

LAW OFFICE OF MITCHELL H. SHEN & ASSOCIATES
Mitchell H. Shen (SBN 297566)
Meng Qi (SBN 330823)
617 S Olive St., Suite 810
Los Angeles, CA 90014
Tel: (213) 878-0333
Fax: (213) 402-2169

DETAINED

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

**YANELA GHILARY HUAMAN
VILLANUEVA,**

Case No.: 1:25-CV-01218-KES

Petitioner,

PETITIONER'S RESPONSE TO
RESPONDENTS' OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER

vs.

Ron Murray, Warden Mesa Verde ICE
Processing Center; **Polly Kaiser**, Field Office
Director, U.S. Immigration and Customs
Enforcement; **Todd M. Lyons**, Acting Director,
U.S. Immigration and Customs Enforcement;
Kristi Noem, Secretary of United States
Department of Homeland Security; **Pam Bondi**,
Attorney General of the United States, in their
official capacities,

Defendant

1
2 **I. INTRODUCTION**

3 On September 23, 2025, Ron Murray, et. al. (“Respondents”) filed an opposition brief
4 (“Respondents’ Opposition”) to Petitioner Yanela Ghilary Huaman Villanueva’s (“Petitioner”) *ex*
5 *parte* motion for a temporary restraining order and preliminary injunction (“Petitioner’s Motion”).
6 The Court should reject Respondents’ arguments because they do not present any analysis and
7 instead conclusorily suggest Petitioner is wrong. Additionally, the Court should not be persuaded
8 by Respondents’ Opposition because it fails to address Petitioner’s Due Process claims, which are
9 the crux of Petitioner’s Motion and show why she is likely to succeed on the merits.
10
11

12 **II. ARGUMENT**

13 ***A. Respondents’ Opposition Does Not Address the Arguments Made in Petitioner’s***
14 ***Motion for a TRO and Preliminary Injunction***

15 In their opposition brief of September 24, 2025 (“Respondents’ Opposition”), Respondents
16 fail to address the arguments that Petitioner made in her Motion for a TRO and Preliminary
17 Injunction (“Petitioner’s Motion”). Instead, they summarily state that (1) Petitioner is not entitled to
18 a bond hearing under 8 U.S.C. § 1226(a); (2) even if Petitioner were entitled to such a hearing,
19 Petitioner was already afforded one on August 18, 2025; and (3) Petitioner’s appropriate remedy
20 at this stage is an appeal to the Board of Immigration Appeals (“BIA”), not a TRO. These
21 arguments are unpersuasive for the following reasons:
22

- 23 1. The plain text of Section 1226 demonstrates that subsection (a) applies to Petitioner, rather
24 than subsection (b) of Section 1225, as Respondents assert. By its own terms, § 1226(a)
25 applies to noncitizens, such as Petitioner, who are inadmissible pursuant to 8 U.S.C. §
26 1182(a). Respondents appear to argue that § 1225(b)(2) should be read to apply to everyone
27
28

1 who is in the United States “who has not been admitted,” but Section 1226(a) covers those
2 who are present within and residing within the United States and who are not at the border
3 seeking admission – like Petitioner, who has resided in the United States for the last two
4 and a half years. The Supreme Court has recognized that § 1225 is concerned “primarily
5 [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases “at
6 the Nation’s borders and ports of entry, where the Government must determine whether a[
7 [noncitizen] seeking to enter the country is admissible,” *id.* at 287. By its plain meaning,
8 Section 1225 does not apply to Petitioner, as Respondents assert.
9

- 10
11 2. The decision issued in Petitioner’s bond hearing on August 18, 2025 was effectively made
12 pursuant to a novel and likely unconstitutional interpretation of the INA issued by DHS to
13 all ICE Employees. July 8, 2025 Interim Guidance Regarding Detention Authority for
14 Applicants for Admission (“DHS Memo”). In this memo, DHS stated that it has “revisited
15 its legal position on detention and release authorities” and now considers that “an ‘applicant
16 for admission’ is an alien present in the United States who has not been admitted or who
17 arrives in the United States, whether or not at a designated port of arrival.” DHS Memo.
18 DHS also argued that “[e]ffective immediately, it is the position of DHS that such aliens
19 are subject to detention under INA § 235(b) and...[t]hese aliens are also ineligible for a
20 custody redetermination hearing (‘bond hearing’) before an immigration judge and may
21 not be released for the duration of their removal proceedings. In construing the statutory
22 regime in this way, DHS effectively directed its employees to treat these aliens “in the
23 same manner that ‘arriving aliens’ have historically been treated – thus subjecting large
24 swaths of immigrants who have been present in the United States for years, like Petitioner,
25 to mandatory detention.
26
27
28

