now declare they are overwriting the record and institute § 1225 expedited removal
27
28

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

3 Respondents’ above reasoning also fits within the voluntary cessation exception to the
4 mootness doctrine. It is well-established, “a defendant cannot automatically moot a case simply by
5 ending its unlawful conduct once sued.” *Brach v. Newsom*, 38 F.4th 6, 12 (9th Cir. 2022).

6 Respondents’ point to not authority that would prevent them from placing Petitioner in expedited
7 removal once this case is dismissed other than their own actions.² Their conduct thus fits squarely
8 within the voluntary cessation exception. *See id.*

9 Respondents are also wrong that “Petitioner has not presented any possible collateral
10 consequences that can be redressed by the habeas petition.” Return at 2–3. Petitioner is asking the
11 Court to enjoin Respondents from re-detaining Petitioner without a pre-deprivation bond hearing.
12 Dkt. 1 (Petition for writ of habeas corpus) at 14. Since Petitioner is even more vulnerable now that
13 her immigration proceedings were dismissed, a pre-deprivation bond hearing is essential to
14 safeguard her liberty interest in her continued freedom.

15 Respondents cite to this Court’s decision in *Meza v Bonnar* as an example of a noncitizen’s
16 habeas petition being moot after the removal proceedings are dismissed. *See* No. 18-cv-02708-BLF,
17 2022 U.S. Dist. LEXIS 132969, at *14 (July 26, 2022); Return at 3. However, there, Ms. Meza’s
18 requested relief only concerned her “due process rights during the pendency of her removal
19 proceedings.” *See Meza*, No. 18-cv-02708-BLF, at *21. Here, however, Petitioner is challenging
20 Respondents’ conduct that is set to occur *after* her removal proceedings were dismissed, since
21 Respondents concede that their motive in moving to dismiss Petitioner’s removal proceedings was
22
23
24
25
26

27 ² Although Respondents are prohibited under 8 U.S.C. § 1225(b)(1)(A)(iii)(II) from applying expedited
28 removal against Petitioner because she has been in the United States for over two years, Respondents do
acknowledge this limitation in their return, which is cause for concern for Petitioner.

1 to place her in expedited removal. Return at 3. Unlike the petitioner in *Meza*, therefore, Petitioner’s
2 relief is not “tethered to [her] removal proceedings.” *See* No. 18-cv-02708-BLF at *14.

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

9
10 In sum, the Court should deny Respondents’ request to find this case is moot.

11 **II. Re-detention without a pre-deprivation hearing before a neutral decisionmaker**
12 **violates Petitioner’s procedural due process rights.**

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

22
23 These principles apply with at least equal force to people like Petitioner, who was
24 conditionally released from civil immigration detention. After all, noncitizens living in the United
25 States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*
26 *v. Davis*, 533 U.S. 678, 690 (2017) And, “[g]iven the civil context [of immigration detention],
27 [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of
28

1 parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). After Petitioner entered
2 the country in 2023, immigration officials classified her as subject to 8 U.S.C. § 1226(a) and
3 released her on an Order of Recognizance, which is a type of conditional parole. *See* Return at 1;
4 *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) finding “release on
5 recognizance” synonymous with conditional parole); 8 C.F.R. § 236.1(c)(8) (setting standard for
6 conditional parole). That release created a liberty interest that “can be taken away only if the
7 government’s procedure for doing so accord[s] with due process.” *See Tellez v. Bondi*, No. 25-cv-
8 08982-PCP, 2025 U.S. Dist. LEXIS 262261, at *12 (N.D. Cal. Dec. 18, 2025).

10 **A. The *Mathews* Test Applies**

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

17 Here, *Mathews* factors weigh heavily in favor of prohibiting Petitioner’s re-detention
18 without a pre-deprivation hearing at which the government bears the burden of proof. *First*, the
19 private interest affected in this case is profound. When considering this factor, courts look to “the
20 degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193
21 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation here is high.
22 Petitioner has resided in the United States for over two years. *See* Return at 1. She fled to the
23 United States from Colombia after criminal groups threatened her. Dkt 6-1 at 1–2 (Declaration of
24 P.F. Gonzalez Montes de Oca). She attended her immigration court hearing the day she was
25 arrested because “wanted to do things right.” *Id.* at 2. As this Court has already found in granting
26 the preliminary injunction, “Petitioner a liberty interest that is protected by the Due Process
27 Clause.” Dkt. 17 (Order granting preliminary injunction) at 7.
28

1 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where “[the petitioner] has
2 not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No. 1:25-cv-00107,
3 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No. 19-cv-07996-NC,
4 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)).

