Kate Lewis (CA 327952)
COMMUNITY LEGAL SERVICES IN EAST PALO ALTO
1861 Bay Road
East Palo Alto, CA 94303
Telephone: (650) 422-2889

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LESBIA JESENIA LEIVA FLORES

Petitioner-Plaintiff,

v.

SERGIO ALBARRAN et al.,

Respondents-Defendants.

CASE NO. 3:25-cv-09302-AMO

PETITIONER-PLAINTIFF'S REPLY TO ORDER TO SHOW CAUSE

Date: November 19, 2025
Time: 9:00 a.m.

Hon. Araceli Martínez-Olguín

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

INTRODUCTION

Respondents spend much of their response to the Order to Show Cause arguing that they are authorized to detain Petitioner indefinitely. They rest their arguments on the issuance of a Form I-860, Notice and Order of Expedited Removal, in Petitioner's case. Response ("Resp.") at 7. However, this document, which shows that the order of removal was unsigned and unverified by a supervisor, and not served on Petitioner as required by regulations, demonstrates that Petitioner was never actually placed in expedited removal. DO Dec., Exh. 2; *see* 8 C.F.R. §§ 235.3(b)(2), (b)(7). Instead, Respondent's own documents, which they issued to Petitioner at the border, indicate that she was released under the discretionary provisions in 8 U.S.C. § 1226(a). Lewis Dec., Exh. B. Respondents cannot now reverse course.

Regardless, this court need not reach the matter of the statutory authority for Petitioner's detention, because the violations of Petitioner's due process rights alone support the grant of a preliminary injunction. Respondents do not claim that Petitioner is a flight risk or a danger to the community, or that there has been any change in circumstances since Petitioner was released more than four years ago. Nor do they respond to binding precedent establishing that unlawful detention is a quintessential form of unlawful harm. Respondents are also unable to distinguish this case from the "tsunami" of district court decisions in recent weeks that have issued preliminary relief in similar circumstances. *See, e.g., Maklad v. Murray,* 2025 U.S. Dist. LEXIS 153675 (E.D.Cal. Aug. 8, 2025). This Court should also issue that relief.

ARGUMENT

I. Petitioner Is Not Subject to Mandatory Detention.

a. Respondent is Not Subject to Expedited Removal

Should the Court reach the detention statue question, it should find that Petitioner is not subject to mandatory detention under § 1225(b). First, Petitioner has not been ordered removed

under expedited removal or even placed in expedited removal proceedings. The Order of Removal on Respondent's Form I-860 (Notice and Order of Expedited Removal) is blank and unsigned. DO Dec., Exh. 2. 8 C.F.R. § 235.3(b)(2) requires that an officer seek supervisory concurrence before issuing an expedited removal order on Form I-860. 8 C.F.R. § 235(b)(7) adds that "Any removal order entered by an examining immigration officer pursuant to section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final" (emphasis added). Petitioner's Form I-860 lacks signatures by either the immigration officer who supposedly ordered her removed or the supervisor who concurred. DO Dec., Exh. 2. Although it is clear from the upper half of the form that a Border Patrol Agent found Petitioner inadmissible, the bottom half, pertaining to the "Order of Removal Under Section 235(b)(1) of the Act," is blank, indicating that no order was ever issued. [1] *Id.* It also lacks a signed proof of service, indicating that neither the order nor the allegations were ever served on Petitioner as required by 8 C.F.R. § 235.3(b)(2). *Id.*

Respondents acknowledge that the expedited removal order was never fully executed, which they say is because Petitioner claimed a fear and thus was pending a credible fear interview. Resp. at 5, fn. 3. They nonetheless argue Petitioner was placed into expedited removal proceedings upon arrival in 2021 and that therefore she remains in expedited removal now. Resp. at 10. This position is an extraordinary one. Respondents note that Congress created expedited removal in order to expedite the removal of certain noncitizens lacking legal basis to remain in the country. Resp. at 1. But this intent conflicts directly with Respondents' own actions, in which they have shown no urgency to process Petitioner for expedited removal, never served her with a Form I-860, and

[1] 8 U.S.C. § 1252(e)(2) specifically allows challenges of expedited removal orders in habeas corpus proceedings in limited circumstances, including, as here, "whether the petitioner was ordered removed" under 8 U.S.C. 1225(b)(1).