1 3. Additionally, on September 5, 2025, the Board of Immigration Appeals (BIA), an agency
2 directly controlled by the Department of Justice (DOJ), adopted this same position. *See*
3 *same Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (ruling that the Immigration
4 Court lacks jurisdiction to consider bond hearings for applicants for admission who are
5 arrested and detained without a warrant); *see also Matter of Q. Li*, 29 I&N Dec. 66 (BIA
6 2025) (holding that individuals who are paroled but re-detained are subject to expedited
7 removal). In *Matter of Q. Li*, the BIA held that aliens such as Petitioner who were arrested
8 without a warrant while arriving in the United States, are detained under INA section
9 235(b) and are thus ineligible for subsequent release on bond under INA section 236(a) of
10 the INA, 8 U.S.C. § 1226(a). The consequences of this decision are enormous, as this
11 suggests that individuals released by DHS – no matter how long they have been present in
12 the United States – are still subject to expedited removal. Such a ruling directly contradicts
13 the statutory regime, which states that aliens who have been continuously physically present
14 in the United States for two years, are not governed by Section 1225(b). §
15 1225(b)(1)(A)(iii)(II).

16
17
18
19 4. Taken together, these cases show that the BIA is colluding with DOJ to advance the novel
20 mandatory-detention interpretation put forward in the DHS Memo. In Petitioner's case
21 before the Immigration Court, the IJ ruled that, pursuant to *Matter of Q. Li*, and *Matter of*
22 *Yajure Hurtado*, the Petitioner is subject to mandatory custody under INA Section 235(b).
23 The IJ also ruled that they, following *Matter of Q. Li* and *Matter of Yajure Hurtado*, the
24 Immigration Court lacked jurisdiction to set bond for the Petitioner. Thus, Petitioner's
25 August 18, 2025 bond hearing was fundamentally flawed, in that the Immigration Court did
26 not even consider the flight risk or danger to the community that Petitioner poses. By
27
28

1 disposing of Petitioner's case on jurisdictional grounds alone, the Immigration Court's
2 decision pursuant to that reading was effectively a foregone conclusion. Thus, Petitioner was
3 effectively deprived of her procedural protections in that hearing.
4

5 5. For these reasons, the appropriate remedy to the Immigration Court's adverse decision in
6 Petitioner's bond hearing is not to appeal to the BIA, which issued *Matter of Q. Li* and *Matter*
7 *of Yajure Hurtado*. Appealing to the BIA would be futile, since the BIA's reasoning in any
8 such appeal will simply be to rely on that court's own flawed decisions. For that reason,
9 Petitioner's only avenue for constitutional redress is an independent court that can
10 autonomously determine the constitutionality of Petitioner's detention. That is this Federal
11 Court.
12

13 ***B. Petitioner Has a Valid Due Process Claim Which Respondents Have Not Addressed***

14 Petitioner has raised a procedural and substantive Due Process Clause challenge to her
15 continued detention, which the Respondents have ignored their Opposition. The Due Process Clause
16 prohibits deprivations of life, liberty, and property without due process of law. *See* U.S. Const.,
17 amend. V. It is well-established that these protections extend to noncitizens present in the United
18 States. *Trump v. J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 1006, 221 L. Ed. 2d 529 (2025) ("It is well
19 established that the Fifth Amendment entitles aliens to due process of law' in the context of removal
20 proceedings"); *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653, (2001)
21 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens,
22 whether their presence here is lawful, unlawful, temporary, or permanent."). The Respondents'
23 Opposition does not address Petitioner's claims pursuant to Constitutional law, including what
24 changed circumstances exist to suddenly re-detain her without notice.
25
26

27 Noncitizen detainees, such as Petitioner, are entitled to procedural due process, meaning
28

1 “notice and opportunity to be heard ‘appropriate to the nature of the case.’” *J.G.G.*, 145 S.Ct. at
2 1006. “[T]he government’s discretion to incarcerate noncitizens is always constrained by the
3 requirements of due process.” *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). Noncitizen
4 detainees, such as Petitioner, are also entitled to substantive due process, which “protects individuals
5 from government action that interferes with fundamental rights.” *Regino v. Staley*, 133 F.4th 951,
6 959-60 (9th Cir. 2025). This includes protection from arbitrary government confinement, since
7 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical
8 restraint—lies at the heart of the liberty [the Due Process Clause] protects.” *Zavydas*, 533 U.S. at
9 690.