5 *Third*, the government has no cognizable interest in detaining the Petitioner without a
6 hearing. As explained below, the only two constitutionally permissible reasons to detain a non-
7 citizen in civil immigration proceedings is if they are a flight risk or danger to the community.
8 And immigration courts routinely conduct custody hearings, which impose a “minimal” cost to the
9 government. *See A.E.*, 2025 WL 1424382, at *5. The harm to the government is therefore
10 negligible at most. *See Florez v. Robbins*, No. 1:25-cv-1897, 2025 U.S. Dist. LEXIS 265346 at
11 *22 (E.D. Cal. Dec. 23, 2025).

12 In this case, a post-deprivation hearing also does not provide sufficient process, because by
13 the time that the Petitioner is arrested, the constitutional violation—re-detention without changed
14 circumstances—will have already occurred. *See E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025
15 WL 2402130, at *16 (W.D. Wash. Aug. 19, 2025) (holding that a “post-deprivation hearing cannot
16 serve as an adequate procedural safeguard because it is after the fact and cannot prevent an
17 erroneous deprivation of liberty”); *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D.
18 Cal. 2025) (same); *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB, 2025 WL 2855193, at *7
19 (E.D. Cal. Oct. 8, 2025) (same, collecting cases); *R.A.N.O.*, No. 1:25-cv-01535-KES-EPG, 2026
20 U.S. Dist. LEXIS 1963, at *14–15 (same).

21 Finally, the government bears a clear-and-convincing burden of proof to remedy a due
22 process violation. The Ninth Circuit so held many years ago. *Singh v. Holder*, 638 F.3d 1196, 1203-
23 05 (9th Cir. 2011). Contrary to Respondents’ arguments, the Ninth Circuit has made clear that
24 “*Singh*’s constitutional holding . . . remains binding law of our court.” *Rodriguez Diaz v. Garland*,
25 83 F.4th 1177, 1179 (9th Cir. 2023) (Paez, J., respecting the denial of rehearing en banc); *see*
26
27
28

1 *Martinez v. Clark*, 124 F.4th 775, 784-86 (9th Cir. 2024) (confirming the government bears the
2 “clear-and-convincing burden of proof” at an immigration bond hearing ordered pursuant to the Due
3 Process Clause). The government bears the burden of proof here. For these reasons, this Court
4 should join the numerous district courts in this circuit and hold that Petitioner prevails on her
5 procedural due process claim. *See, e.g., Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025
6 U.S. Dist. LEXIS 171892, at *9–10 (N.D. Cal. Sept. 3, 2025). *Cardenas Castellanos, et al. v.*
7 *Kaiser*, 5:25-cv-07962-NW, 2025 U.S. Dist. LEXIS 183957, at *8–9 (N.D. Cal. Oct. 14, 2025).

8
9 **B. Reclassifying Petitioner from § 1226(a) to § 1225(b) violates procedural due
Process.**

10 Any attempts to unilaterally reclassify Petitioner as subject to § 1225(b) would violate due
11 process. *See Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 U.S. Dist. LEXIS 163056, *11
12 (N.D. Cal. Aug. 21, 2025). Respondents “fail to contend with the liberty interests created by the fact
13 that the Petitioner[] in this case w[a]s released on recognizance *prior to the manifestation*” of the §
14 1225(b) classification. *See Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist.
15 LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025) (emphasis in original). Respondents thus cannot
16 now “switch[] tracks” mid-stream. *See Salcedo Aceros*, 2025 U.S. Dist. LEXIS 179594, at *21; *See*
17 *also Otero v. Kaiser*, No. 25-cv-06536-NC, 2025 U.S. Dist. LEXIS 232899, at *20 (N.D. Cal. Nov.
18 26, 2025). To do so would amount to an impermissible post hoc rationalization. *See Lopez Benitez*
19 *v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025).

