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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROSALINDA AYRA LEANDRO, Petitioner, v. SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office, et al., Respondents.	Case No. 3:25-cv-10042-JD **REPLY TO RESPONDENTS' OPPOSITION**

REPLY TO RESPONDENTS' OPPOSITION

INTRODUCTION

Petitioner has two young children, no criminal history, and an asylum case pending in immigration court. On November 20, 2025, Respondents arrested and detained Petitioner outside her home in San Mateo County without providing any hearing and without any grounds to justify this detention. That same evening, this Court granted Petitioner's motion for temporary restraining order, finding Petitioner "likely to succeed on the merits of her procedural due-process claim." Doc. 3 at 4. The Court ordered Petitioner released immediately and "order[ed] that defendants shall not re-arrest or otherwise re-detain Ms. Ayra Leandro without first providing her with a pre-detention bond hearing before an immigration judge at which the

government establishes by clear and convincing evidence that her detention is necessary to prevent her flight or to protect the public." *Id.*

Petitioner's due process claim is straightforward. She and her two young children entered the country in May 2023. Ex. A at 2.[1] Respondents encountered her at the border, provided her with a Notice to Appear, and released her on her own recognizance, thus, allowing her to pursue her immigration case from the non-detained docket. Ex. A at 2, 14. This release reflected an assessment by Respondents that Petitioner was neither a danger nor a flight risk. For the past two and half years, Petitioner enjoyed a liberty interest of the highest magnitude. This interest was snatched from Petitioner on November 20 without a pre-deprivation hearing and without any changed circumstances that could justify such deprivation without process. Respondents' actions are anathema to due process.

Respondents focus their Opposition on a statutory interpretation claim, rather than on a defense of the due process claim. They assert that noncitizens who entered without inspection are all subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* Opp. at 3-19. This position has been thoroughly rejected by district courts across the nation. Moreover, this argument does not address the due process violation that Petitioner suffered when she was detained without a pre-deprivation hearing.

Petitioner asks this Court to issue a preliminary injunction prohibiting her re-arrest or re-detention unless she first receives a pre-detention hearing at which the government bears the burden of proving danger and flight risk by clear and convincing evidence.

ARGUMENT

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

[1] Citations to the record refer to the exhibits to the Declaration of Counsel.

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). Despite this well-established principle, Respondents claim that Petitioner has no due process rights beyond what is provided for her in 8 U.S.C. § 1225. Opp. at 20. However, the case Respondents rely upon, *Dep't of Homeland Sec. v. Thuraissigiam*, concerned a noncitizen seeking additional procedures under the credible fear interview process; it was not a challenge to physical custody. 591 U.S. 103, 157 (2020). Numerous courts have rejected the government's attempt to extend *Thuraissigiam* in this way. *See, e.g., Oliveros v. Kaiser,* No. 25-cv-07117-BLF, 2025 U.S. Dist. LEXIS 183943, at *13 (N.D. Cal. Sep. 18, 2025) (accepting Respondents' request at the PI hearing to consider the applicability of *Thuraissigiam* and finding it does not apply); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) ("The Court stands unconvinced that the Supreme Court's decision in *Thuraissigiam* requires dismissal of Plaintiffs' due process claim."); *Jatta v. Clark*, No. 19-cv-2086, 2020 WL 7138006, at *2 (W.D. Wash. Dec. 5, 2020) (finding *Thuraissigiam* "inapposite" to due process challenge to detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021) ("*Thuraissigiam* does not govern here, as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an Immigration Judge's review of prolonged and indefinite detention."); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844–48 (E.D. Va. 2020).

Nor can Respondents make headway with their assertion that the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), "balancing test" does not apply because the Supreme Court has not used the test to address mandatory-detention challenges. Opp. at 20. As Respondents concede in Footnote 6 of their Opposition, 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 v. Noem*, 792 F. Supp. 3d 1025, 1033 (N.D. Cal. 2025) (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 regularly apply *Mathews* in due process challenges in similar circumstances to those here. *Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 U.S. Dist. LEXIS 179594, at *14 (N.D. Cal. Sep. 12, 2025). There is no reason this Court should do otherwise.

