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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

LIZBETH MORELIS IBANEZ DAZA,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 3:25-cv-10214-RFL

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE AND
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

1 Respondents spend the majority of their opposition arguing that noncitizens like Petitioner
2 are subject to mandatory detention under 8 U.S.C. § 1225(b), a position that has been
3 overwhelmingly rejected by district courts across the nation. At issue, however, is whether
4 Petitioner has a protected liberty interest under the Due Process Clause and is therefore entitled to
5 a pre-deprivation bond hearing before her re-arrest, which she is. Although Respondents reference
6 vague and unsupported allegations of violations of release conditions as the reason for the arrest,
7 they do not even attempt to argue that Petitioner, *who was arrested while attending an ICE check-*
8 *in* and has no criminal history, is a flight risk or danger, the only two constitutionally permissible
9 reasons to detain a noncitizen. This case is actually a great example of why the Constitution
10 requires pre-deprivation hearings in the first place – to protect against pretextual arrests. This
11 Court should join a growing number of district courts and find that minor alleged technical
12 violations of release conditions are not a sufficient change in circumstances to warrant re-
13 detention without a pre-deprivation bond hearing.¹

ARGUMENT

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

14 The Due Process Clause applies to noncitizens regardless of whether they are “seeking
15 admission” or are “admitted” under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th
16 Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007). Notwithstanding
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24 ¹ See, e.g., *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *20 (E.D.
25 Cal., Nov. 6, 2025); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at
26 *21 (E.D. Cal., Oct. 27, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS
27 205300, at *20-21 (E.D. Cal., Oct. 17, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S.
28 Dist. LEXIS 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025
WL 2402130, at *17 (W.D. Wash. Aug. 19, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB, 2025
U.S. Dist. LEXIS 217645, at *17 (E.D. Cal., July 17, 2025).

1 this well-established principal, Respondents claim that Petitioner has no due process rights beyond
2 what is provided for her in § 1225. Opp. at 11. However, the case Respondents cite for this
3 proposition, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020), was about a
4 noncitizen seeking additional procedures under the credible fear interview process and not about a
5 challenge to his physical custody. *See* 591 U.S. at 157. Numerous courts have already rejected the
6 government's attempt to extend *Thuraissigiam* in this way. *See, e.g., Jaraba Olivero v. Kaiser*, No.
7 25-cv-07117-BLF, at *7-8 (N.D. Cal. Sept. 18, 2025) (accepting Respondents' request at the PI
8 hearing to consider the applicability of *Thuraissigiam* and finding it does not apply); *Padilla v. U.S.*
9 *Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) ("The Court stands
10 unconvinced that the Supreme Court's decision in *Thuraissigiam* requires dismissal of Plaintiffs'
11 due process claim."); *Jatta v. Clark*, No. 19-cv-2086, 2020 WL 7138006, at *2 (W.D. Wash. Dec. 5,
12 2020) (finding *Thuraissigiam* "inapposite" to due process challenge to detention); *Leke v. Hott*, 521
13 F. Supp. 3d 597, 604 (E.D. Va. 2021) ("Quite clearly, *Thuraissigiam* does not govern here, as the
14 Supreme Court there addressed the singular issue of judicial review of credible fear determinations
15 and did not decide the issue of an Immigration Judge's review of prolonged and indefinite
16 detention."); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844–48 (E.D. Va. 2020) (similar).

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19 Moreover, Respondents claim that the multi-factor "balancing test" of *Mathews v. Eldridge*,
20 424 U.S. 319, 335 (1976) does not apply because the Supreme Court has not used the test to address
21 mandatory detention challenges. Opp. at 11. However, the Ninth Circuit has "assume[d] without
22 deciding" that *Mathews* applies in the immigration detention context. *See Rodriguez Diaz v.*
23 *Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining "it
24 remains a flexible test"); *accord Pinchi v. Noem*, No. 5:25-cv-05632-PCP, F. Supp. 3d, 2025 WL
25 2084921, at *3 n.2 (N.D. Cal. July 24, 2025) (discussing *Rodriguez-Diaz*); *Landon v. Plasencia*,
26 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing
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1 procedures). Courts in this circuit also regularly apply *Mathews* in due process challenges in
2 identical or similar circumstances to those here. *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC
3 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025), at *9. There is no reason this Court should
4 not do the same.

5 Respondents offer no additional reasons for their assertion that Petitioner does not have a
6 protected liberty interest in continued freedom from detention. *See* Opp. at 11. To the contrary, this
7 Court has held that “[g]iven the civil context [of immigration detention], [the] liberty interest [of
8 noncitizens released from custody] is arguably greater than the interest of [criminal] parolees.”
9 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

10 The Court should thus reject Respondents’ unsupported claim that Petitioner does not have
11 protected liberty interested in her continued freedom and, consistent with recent decisions in
12 factually similar cases, grant the preliminary injunction. *See Pinchi v. Noem*, 2025 WL 2084921, at
13 *7 (converting TRO requiring release of asylum seeker arrested at immigration court into
14 preliminary injunction prohibiting Government from re-detaining her without hearing); *Singh v.*
15 *Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025); *Castellon v. Kaiser*, No. 1:2-cv-
16 00968, 2025 WL 2373425, at *24 (N.D. Cal. Aug. 14, 2025).