20
21
22 **III. Petitioner’s re-detention would violate substantive due process.**

23 As to substantive due process, though this Court previously did not decide this claim, it can
24 readily do so now. Whereas procedural due process “promotes fairness” in government decisions to
25 deprive persons of their liberty by “require[ing] the government to follow proper procedures,”
26 substantive due process “prevent[s] governmental power from being used for purposes of
27 oppression” by “barring certain actions regardless of the fairness of the procedures used to
28

1 implement them.” *Daniel v. Williams*, 474 U.S. 327, 331 (1986). As an initial matter, Respondents
2 do not attempt to argue that Petitioner is a flight risk or danger to society, the only two
3 constitutionally permissible reasons to detain a noncitizen. *See Zadvydas*, 533 U.S. at 690. They
4 thus waive any opposition to Petitioner’s argument that her re-detention violates his substantive due
5 process rights. *See Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

6 Freedom from detention “lies at the heart of liberty” protected by the Due Process Clause.
7 *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to the
8 community, immigration detention serves no legitimate government purpose and becomes
9 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v. Indiana*,
10 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests
11 in preventing flight and danger); *see also Valencia Zapata v. Kaiser*, 2025 WL 2741654, at *11–12
12 (N.D. Cal. Sep. 26, 2025) (holding that a similarly situated petitioner demonstrated serious
13 questions going to the merits of their substantive due process claim); *Leiva Flores v. Albarran*, 2025
14 WL 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (same); *Bautista Pico v. Noem*, 2025 WL 3295382,
15 at *3 (N.D. Cal. Nov. 26, 2025) (same); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL
16 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may
17 succeed on claim that the government lacks any legitimate reason to detain him”).

18
19
20 As the Ninth Circuit has held, “the government has no legitimate interest in detaining
21 individuals who have been determined not to be a danger to the community and whose appearance
22 at future immigration proceedings can be reasonably ensured by a lesser bond or alternative
23 conditions.” *Hernandez*, 872 F.3d at 994. When immigration officials released Petitioner on an
24 Order of Recognizance, they made a determination that she was not a danger to the community or a
25 flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom.*
26 *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 236.1(c)(8) (allowing
27 release only after making such findings).
28

1 Respondents have presented no evidence that Petitioner has since become a flight risk or
2 danger to the community. It is undisputed that she has complied with all conditions of release,
3 including attending all check-ins and immigration court hearings, and has no criminal history at all.
4 Because the government cannot show that Petitioner’s re-detention would advance the only
5 accepted rationales for civil detention—flight risk or danger—Petitioner has demonstrated her re-
6 detention would violate his substantive due process rights. *Zadvydas*, 533 U.S. at 690. Where, as
7 here, the government does not even make bare allegations of flight risk or danger to justify
8 detention, detention violates the Constitution regardless of the procedural protections involved.
9

10 Section 1225(b)’s mandatory detention framework is also subject to constitutional
11 limitations. *See Zadvvdas*, 533 U.S. at 701. Courts regularly order the government to release
12 noncitizens subject to mandatory detention on substantive due process claims. *See e.g., Doe v.*
13 *Chestnut*, No. 1:24-cv-00943-EPG, 2025 U.S. Dist. LEXIS 232754, at *72 (E.D. Cal. Nov. 26,
14 2025); *Doe v. Becerra*, 732 F. Supp. 3d 1071 (N.D. Cal. 2024). Although the Supreme Court has
15 upheld facial challenges to mandatory detention, such as 8 U.S.C. § 1226(c), it has not “foreclose[d]
16 as-applied challenges—that is, constitutional challenges to applications of the statute.” *See Nielsen*
17 *v. Preap*, 586 U.S. 392, 420 (2019). An as-applied challenge, like Petitioner’s substantive due
18 process claim, require a petitioner to show only that “the application of the statute to a specific
19 factual circumstance” is unconstitutional. *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB
20 (HC), 2025 WL 2420390, at * 4 (E.D. Cal. Aug. 21, 2025). Therefore, even if Petitioner were
21 subject to expedited removal under § 1225(b)(1), she has still established that re-detention in *her*
22 case, where she inarguably poses no risk of flight or danger to the community, violates substantive
23 due process. *See id.*
24
25

26 **IV. Any potential post-final removal order detention cannot be excessive.**

27 Petitioner acknowledges that by statute, Respondents may detain her for the 90-day period
28 following a final removal of order. *See Return* at 3–4. However, a final removal order is not

1 grounds for Respondents to detain Petitioner excessively. *See Zadvydas*, 533 U.S. at 701. Petitioner
2 thus asks the Court to closely scrutinize any post-90 day detention in the unlikely event that
3 Petitioner receives a final order of removal, should Petitioner bring it to the Court's attention.

4 **V. CONCLUSION**

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

6
7
8 Date: February 4, 2026

Respectfully Submitted,

9
10 */s/ Jordan Weiner*

11 Jordan Weiner
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28