

1 Jenna Gilbert* (CA SBN 275412)
JGilbert@mofocom
2 Laura Lively Babashoff* (CA SBN 323922)
LLively@mofocom
3 Emma Zurcher Burgoon* (CA SBN 348097)
EBurgoon@mofocom
4 Morrison & Foerster LLP
707 Wilshire Boulevard, Suite 6000
5 Los Angeles, California 90017-3543
Telephone: 213.892.5200
6 Facsimile: 213.892.5454

7 Jana Whalley* (CA SBN 318367)
JWhalley@publiccounsel.org
8 Helen Boyer* (PA SBN 325887)
HBoyer@publiccounsel.org
9 Public Counsel
610 South Ardmore Avenue
10 Los Angeles, California 90005
Telephone: 213.385.2977
11 Facsimile: 213.201.4727

12 *Admitted Pro Hac Vice

13 Attorneys for Petitioner
14 F.B.

15 UNITED STATES DISTRICT COURT
16 DISTRICT OF ARIZONA

17 F.B.,

18 Petitioner,

19 v.

20 Kristi Noem, Secretary, Department of
21 Homeland Security; Pam Bondi, Attorney
22 General; Immigration and Customs
23 Enforcement; Todd Lyons, Acting Director,
24 Immigration and Customs Enforcement;
25 Gregory J. Archambeault, Field Office
Director of the San Diego Field Office of
U.S. Immigration and Customs Enforcement;
and David R. Rivas, Warden, San Luis
Regional Detention Center,

26 Respondents.
27
28

Case No. 2:25-CV-04271-JJT JZB

**REPLY IN SUPPORT OF
PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PETITION FOR
WRIT OF HABEAS CORPUS**

Oral Argument Requested

1 **I. INTRODUCTION**

2 Petitioner's request for a TRO should be granted because she has demonstrated that
3 she is likely to succeed on the merits of her due process claims, likely to suffer irreparable
4 injury if relief is not granted, and the balance of equities and public interest weigh heavily
5 in her favor. Petitioner respectfully requests the Court grant her request for a TRO directing
6 Respondents to immediately release her from detention, which would return her to the status
7 quo ante. Alternatively, Petitioner requests the Court order her release within 7 days unless
8 Respondents schedule a bond hearing before an Immigration Judge earlier than 7 days.¹

9 **II. ARGUMENT**

10 Petitioner's continued detention violates the Fifth Amendment to the United States
11 Constitution, she risks irreparable harm absent immediate relief, and the public interest and
12 equities weigh heavily in her favor.

13 **A. Petitioner is Likely to Succeed on the Merits of Her Procedural Due**
14 **Process Claim Because Her Detention is Unlawful**

15 Respondents argue that Petitioner cannot establish a likelihood of success on the
16 merits of her habeas petition because Petitioner is subject to mandatory detention under 8
17 U.S.C. § 1225(b)(2).² (ECF No. 7 at 8, 10.) Regardless of the statutory provision
18 Respondents claim justifies Petitioner's detention, Petitioner is likely to succeed on the
19 merits of her habeas petition because she was entitled to due process prior to Respondents'
20 decision to re-detain her and Respondents' failure to provide such due process makes her
21

22 ¹ Respondents' filing on November 25, 2025 (ECF No. 7) is titled as a combined response
23 to Petitioner's request for a TRO and her habeas petition. Respondents have confirmed in
24 meet and confer communications that their filing constitutes both. Petitioner replies here
25 only in support of her request for a TRO and preserved her ability to file a separate and
26 additional reply in support of her petition by Friday, December 5, 2025, per the deadlines
27 set in the Court's November 18, 2025 Order. (ECF No. 6.)

28 ² Respondents maintain this position despite recent decisions like *Echevarria v. Bondi*
holding that the application of § 1225 is "more limited than what the plain text [] might
indicate." No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. Oct.
3, 2025) ("[W]hen § 1225 was considered alongside its § 1226 companion, this
comparison demonstrates that the most natural interpretation of § 1225 is that it applies to
aliens encountered as they are attempting to enter the United States or shortly after they
gained entry without inspection.") (internal quotations omitted).

1 detention unlawful.³

2 The inquiry on Petitioner's procedural due process claim proceeds in two steps:
3 "[T]he first asks whether there exists a protected liberty interest under the Due Process
4 Clause, and the second examines the procedures necessary to ensure any deprivation of that
5 protected liberty interest accords with the Constitution." *Fernandez Lopez v. Wofford*, No.
6 1:25-CV-01226-KES-SKO (HC), 2025 WL 2959319, at *3 (E.D. Cal. Oct. 17,
7 2025)(internal quotation marks omitted).