10
11
12 To determine whether detention violates procedural due process, courts apply the three-part
13 test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Under
14 *Mathews*, courts weigh the following three factors: (1) “the private interest that will be affected by
15 the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures
16 used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
17 Government’s interest, including the function involved and the fiscal and administrative burdens that
18 the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335. The
19 facts in this case demonstrate that all three *Mathews* factors weigh heavily in Petitioner’s favor.
20

- 21
22 1. First, Petitioner’s interest in being free from imprisonment, “the most elemental of liberty
23 interests,” is substantial. *Hamdi*, 542 U.S. at 529. In the United States, liberty is the norm
24 and detention “is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739,
25 755, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987); see also *Rodriguez Diaz*, 53 F.4th At 1207
26 (“An individual’s private interest in freedom from prolonged detention is unquestionably
27 substantial.”) Here, Petitioner has suffered substantial harms attendant to her detention—
28

1 including being separated from her family, losing the ability earn an income, mental and
2 emotional distress, and difficulty communicating with her counsel and gathering evidence in
3 preparation for her removal proceedings. Petitioner has thus clearly established that the first
4 *Mathews* factor weighs strongly in her favor.
5

6 2. The second *Mathews* factor addresses “the risk of an erroneous deprivation of [Petitioner’s]
7 interest through the procedures used, and the probable value, if any, of additional or substitute
8 procedural safeguards.” *Mathews*, 424 U.S. at 335. Petitioner’s ongoing detention creates an
9 extreme risk of erroneous and arbitrary confinement since, in denying Petitioner’s bond
10 hearing, the Immigration Court indicated it has adopted the BIA’s reasoning in *Matter of Q.*
11 *Li* and *Matter of Yajure Hurtado*, which itself aligns a novel policy from DHS that likely
12 violates federal law. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA
13 indicated it has adopted DHS’s reading of the INA consistent with a July 8, 2025 Notice to
14 DHS employees. Accordingly, as argued above, the Immigration Court’s denial of
15 Petitioner’s bond hearing was fundamentally flawed. Because the IJ denied Petitioner’s bond
16 hearing pursuant to DHS’s new policy – a policy that will likely prove unconstitutional –
17 Petitioner was erroneously and arbitrarily deprived of core procedural protections, as
18 *Mathews* warns against. Thus, this factor weighs in Petitioner’s favor.
19
20

21 3. The final *Mathews* factor considers the “Government’s interest, including the function
22 involved and the fiscal and administrative burdens that the additional or substitute procedural
23 requirement would entail.” 424 U.S. at 335. Respondents make no argument regarding their
24 interest in continuing to detain Petitioner, which itself demonstrates that the Government’s
25 interest in Petitioner’s ongoing detention is minimal. Respondents do not argue that the
26 Government has a “legitimate interest in detaining individuals who have been determined
27
28

1 not to be a danger to the community and whose appearance at future immigration
2 proceedings can be reasonably ensured by a lesser bond or alternative conditions.”
3 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Thus, in failing to articulate any
4 reason why Petitioner – who has no criminal history and who is not a flight risk, and who
5 was taken into custody while lawfully appearing at her ICE check-in – should be detained,
6 the question arises whether the purpose of the detention is “to incarcerate for other reasons,”
7 including unconstitutional ones. *Demore*, 538 U.S. at 532-33. Because Respondents’
8 Opposition does not articulate the Government’s interest in continuing to detain Petitioner,
9 this factor should also weigh in Petitioner’s interest.

10
11
12 In their Opposition, Respondents completely ignore Petitioner’s substantive due process
13 arguments. Government detention violates substantive due process unless it is ordered in a criminal
14 proceeding with adequate procedural protections, or in non-punitive circumstances “where a special
15 justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical
16 restraint.” *Zadvydas*, 533 U.S. at 690. Noncitizens like Petitioner have a fundamental liberty interest
17 in their right to “live and work in this land of freedom,” which Petitioner has peacefully enjoyed for
18 over two years. *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed. 2d 21 (1982).
19 Respondents here have not articulated *any* interest—let alone a compelling interest—to justify
20 Petitioner’s ongoing detention and have instead ignored the due process protections that should have
21 been governed Petitioner’s case. Respondents have not presented any changed circumstances that
22 warrant re-detaining Petitioner without notice. Where no changed circumstances exist and no notice
23 is given, due process is violated. Accordingly, in addition to finding that the challenged regulation
24 violates procedural due process, the Court should find that Respondents’ continued detention of
25 Petitioner violates her procedural and substantive due process rights.
26
27
28

III. CONCLUSION

For the foregoing reasons, the Court should deny Respondents' Opposition to Petitioner's Motion for a TRO.

Dated: 9/25/2025

A handwritten signature in black ink, appearing to read "MS", is written over a horizontal line.

Mitchell H. Shen, Esq.
Attorney for Petitioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner, certifies that this Memo contains 2158 words, which complies with the word limit of L.R. 11-6.1.