never provided her with a credible fear interview as required by 8 U.S.C. § 1225(b)(1)(A)(ii). Respondents' insistence that Petitioner is in expedited removal runs contrary to their consistent and long-term failure to comply with the statutory and regulatory requirements for expedited removal in Petitioner's case.[2]

Meanwhile, in her more than four years in the United States, Petitioner has done everything she can to obey the terms of her release. *See* Lewis Dec., Exh. A. There is no dispute that she complied with her ICE check ins, which happened one to two times a year. *See* Lewis Dec., Exh. B. She even applied affirmatively for asylum before USCIS in order to move her fear of return claim forward after the government failed to give her a credible fear interview. *See* Lewis Dec., Exh. D. Respondents have had every opportunity to provide her with a credible fear interview—at the border, after any of her six ICE-checks in upon release—but they have not.

Put simply, until the government's expansion of expedited removal earlier this year, Respondents had not taken a single action consistent with pursuing expedited removal against Petitioner since her release from detention. This makes sense, because as discussed *infra,* shortly after her release, Respondents issued Petitioner an order on release on recognizance document indicating that she was released under 8 U.S.C. § 1226(a). Lewis Dec., Exh. B. Now they are attempting to walk this determination back.

Nor can Respondents initiate expedited removal proceedings against Petitioner today. Petitioner has been paroled into the United States, and a federal judge has issued an order staying any enforcement of recent agency actions applying expedited removal proceedings to noncitizens who were previously paroled. *See CHIRLA* at *84 (D.D.C. Aug. 1, 2025); Lewis Dec., Exh. C.

b. Petitioner was Released under 8 U.S.C. § 1226(a)

[2] This position would suggest that, if Petitioner is re-arrested by Respondents, they can continue to detain her under § 1225(b)(2)(1) mandatory detention indefinitely—perhaps an additional four years—while still refusing to schedule her for a credible fear interview.

Petitioner is currently subject to 8 U.S.C. § 1226(a) and not § 1225(b)(1), as Respondents now claim. Indeed, Respondents issued Petitioner ICE Form I-220A, which states that she was being released on her own recognizance ("OREC") "[i]n accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226]." Lewis Dec., Exh. C. A district judge in New York recently examined release documents, such as Form I-220A, Order of Release on Recognizance, finding that they "unequivocally establish that [the petitioner] was detained pursuant to Respondents' discretionary authority under § 1226(a)." *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). Petitioner has not been given a credible fear interview—required under § 1225(b)(1)(A)(ii) for all those arriving in the United States who claim a fear of return to their home country—during her more than four years in the United States, which also undermines the government's arguments that she has been detained under § 1225(b)(1) all along. *See* Lewis Dec., Exh. D.

Although Respondents may have initially intended to process Petitioner under §1225(b)(1), the blank, unserved I-860 makes clear that it was ultimately abandoned. DO Dec., Exh. 2. In this context, the OREC document clearly reflects an acknowledgement by ICE that, at the time the I-220A was issued, Petitioner was subject to § 1226(a) because she was residing in the interior of the country and thus no longer "seeking admission."[3] Lewis Dec., Exh. B.

Respondents now claim that the I-220A was issued in error, citing to a declaration submitted by a Deportation Officer assigned to Petitioner's case. DO Dec. at ¶ 10. But a

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[3] The OREC document was issued September 14, 2021, prior to the BIA decision *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). The government's position at that time, and for decades until the unprecedent *Yajure Hurtado* decision, was that noncitizens encountered in the interior were processed under § 1226(a), regardless of their manner of entry. *Yajure Hurtado*, 29 I&N Dec. at 225 fn.6. The OREC document given to Petitioner is consistent with that position. Subsequently, as mentioned *supra*, a wave of district court decisions have found *Yajure* wrongly decided.

declaration created by an ICE officer in 2025, for the purposes of this litigation, cannot change *ex post facto* a determination made in 2021 by a completely different officer. *See* Lewis Dec., Exh. B. Furthermore, no real explanation is provided for why this was an error at the time, other than its factual inconvenience to Respondents. Respondents state that Petitioner could not have been properly issued OREC documents because she was subject to § 1225(b)(1) expedited removal, but that is not true, as discussed *supra.* Resp. at 9. Respondents also claim she could not be released on OREC because she had already been paroled one month earlier. *Id.* But Respondents also note that Petitioner's parole was temporary under a class action preliminary injunction in *Fraihat v. ICE*, 445 F.Supp. 3d 709 (C.D. Cal. 2020). Resp. at 10.