8 First, in her habeas petition, Petitioner invokes "the most significant liberty interest
9 there is—the interest in being free from imprisonment." *Velasco Lopez v. Decker*, 978 F.3d
10 842, 851 (2d Cir. 2020); *see also, Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom
11 from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause
12 protects."). Petitioner's initial detention did not somehow "divest[] [her] of any liberty
13 interest for purposes of the Due Process Clause." *Fernandez Lopez*, 2025 WL 2959319, at
14 *4 (finding that petitioner released from immigration detention on parole had protected
15 liberty interest in remaining out of custody regardless of whether she was paroled under §
16 1182(d)(5)(A) or § 1226(a)); *see also, Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025
17 WL 2800149, *4, 9-10 (S.D. Cal. 2025) (finding that petitioner who was paroled from
18 immigration detention under § 1182(d)(5)(A) had protected liberty interest in remaining out
19 of custody). On the contrary, upon her release on parole, Petitioner "relied on at least an
20 implicit promise that [her] parole [would] be revoked only if [s]he fail[ed] to live up to the
21 parole condition." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Indeed, Petitioner and
22 her family built a life in the United States based on that promise, including a strong
23

24 ³ Petitioner's detention is unlawful because she was entitled to due process and a pre-
25 deprivation hearing upon the government's decision to re-detain her after exercising their
26 discretion to release her on parole. Alternatively, Petitioner is also now entitled to due
27 process and a bond hearing to determine whether continuing to detain her is justified and
28 reasonable given the length of her detention. However, if the Court concludes it needs to
reach the issue of whether Petitioner should be categorized under §1225(b)(2) or §1226(a)
in order to reach a decision on this alternative basis for relief, Petitioner requests the
chance to provide a supplemental brief on which statutory provision governs her
detention.

1 community of support in Southern California.

2 Second, an evaluation of the *Mathews* factors demonstrates that Petitioner should
3 not have been deprived of her liberty interest absent a showing that she posed a risk of flight
4 or danger. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976 (balancing (1) the private
5 interest threatened by governmental action; (2) the risk of erroneous deprivation of such
6 interest and the value of additional or substitute safeguards; and (3) the government interest).
7 As established above, Petitioner has a significant liberty interest in remaining out of custody.
8 The risk of erroneous deprivation of this liberty interest is high where, as here, Petitioner
9 received no procedural safeguards prior to her re-detention. Petitioner was in active parole
10 status at the time of her detention and Respondents never provided a reason for re-detaining
11 her. “[T]he probable value of additional procedural safeguards, i.e., a bond hearing, is high,
12 because Respondents [] provided virtually no procedural safeguards at all.” *A.E. v. Andrews*,
13 No. 1:25-CV-00107-KES-SKO (HC), 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025),
14 report and recommendation adopted, No. 1:25-CV-00107-KES-SKO (HC), 2025 WL
15 1808676 (E.D. Cal. July 1, 2025).

16 Finally, the Supreme Court has recognized only two justifications for civil
17 immigration detention: (1) mitigation of flight risk and (2) preventing danger to the
18 community. *See, e.g., Zadvydas*, 533 U.S. at 690 (The government has two regulatory
19 goals: “ensuring the appearance of aliens at future immigration proceedings and preventing
20 danger to the community.”); *Demore v. Kim*, 538 U.S. 510, 528 (2023) (same).
21 Respondents have virtually conceded that Petitioner was not detained for either purpose,
22 and they do not even argue in opposition to Petitioner’s habeas petition that Petitioner
23 presents a risk to either purpose. Moreover, all of the record evidence demonstrates that
24 she does *not* present a risk to either purpose. Petitioner has no criminal history, she has
25 been fingerprinted multiple times and has passed all background checks, she was granted
26 parole into the United States over two years ago, she has complied with all immigration-
27 related monitoring requirements and court hearings since then, and an immigration judge
28

1 has twice granted her application for asylum.

2 Because Petitioner has established a protected liberty interest in being free from
3 detention and Respondents failed to provide her with any notice or opportunity to be heard
4 before re-detaining her, Petitioner's detention is unlawful and she is likely to succeed on
5 the merits of her habeas petition.

6 **B. Petitioner is Likely to Succeed on the Merits of Her Procedural Due**
7 **Process Claim Because She Has Been Detained for Too Long Without**
8 **Due Process**

9 Respondents do not directly address Petitioner's due process claim based on her
10 prolonged detention for over 400 days without a bond hearing. However, an "individualized
11 determination as to [a person's] risk of flight and dangerousness" may be warranted "if
12 the[ir] continued detention became unreasonable or unjustified." *See Demore*, 538 U.S. at
13 532 (Kennedy, J., concurring). "In general, as detention . . . continues past a year, courts
14 become extremely wary of permitting continued custody absent a bond hearing." *Lopez v.*
15 *Garland*, 631 F. Supp. 3d 870, 880 (E.D. Cal. 2022). Given the length of her detention,
16 Petitioner is also likely to succeed on the merits of her habeas petition because she is entitled
17 to, but has been deprived of, an individualized determination regarding whether she presents
18 a flight risk or danger to the community.