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20 **II. Respondents’ vague and unfounded allegations that Petitioner violated the terms of her**
21 **release are not sufficient to overcome Petitioner’s entitlement to a pre-deprivation bond**
22 **hearing.**

23 Respondents do not argue that Petitioner is a flight risk or danger, the only two
24 constitutionally permissible reasons for civil detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690
25 (2001). Instead, they assert that ICE detained her in part due to “her ATD violations.” Opp. at 6.
26 Specifically, Respondent claims that Petitioner failed to complete biometrics check-ins on June 30,
27 2025 and October 14, 2025. *Id.*

1 As an initial matter, Respondents' allegations that Petitioner violated the terms of her release
2 are too vague and unsupported as to constitute changed circumstances sufficient to warrant re-
3 detention without a pre-deprivation bond hearing. *See Guillermo M. R. v. Kaiser*, No. 25-CV-
4 05436-RFL, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025) (“*absent evidence of urgent*
5 *concerns*, a pre-deprivation hearing is required to satisfy due process, particularly where an
6 individual has been released on bond by an IJ”), emphasis added. The single source of the
7 government's allegations is a declaration by Deportation Officer Paul Garcia. Opp., No. 16-1.
8 However, in that declaration, Officer Garcia merely writes one vague sentence alleging release
9 violations. *See id.* ¶ 9. Officer Garcia writes:

11 2 ¶ 9. While on ISAP, Petitioner violated the terms of her release, including missing biometric
12 3 check-ins on June 30, 2025, and October 14, 2025.

13 There is no additional information in the record to help clarify what Officer Garcia is
14 talking about. Officer Garcia does not state the basis of his knowledge, and there is no additional
15 evidence that Petitioner missed any ISAP check-ins. In contrast, Petitioner states she has always
16 complied with the terms of her release, including all ISAP check-ins, and was never informed of
17 any alleged non-compliance. *See Ex. 1, Declaration of Lisbeth Morelys Ibanez Daza*, ¶¶ 6-9. The
18 Court should thus give no weight to the government's unsupported allegations that Petitioner
19 violated the terms of her release. *See C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO2025 U.S.
20 Dist. LEXIS 216277, at *7 (E.D. Cal., Nov. 1, 2025) (finding Respondents' “key factual assertions”
21 were not supported because the deportation officer did not state the “basis for personal knowledge
22 for the facts claimed” in his declaration).
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25 Even if Petitioner had missed two biometrics check-ins, these are not circumstances “that
26 urgently require arrest.” *See id.* at *28, citing *Zinerman v. Burch*, 494 U.S. 113, 127, 110 S. Ct. 975,
27 108 L. Ed. 2d 100 (1990). First, the fact that the government waited nearly five months after the

1 first alleged missed ISAP reporting, and more than one month after the second alleged missed
2 reporting, to re-arrest Petitioner indicates that the government itself did not treat Petitioner's re-
3 arrest as an urgent matter. Opp., No. 16-1 ¶ 9. Second, courts in this circuit have repeatedly rejected
4 the argument that ICE can re-detain a noncitizen for a purely technical violation "without regard to
5 whether that technical violation means that one is a flight risk or danger." *J.C.L.A. v. Wofford*, No.
6 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *12 (E.D. Cal., Oct. 17, 2025),
7 internal citations omitted; *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS
8 219172, at *12 (E.D. Cal., Nov. 6, 2025) ("While respondents assert that ICE arrested petitioner for
9 those technical violations...they do not argue that a missed check-in or failure to seek advance
10 approval to move means that petitioner is a flight risk or danger to the community."); *J.A.E.M. v.*
11 *Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *12 (E.D. Cal., Oct. 27,
12 2025) ("Respondents do not argue that petitioner's two late check-ins mean that he is a flight risk or
13 danger to the community...[r]ather, respondents assert that ICE arrested petitioner for those
14 technical violations."); *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *11
15 (W.D. Wash. Aug. 19, 2025) (Ultimately, even if Petitioner's arrest was not pretextual and was
16 solely motivated by ICE's realization of his ATD violations, it would not necessarily follow that
17 Petitioner can be detained for those violations without a hearing."). Here, there is no credible
18 argument that Petitioner, who has no criminal history, complied with all of her reporting
19 requirements, timely submitted an asylum application, and was detained *while appearing for her*
20 *ICE check-in*, is a flight risk or danger. See *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG at
21 *12. A pre-deprivation bond hearing is thus especially important in cases like this because the risk
22 of erroneous deprivation is high. See *Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 U.S. Dist.
23 LEXIS 228110, at *13 (N.D. Cal., Nov. 19, 2025). Accordingly, this Court should join the growing
24 number of district courts finding ICE's new trend of suddenly re-arresting people at ICE check-ins
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1 is unconstitutional and grant the requested relief. *See Vilela v. Robbins*, No. 1:25-cv-01393-KES-
2 HBK, 2025 U.S. Dist. LEXIS 219172, at *20 (E.D. Cal., Nov. 6, 2025); *J.A.E.M. v. Wofford*, No.
3 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *21 (E.D. Cal., Oct. 27, 2025);
4 *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *20-21 (E.D.
5 Cal., Oct. 17, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS
6 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL
7 2402130, at *17 (W.D. Wash. Aug. 19, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB,
8 2025 U.S. Dist. LEXIS 217645, at *17 (E.D. Cal., July 17, 2025).