Likewise, the Court should reject Respondents' claim that the *Morrissey v. Brewer* analysis does not apply to Petitioner's case. Respondents argue that, unlike with parolees, there is no interest in "reintegrat[ing]" a noncitizen into society. Opp. at 21, n.7. However, this argument rests on the faulty premise that Petitioner has no right to be in this country. In fact, she is an asylum seeker with an ongoing case, Ex. A at 13, 15-17, and she has been fully engaged in her legal process, Ex. A at 6-13. Petitioner's liberty interest "is arguably greater than the interest of parolees" "[g]iven the civil context" of immigration detention. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Indeed, immigration detention cannot serve any punitive purpose; it is justified only by danger or flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, the Court should reject the claim that Petitioner lacks a protected liberty interest in her continued freedom. Consistent with decisions in similar cases, the Court should grant the preliminary injunction. Pinchi, 792 F. Supp. 3d at 1038 (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).

II. No "Changed Circumstances," Much Less "Urgent" Ones, Exist That Could Justify Deprivation of Petitioner's Liberty Without a Hearing.

Respondents do not argue that Petitioner is a flight risk or danger, the only two constitutionally permissible reasons for civil detention. *See Zadvydas*, 533 U.S. at 690. Nor do they argue that any "changed circumstances," much less "urgent" ones, exist that could justify a deprivation of liberty without a hearing.

When Respondents release a person on their "own recognizance," as they did with Petitioner in 2023, Ex. A at 14, that decision "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk," *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). Indeed, the relevant regulations state that "the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). Once that determination is made, Respondents cannot override that determination later on without a hearing at which changed circumstances are shown by clear and convincing evidence. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) ("[W]here a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance.");[2] *Saravia*, 280 F. Supp. 3d at 1197 (noting that, "[o]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially

[2] *Saravia*, a leading case from this district, notes that "DHS has incorporated this holding [from *Sugay*] into its practice, requiring a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." Saravia, 280 F. Supp. 3d at 1197.

changed circumstances — namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal."); *see Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

Courts have required Respondents to demonstrate not only "changed circumstances" but also "evidence of urgent concerns" if they seek to redetain a noncitizen without a hearing. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ"). This applies not only to those released on bond but also to those released on their own recognizance. *See Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that, "given the absence of evidence of urgent concerns . . . a *pre*-deprivation hearing [was] required to satisfy due process," and collecting cases).[3] Such changed circumstances could include a criminal charge or action by the noncitizen that materially alters the danger or flight-risk assessment.

Notably, Respondents do not claim any such changed circumstances, much less urgent ones. Respondents justify Petitioner's re-detention on the grounds of a policy change:

> On or about November 20, 2025, *following new guidance* issued by the Department of Homeland Security regarding the applicable detention authority for applicants for admission like Petitioner who enter the country without being admitted, ICE took Petitioner into custody.

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[3] Numerous decisions reach this conclusion. *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, at *2 (E.D. Cal. Oct. 24, 2025); *W.V.S.M. v. Wofford*, No. 1:25-cv-01489-KES-HBK (HC), 2025 U.S. Dist. LEXIS 228189, at *3 (E.D. Cal. Nov. 19, 2025); *Ramandi v. Field Office Dir., ICE Ero S.F.*, No. 1:25-CV-01462-JLT-EPG, 2025 U.S. Dist. LEXIS 224698, at *2 (E.D. Cal. Nov. 13, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB (HC), 2025 U.S. Dist. LEXIS 217645, at *3 (E.D. Cal. Nov. 4, 2025); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172, at *3 (E.D. Cal. Nov. 6, 2025); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK (HC), 2025 U.S. Dist. LEXIS 211728, at *2 (E.D. Cal. Oct. 27, 2025).