Certainly, it is not anomalous to be issued both OREC and parole: such was the case for Petitioners in, for example, *Maklad v. Murray et al.*, 2025 U.S. Dist. LEXIS 153675 and *N.A. v. Larose*, 2025 U.S. Dist. LEXIS 198688 (S.D. Cal 2025). As Respondents note, release under *Fraihat* indicated that Petitioner was "at heightened risk of severe illness and death upon contracting the COVID-19 virus." Resp. at 5; *Fraihat v. ICE*, 445 F.Supp. 3d at 736 (C.D. Cal. 2020). A *Fraihat* release and a subsequent OREC determination thus served two different functions: the former, a temporary release given the context of the global pandemic, and the latter, a more permanent (subject to any changed circumstances in her case) finding that Petitioner did not represent a flight risk or danger to the community.

c. *Yajure Hurtado* Was Wrongly Decided

Respondents argue that Petitioner is subject to mandatory detention under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that every single noncitizen who enters without inspection is considered an "applicant for admission" and thus subject to mandatory detention under § 1225(b). Resp. at 7. Judges all over the country, including in this district, have disagreed with this proposition. In one example, *Salcedo Aceros v. Kaiser*, a judge in this district

issued a comprehensive rejection of the government's application of section 1225(b)(2) in this manner, rooted in the text, structure, agency application, and legislative history of the statute. *See* 2025 U.S. Dist. LEXIS 179594 at *24-32.

Salcedo Aceros is also rooted in precedent: for decades, courts and agencies have recognized that the detention of individuals who entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default discretionary detention statute that permits release by DHS or an immigration judge. Regulations promulgated nearly thirty years ago provide that noncitizens "who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Respondents also consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N. Dec. 93 (BIA 2009); *Matter of D–J–*, 23 I&N. Dec. 572 (A.G. 2003); Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

The Supreme Court explained in *Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018) that discretionary detention governs the cases of those, like Petitioner, who are "already in the country" and are detained "pending the outcome of removal proceedings.". In contrast, section 1225(b) concerns decision making by immigration officials at "the Nation's borders and ports of entry." *See id.* at 287. The plain text of section 1225(b)(2)(A) shows it only applies to people at the border. Section 1225(b)(2)(A) states: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." (emphasis added). The phrase "seeking admission" implies a present-tense

action. Someone who is already in the United States is no longer "seeking admission" because they have already entered and, in the case of Petitioner, have lived in the United States for over four years.[4] If the phrase "seeking admission" did not modify the phrase "applicant for admission," then there would be no reason to include it. *See Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594 at *16 (invoking the rule against surplusage). Respondents' reading of the statute that non-citizens who have entered the United States and lived here for years are still "seeking admission" is thus "unnatural and ignores the tense of the term." *See id.* Petitioner also respectfully refers the Court to the following additional comprehensive explanations for why § 1225(b)(2)(A) does not apply to noncitizens living in the interior of the United States: *Lopez Benitez*, No. 25-cv-5937, 2025 WL 2371588, at *5–9. *Martinez*, 2025 WL 2084238, at *2-8; *Gomes v. Hyde*, No. 25-cv-11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025)); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 U.S. Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz. Aug. 11, 2025).

In sum, Petitioner, who has no criminal history, is subject to discretionary detention under 8 U.S.C. § 1226(a). *See* Lewis Dec. In line with the reasoned analysis of these authorities, this Court—if it reaches the question—should reject the government's contrary new statutory interpretation.

II. The Due Process Clause Protects Petitioner's Liberty Interests.

[4] Several courts have used the following example: "[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as 'seeking admission' (or 'seeking' 'lawful entry') at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there." *Salcedo Aceros*, No. 3:25-cv-06924-EMC at *17 (citing *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7.