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

11 The due process issue, above, is dispositive. However, if the Court chooses to address the
12 statutory interpretation question, it should find that Petitioner is subject to subject to 8 U.S.C. §
13 1226(a) and not § 1225(b), as Respondents now claim. Opp. at 7-11.

15 Respondents attempt to distinguish Petitioner, who was granted interim parole pursuant to
16 § 1182(d)(5)(A), from people who were conditionally released under § 1226(a). Opp. at 10. This
17 distinction is immaterial. In *Pinchi*, the Court ruled that “even where ICE has the initial discretion
18 to detain or release a noncitizen pending removal proceedings, after that individual is released
19 from custody, she has a protected liberty interest in remaining out of custody.” *Pinchi*, 2025 WL
20 2084921, at *3. The court makes no distinction between conditional release under § 1226(a) and
21 parole under § 1182(d)(5)(A). Therefore, regardless of the statute that authorized Petitioner’s
22 initial release from custody, the fact that she was released establishes a liberty interest against
23 future arbitrary detention. Respondents cite *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) in their
24 argument that Petitioner is subject to mandatory detention and is not entitled to additional due
25 process protections beyond those set forth in the statute. Opp. at 10. However, federal courts are
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1 not bound by such agency decisions, and, for the aforementioned reasons, this Court should not
2 accept the government's argument that Petitioner is subject to mandatory detention and not
3 entitled to fundamental due process protections established by the Constitution. *Loper Bright*
4 *Enterprises v. Raimondo*, 603 U.S. 369 (2024).

5 This Court should join the districts courts across the nation that have uniformly rejected
6 the government's novel application of section 1225(b) to people arrested in the interior of the
7 United States, like Petitioner. *See, e.g., Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at
8 *5-9 (D. Mass. July 24, 2025)); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025 WL
9 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-
10 KES-SKO, 2025 U.S. Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v. Figueroa*,
11 No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz. Aug. 11,
12 2025). Courts have also given little deference to the Board of Immigration Appeals' recent
13 decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 219 (BIA 2025) as the authority for the
14 government's reinterpretation of § 1225(b)(2). *See, e.g., Flores v. Albarran*, No. 25-cv-09302-
15 AMO, 2025 U.S. Dist. LEXIS 228110, at *11 (N.D. Cal., Nov. 19, 2025) ("The Court finds that
16 *Yajure Hurtado* 'merit[s] little deference due to its inconsistency with earlier BIA decisions' and
17 because 'its reasoning is [] at odds with the text of sections 1225 and 1226'", citing *Valencia*
18 *Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025).

19 Respondents are unable to cite to a single district court that agrees with the BIA's
20 construction of section 1225(b), despite claiming that the "plain language" of the statute makes
21 Petitioner subject to mandatory detention. Opp. at 8. To the contrary, for example, in *Salcedo*
22 *Aceros*, 2025 WL 2637503, this Court went into great detail to explain why the BIA's analysis
23 directly conflicts with fundamental canons of statutory construction. *Id.*, slip op. at *8-12.

24 Furthermore, in *Maldonado Bautista v. Santaacruz, Jr.*, No. 5:25-CV-1873, 2025 WL 3288403

1 (C.D. Cal. Nov. 25, 2025), the district court for the Central District of California directly
2 challenged *Yajure Hurtado* by certifying a nationwide class of people allegedly subject to
3 mandatory detention under *Yajure Hurtado* and restoring bond hearings for the class. *Id.* at *9.

4 Thus, Petitioner, who has no criminal history, is subject to discretionary detention. In line
5 with the reasoned analysis of these authorities, this Court should reject the government’s contrary
6 new statutory interpretation.

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8 **IV. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner’s**
9 **Favor.**

10 Petitioner faces irreparable injury in the form of constitutional harm of the highest order if
11 the preliminary injunction is not granted. *See Pinchi*, 2025 WL 2084921, at *7 (collecting cases).
12 The public interest likewise weighs strongly in Petitioner’s favor. *Id.* This Court should not be
13 persuaded by Respondents’ argument that the government’s interest in enforcing its novel and
14 extreme interpretations of detention statutes, rejected by many district courts across the nation,
15 outweighs Petitioner’s interest and the public interest in protecting constitutional rights. *Opp.* at 12-
16 13.

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18 **CONCLUSION**

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

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21 Date: December 18, 2025

Respectfully Submitted,

22 /s/ Marissa Rosenberg-Carlson

23 Marissa Rosenberg-Carlson

24 *Attorney for Petitioner*