Opp. at 3 (emphasis added). This policy change cannot satisfy the requirements of urgent, changed circumstances. Not only has the "new guidance" been deemed unlawful by an avalanche of district court decisions around the country, *see infra* Section III, but the policy also has no bearing on whether Petitioner is a danger or a flight risk. In addition, even if those flaws could be overlooked and this policy change could count as "changed circumstances," there would be nothing "urgent" enough about it to justify dispensing with a pre-deprivation hearing. The policy change occurred on July 8, 2025, roughly four and a half months before Petitioner's detention.

Throughout the Opposition, it is significant that Respondents make no claim that Petitioner is a danger or a flight risk. Nor could they. Petitioner is a 37-year-old mother who came to the United States with two young boys, now 5 and 4 years old. Ex. A at 15-17. She is married and has lived at the same address, with her husband, since settling in the United States. Ex. A at 6, 15-16. She has no criminal history. Ex. B at 2. She has filed a timely asylum application. Ex. 15-17. She has the assistance of a committed immigration attorney and has attended her court hearings. Doc. 2-3. Petitioner is not a danger. She is not a flight risk. Respondents have not alleged anything even approaching "changed circumstances" that "urgently require arrest." *Guillermo M. R.*, 791 F. Supp. 3d at 1036. Absent such urgent, changed circumstances, due process requires a hearing *before* depriving Petitioner of her liberty.

III. Petitioner is not subject to mandatory detention 8 U.S.C. § 1225.

Although not necessary to grant relief in this case, if the Court chooses to reach the statutory interpretation question, it should find Petitioner subject to 8 U.S.C. § 1226(a), not § 1225(b)(2). It is undisputed that, when Petitioner entered the country, she was not subjected to 1225(b)(2) mandatory detention. A Border Patrol agent signed a Notice to Appear on May 31, 2023, Ex. A at 2, and released her on her own recognizance, Ex. A at 14. The release order

cites "section 236 of the Immigration and Nationality Act"—which corresponds to 8 U.S.C. § 1226—as the source of authority for the release. Ex. A at 14. Nearly two and a half years later, Respondents seek to reverse course and "unilaterally reclassify" Petitioner "as detained pursuant to Section 1225(b)(2))." *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 U.S. Dist. LEXIS 178531, at *9 (N.D. Cal. Aug. 29, 2025) (internal quotation marks omitted). But the government cannot simply "switch[] tracks" mid-litigation without regard for a noncitizen's liberty interests. *Aceros*, 2025 U.S. Dist. LEXIS 179594 at *21; s*ee also Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 U.S. Dist. LEXIS 228110, at *10-11 (N.D. Cal., Nov. 19, 2025) ("The Court is persuaded by the many district courts that have found Section 1225 inapplicable to noncitizens who were conditionally released in the past under Section 1226"). To do so would amount to an impermissible post hoc rationalization. *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025).

Even if Petitioner were not initially released pursuant to section 1226(a), districts courts across the nation have rejected the government's efforts to apply Section 1225(b)(2) to people arrested in the interior of the United States. *See, e.g.*, *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *5-9 (D. Mass. July 24, 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). The list of such citations is lengthy and growing. *See* Doc. 1 at 9-10 (collecting cases); *see Vazquez v. Bostock,* No. 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, at *4 n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases).

Respondents offer no arguments that have not already been addressed and rejected by

courts in this district. For example, they have no satisfying explanation for how their reading of the statute can account for the recent passage of the Laken Riley Act of 2025, Pub. L. No. 119-1, 139 Stat. 3 (2025). In the Laken Riley Act, Congress desired to detain more people who had entered without inspection and were in removal proceedings. But it did not simply declare that all those who entered without inspection were subject to mandatory detention. Rather, it provided that all those who entered without inspection *and* had criminal histories would be subject to mandatory detention. There is no reason Congress would have create this two-pronged test—(1) entry without inspection and (2) criminal history—if Section 1225(b)(2)(A) already required detention of every person who entered without inspection, as Respondents claim. This point has been made repeatedly by district courts around the country.[4]