19 An evaluation of the *Matthews* factors here leads to the same result here as it did
20 above. Petitioner has a significant liberty interest in remaining out of custody and the risk
21 of erroneous deprivation of this liberty interest is high because Petitioner was provided no
22 procedural safeguards prior to her re-detention. The government also cannot justify
23 Petitioner's continued detention without a bond hearing. *See A.E.*, 2025 WL 1424382, at
24 *5 ("[T]he key government interest at stake here is not the continued detention of Petitioner,
25 but the government's ability to detain h[er] without a bond hearing."). Providing Petitioner
26 with a bond hearing where the government must offer evidence of Petitioner's flight risk or
27 danger to the community before a neutral arbiter would actually serve the government's
28 interests in ensuring that only those who present such risks remain detained at government

1 expense, while allowing those who do not present such risks to maintain their liberty
2 interests.

3 Respondents have all but admitted they had no reason to re-detain Petitioner over
4 400 days ago related to these justifiable interests. But even if they had such a reason (they
5 have provided none), Petitioner’s continued detention—through successive grants of
6 asylum by an immigration judge—has unquestionably now become “unreasonable [and]
7 unjustified.” *Demore v. Kim*, 538 U.S. at 527. Because Petitioner’s continued detention
8 without a bond hearing is unreasonable and unjustified, Petitioner is also likely to succeed
9 on the merits of her habeas petition. *See e.g., Lopez*, 631 F. Supp. 3d at 882 (holding
10 Petitioner’s continued detention for over one year was unreasonable and due process
11 required Petitioner be provided a bond hearing.)

12 **C. Petitioner Will Suffer Irreparable Harm Without the Emergency Relief**
13 **She Requests**

14 Petitioner has established she will suffer concrete, imminent harm absent the Court’s
15 intervention. Respondents have offered no indication of when Petitioner might be released
16 from detention, and they have continued to detain her through each successive appeal of her
17 grants of asylum. There is a great risk that Respondents will continue to detain her and
18 appeal the matter until and unless they have exhausted all appeals or a final order of removal
19 is entered. This deprivation of Petitioner’s liberty alone constitutes irreparable harm
20 justifying emergency relief. *See e.g., Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir.
21 2017) (“It is well established that the deprivation of constitutional rights unquestionably
22 constitutes irreparable injury.”) Beyond that, Petitioner’s emotional suffering away from
23 her family, including her four-year-old daughter who has spent more than a year forcibly
24 separated from her mother, constitutes irreparable harm. *Garcia v. Andrews*, No. 1:25-CV-
25 01006 JLT SAB, 2025 WL 2420068, at *10 (E.D. Cal. Aug. 21, 2025) (significant
26 emotional distress constitutes irreparable harm).

27 **D. Equity and the Public Interest Weigh in Petitioner’s Favor**

28 Finally, Respondents argue that the balance of equities and public interest weigh

1 against Petitioner because “[t]he public interest lies in the Executive’s ability to enforce
2 U.S. immigration laws.” (ECF No. 7 at 11.) First, Respondents’ interest in continuing to
3 detain Petitioner is slight given that she has been granted asylum twice, she presents no risk
4 of flight or danger to the community, and there are less restrictive means of monitoring
5 Petitioner. There is no evidence Petitioner presents any risk to Respondents’ ability to
6 enforce U.S. immigration laws. Second, “[i]t is always in the public interest to prevent the
7 violation of a party’s constitutional rights.” *Index Newspapers LLC v. U.S. Marshals Serv.*,
8 977 F.3d 817, 838 (9th Cir. 2020). Indeed, “[t]he public has a strong interest in upholding
9 procedural protections against unlawful detention” *Fernandez Lopez*, 2025 WL
10 2959319, at *7. Enforcement of U.S. immigration laws cannot come at the expense of
11 Petitioner’s constitutional rights. Because Petitioner is unlawfully detained in violation of
12 her rights to due process, the balance of equities and public interest weigh heavily in favor
13 of Petitioner.

14 **III. CONCLUSION**

15 For all the foregoing reasons, Petitioner respectfully requests the Court grant her
16 request for a TRO directing Respondents to immediately release her from detention, which
17 would return her to the status quo ante—“the last uncontested status which preceded the
18 pending controversy.” *See e.g., Nguyen v. Archambeault*, No. CV-25-04107-PHX-SHD
19 (ASB), 2025 WL 3250922, at *1 (D. Ariz. Nov. 21, 2025) (collecting cases). Alternatively,
20 Petitioner requests the Court order her release within 7 days unless Respondents schedule a
21 bond hearing before an Immigration Judge earlier than 7 days.

22 Dated: December 1, 2025

MORRISON & FOERSTER LLP

23
24
25 By: /s/ Laura Lively Babashoff
Laura Lively Babashoff

26 *Attorney for Petitioner*
27 F.B.

1 Dated: December 1, 2025

PUBLIC COUNSEL

2

3

By: /s/ Jana Whalley
Jana Whalley

4

5

Attorney for Petitioner
F.B.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21 MF-364761111

22

23

24

25

26

27

28