Regardless of whether Petitioner is detained under § 1225(b) or § 1226(a), however, her re-detention has resulted in an unconstitutional violation of her rights. And indeed, the Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007).

a. Respondent's Detention Violates Her Substantive Due Process Rights

Here, Petitioner maintains a strong liberty interest in her freedom based on more than four years of living in and working in the United States. Lewis Dec., Exh. A; *See Maklad v. Murray et al.*, 2025 U.S. Dist. LEXIS 153675 at *12 ("When an immigrant is placed into parole status after having been detained, a protected liberty interest may arise.")(*citing Young v. Harper*, 520 U.S. 143, 147-149 (1997)); *see also Ortega v. Bonnar*, 415 F. Supp. 3d (N.D.Cal. 2019)("Just as people on preparole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond.") This interest is not disturbed by claims that she is subject to mandatory detention under § 1225(b). As the court in *Espinoza v. Kaiser* pointed out, "even assuming Respondents are correct that § 1225(b) is the applicable detention authority for all 'applicants for admission,' Respondents fail to contend with the liberty interests created by the fact that the Petitioners in this case were released on recognizance prior to the manifestation of this interpretation." *See* No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025); *see also Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 142213 (N.D.Cal. 2025) at *16 (". . . even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.").

Respondents claim that, because Petitioner was initially released under *Fraihat*, 445 F.Supp. 3d 709, she did not develop the same liberty interest as she may have under an "affirmative,

voluntary parole determination." Resp. at 11. But even if that is true, Respondents ignore that Petitioner was *also* issued an order releasing her on her own recognizance. *See* Lewis Dec., Exh. B. Whereas in *Giorges v. Kaiser,* No. 25cv7683-NW, 2025 U.S. Dist. LEXIS 201578 (N.D.Cal. 2025), the court held that the petitioners in that case "could not reasonably claim that the government promised [them] ongoing freedom" in the context of a temporary release from custody under *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36 (N.D. Cal. 2020), the same cannot be said for Petitioner here. Respondents' decision to issue Petitioner documents releasing her on her own recognizance represented an "affirmative, voluntary" determination that she was neither a flight risk nor a danger to the community and thus need not be detained. *See* Resp. at 11; *see also Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Respondents complied with this determination well past the vacatur of *Fraihat,* 445 F.Supp. 3d 709, in *Fraihat v. ICE*, 16 F.4th 613 (9th Cir. Oct. 20, 2021), and even past the end of the federal COVID public health emergency in 2023[5]. These actions suggest that, once Respondents issued Petitioner the OREC document, her freedom was not meant to be temporary after all. A liberty interest developed thereafter.[6]

Respondents have not made any allegations that Petitioner's re-detention resulted from an assessment of either danger or flight risk, the sole lawful bases for immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because she has a liberty interest in her freedom, and there has been no change in circumstances to justify her re-arrest, her detention is punitive and therefore unconstitutional. Because it is unconstitutional, Respondents should be enjoined from re-detaining her absent a change in circumstances.

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[5] *End of the Federal COVID-19 Public Health Emergency (PHE) Declaration*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://archive.cdc.gov/www_cdc_gov/coronavirus/2019-ncov/your-health/end-of-phe.html (last visited Nov. 12, 2025).

[6] In *Doe v. Albarran*, No. 25-cv-08774-VC (N.D.Cal. Nov. 10, 2025), the court considered the case of another petitioner who had been released on *Zepeda Rivas*. It found that the petitioner had a liberty interest in his freedom because the government had chosen to allow him to remain free long after the end of the COVID-19 crisis and had issued him a work permit. Here, Petitioner's OREC document adds an additional layer of liberty interest.

b. Because Petitioner Has a Liberty Interest in Her Freedom, Her Re-Arrest Violated Procedural Due Process

Respondents' suggestion that Petitioner is not entitled to due process protections outside of those afforded under 8 U.S.C. § 1225 is wrong, regardless of the statutory authority for her arrest. *See* Resp. at 13. Because, as discussed *supra*, Petitioner has a liberty interest in her freedom, she is entitled to a pre-deprivation hearing before she is re-detained. *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

Respondents claim that the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)—which is used to determine what procedural protections are due when a liberty interest is at stake—does not apply because the Supreme Court has not used the test to address mandatory detention challenges. Resp. at 12, fn. 8. However, the Ninth Circuit has "assume[d] without deciding" that *Mathews* applies in the immigration detention context. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining "it remains a flexible test"); *accord Pinchi,* 2025 U.S. Dist. LEXIS 142213, at *9 (discussing *Rodriguez-Diaz*); *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing procedures). Courts in this circuit also regularly apply *Mathews* in due process challenges in identical or similar circumstances to those here. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, at *9. Thus, consistent with recent decisions in factually similar cases, this Court should grant the preliminary injunction preventing Petitioner's re-detention. *See Pinchi,* 2025 U.S. Dist. LEXIS 142213 at *18 (converting TRO requiring release of asylum seeker arrested at immigration court into preliminary injunction prohibiting Government from re-detaining her without hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025); *Castellon v. Kaiser*, No. 1:2-cv-00968, 2025 WL 2373425, at *24 (N.D. Cal. Aug. 14, 2025).