Nor are the other claims compelling. Respondents press arguments based on the use of the phrase "or otherwise" in § 1225(a)(3), Opp. at 12-13; based on other statutory uses of the phrase "seeking admission", *id.* at 11-13; and based on the implementing regulation for § 1225(b), *id.* at 11. However, those arguments have already been refuted in *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 U.S. Dist. LEXIS 197865, at *38-39, 26-27, 29 (N.D. Cal. Oct. 3, 2025). Similarly, the Opposition's citations to *Yajure Hurtado*, the recent Board of Immigration Appeals decision, cannot turn back the tide of federal court opinions rejecting Respondents' arguments. Opp. at 8-9. Under the Supreme Court's decision in *Loper Bright v. Raimondo*, federal courts must not defer to agency interpretations of statutes and are, instead,

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[4] *See Maldonado v. Olson,* No. 25-CV-3142 (SRN/SGE), ---F.Supp.3d---, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025). ("Respondents' one-size-fits-all application of § 1225(b)(2) . . . would violate fundamental canons of statutory construction. . . . The Court will not find that Congress passed the Laken Riley Act to "perform the same work" that was already covered by § 1225(b)(2)."); *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); ("Applying section 1225 to noncitizens 'already in the country,' as Respondents argue . . . would make a recent amendment to section 1226—adopted in 2025 by the Laken Riley Act—superfluous. This is a presumptively dubious result…") (internal citations and quotation marks omitted); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("Respondents' interpretation of the statutes would render this recently amended section superfluous.").

required to independently interpret the meaning and scope of statutes using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024). One court after the other has found the BIA's reasoning in *Yajure Hurtado* to be unpersuasive. *See, e.g., Flores*, 2025 U.S. Dist. LEXIS 228110, at *11 ("The Court finds that *Yajure Hurtado* 'merit[s] little deference due to its inconsistency with earlier BIA decisions' and because 'its reasoning is [] at odds with the text of sections 1225 and 1226'"), *citing Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025).

Petitioner is not subject to mandatory detention. In line with the authorities cited above, this Court should reject the government's new and contrary interpretation of the statute.

IV. Petitioner's Detention Cannot Be Justified Under 1226(a).

Last week, a court in this district analyzed Respondents' arguments for the re-detention of a 60-year-old grandmother of seven who was accused of "minor, technical violations" of her release on own recognizance. *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025). The court found that petitioner was not subject to Section 1225(b)(2) and went on to find that she could not be detained under Section 1226(a), either. "[D]etention is permitted under section 1226(a) only if [petitioner] is dangerous or a flight risk," the court explained, and Respondents had alleged only "minor, technical violations" of her release conditions, rather than suggesting that she was a danger or flight risk. *Id.* The court granted injunctive relief, concluding that "Respondents have not come close to showing that [petitioner is a danger or flight risk], and in fact, have hardly even tried." *Id.*

If this Court is not inclined to grant Ms. Ayra Leandro's request for preliminary injunction on due process grounds, it could do so on the statutory grounds, as outlined in *Bernal*, given that Respondents in this case have not alleged, much less shown, any grounds to

believe that Petitioner is a danger or a flight risk.

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

Respondents do not rebut Petitioner's showing that the remaining factors weigh in her favor. She faces irreparable injury in the form of constitutional harm of the highest order if the preliminary injunction is not granted. *See Pinchi*, 792 F. Supp. 3d at 1037-38 (collecting cases). The public interest likewise weighs strongly in Petitioner's favor. *Id.*

CONCLUSION

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

Date: November 28, 2025

Respectfully Submitted,
/s/ Jonathan Abel
Jonathan Abel
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, this 28th day of November, 2025, I filed a copy of the foregoing Reply to Respondents' Opposition and Exhibits through the CM/ECF system, which gave service to all counsel of record.

By: /s/ Jonathan Abel

Jonathan Abel

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