c. If a Pre-Deprivation Hearing Is Necessary, It Should Be Held before This Court

Finally, Petitioner kindly requests that, if a pre-deprivation be scheduled, it be heard by this Court. "A neutral judge is one of the most basic due process protections." *Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003). Immigration judges ("IJs") and the Board of Immigration Appeals ("BIA") should be unbiased, neutral decisionmakers that decide cases litigated between the Department of Homeland Security and the noncitizen. However, in practice, immigration bond hearings are conducted in an informal manner by IJs who are susceptible to political pressure. *See* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024). Recent scholarship evaluating the quality of bond rulings in immigration court has characterized bond hearings as "law-free zones" and "implicit bias minefields." Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025).

To begin, IJs are not independent adjudicators. They are career attorneys with the Department of Justice who report to the Attorney General, making them "very susceptible to pressure from above to decide cases in a certain way." *Accord* Musalo, 65 B.C. L. Rev. at 2755; Holper, 74 Duke L.J. at 1010. A number of appellate judges "have suggested that the immigration courts are fundamentally incompetent, biased, or both." Adam B. Cox, *Deference, Delegation, and Immigration Law*, 74 U. Chi. L. Rev. 1671, 1682 (2007); *see, e.g.*, *Benslimane v Gonzales*, 430 F3d 828, 830 (7th Cir 2005) ("[T]he adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice.").

In recent months, President Trump began a purge of immigration judges and BIA members, highlighting the agency's lack of independence. [7] As a consequence, in the ten months since January

[7] *See* Law 360, *Trump Admin to Nearly Halve Immigration Appeals Board* (Feb. 20, 2025),

20, 2025, the BIA has issued at least 53 precedent decisions.[8] Either all or nearly all of these decisions found against the noncitizen, including many that reversed IJ decisions which had found in favor of the noncitizen in bond proceedings. *See id.*; *E.g.*, *Matter of Salas Pena*, 29 I&N Dec. 173 (BIA 2025); *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025). By contrast, in all of 2024 the BIA issued just 14 precedent decisions, some of which were in favor of the DHS while others favored the noncitizen.[9] A group of former immigration judges told journalists that the Trump administration's treatment of the immigration court system, including the mass firing of any judge seen to be granting too many cases, has presented an "unprecedented threat to judicial independence and is eroding immigrants' due process rights."[10] In this context, neutral adjudication in the immigration court system has been increasingly hard to find.

Respondents do not dispute Petitioner has no criminal history and has been complying with the terms of her release, including attending her ICE check-ins. Respondents do not dispute that Petitioner is not a flight risk or a danger to the community. Because Respondents have offered no legitimate statutory authority to support Petitioner's redetention, there is no reason that a pre-deprivation hearing be scheduled at this time. However, should one be scheduled, due process principals suggest that it be scheduled with this Court.

III. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner's Favor.

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https://www.law360.com/articles/2300903/trump-admin-to-nearly-halve-immigration-appeals-board (last visited Nov. 12, 2025); *see* also Bustillo, Ximena and Anusha Mathur, NPR, *The DOJ has been firing judges with immigrant defense backgrounds* (Nov. 6, 2025), https://www.npr.org/2025/11/06/g-s1-96437/trump-immigration-judges-fired (last visited Nov. 12, 2025).

[8] *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 29*, https://www.justice.gov/eoir/volume-29 (last visited Nov. 12, 2025).

[9] *See* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 28*, https://www.justice.gov/eoir/volume-28 (last visited Nov. 12, 2025).

[10] Poggio, Marco, Law360, *Judges See An Immigration Court Gutted From Inside* (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside (last visited Nov. 12, 2025).

Petitioner faces irreparable injury in the form of constitutional harm of the highest order if the preliminary injunction is not granted. *See Pinchi*, 2025 U.S. Dist. LEXIS 142213, at *18 (collecting cases). The public interest likewise weighs strongly in Petitioner's favor, because "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020).

CONCLUSION

For the foregoing reasons, this Court should grant the preliminary injunction.

Date: November 12, 2025

Respectfully Submitted,

/s/ Kate Lewis
Kate Lewis

Attorney for Petitioner