

Natalia Vieira Santanna,
CA BAR No. 337502
MI BAR No. P76443
SANTANNA LAW OFFICES
PO Box 7528, Oakland, CA, 94601
(510) 922-0154 (Telephone)
(510) 903-4211 (Facsimile)
natalia@santannalaw.com (Email)
Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

J.E.H.G.,
Petitioner-Plaintiff,

v.

Minga WOFFORD, et al

Respondents-Defendants.

Case No. 1:25-CV-01673-JLT-SKO

**REPLY TO RESPONDENTS'
OPPOSITION TO
PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER¹**

INTRODUCTION

Petitioner, J.E.H.G., by and through her undersigned counsel, hereby files this response to the Respondents' Opposition to J.E.H.G.'s Request for Temporary Restraining Order.²

¹ No hearing is requested. Petitioner does not oppose that the Motion for a Temporary Restraining Order be converted to a Preliminary Injunction.

² Respondents, in a footnote, purport to move to "dismiss all unlawfully named officials." ECF 9 * 1 fn 1. J.E.H.G. opposes such a motion because the named respondents are not tangentially related to J.E.H.G.'s detention; they form a direct chain of command legally responsible for it. The warden's role is to follow the directives issued by the Attorney General, the Department of Homeland Security, and ICE. Therefore, a TRO and writ of habeas corpus directed only at the warden would be ineffective, as the warden lacks the power to provide the ultimate relief sought. The government's reliance on *Rumsfeld v. Padilla* and *Doe v. Garland* is misplaced, as those cases are factually and legally distinguishable from the circumstances here. The "immediate custodian" rule from *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), which typically points to a warden, does not create an inflexible jurisdictional requirement. The Supreme Court established this rule in the context of a U.S. citizen military detainee, where the chain of command and the nature of custody are fundamentally different from immigration detention. In the immigration context, the "custodians" are the entity with legal, dispositive control over the detention. That entity necessarily includes ICE and its leadership, and they are the ones who can order J.E.H.G. released. Likewise, *Doe v. Garland*, 109 F.4th

ARGUMENT

I. The Court Should Grant the TRO and the Preliminary Injunction

A. J.E.H.G. is likely to succeed on the merits

i. J.E.H.G. is not improperly seeking a determination on the merits

Respondents state that J.E.H.G.'s TRO and habeas petition both seek the same relief. See ECF 11 *4. However, the TRO would not grant the "ultimate relief" as the Respondents claim. The ultimate relief sought in the habeas petition is a final declaration that J.E.H.G.'s detention is unlawful and a definite order that J.E.H.G. cannot be re-detained without due process. The relief J.E.H.G. seeks is not a premature grant of her habeas petition but is instead a limited and tailored action to restore the "*status quo ante*," or the state of affairs that existed immediately before her unconstitutional arrest. Before the government's unilateral action, J.E.H.G. was a free individual in California, whose liberty could only be restrained after a proper due process hearing had taken place. Therefore, the TRO was a permissible and necessary remedy to return the parties to their respective positions before the government's unlawful conduct, rather than a final grant of freedom, and a return of her property. See *Kuzmenko v. Phillips*, No. 25-CV-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025) (granting a temporary restraining order requiring immediate release of the petitioner back to home confinement from custody, as a restoration of the *status quo*).

ii. Respondents' alleged ISAP violations do not support the finding that J.E.H.G. does not have a right to due process

1188 (9th Cir. 2024), does not preclude naming the respondents listed here. While *Doe* held that a warden of a private facility must be named as a proper respondent, it does not hold that the warden is the *only* proper respondent. In addition, the Respondents' request is procedurally improper because a "request for court order must be made by motion." *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *4 (N.D. Cal. Aug. 6, 2025). "[A] request for affirmative relief is not proper when raised for the first time in an opposition." *Id.*

Respondents argue that the Petitioner has sporadically failed to comply with the terms of her “Intensive Supervision Appearance Program.” ECF 11 *1. As J.E.H.G. explained, she honestly believed she was complying with the requirements of the ISAP program and ICE’s order of supervision.³ Respondent’s allegations are unsupported by any evidence that Petitioner could meaningfully confront. Respondents submit a declaration from Officer Cruz along with a Form I-231 at ECF 11-1. The document does not specify where the officer obtained the information regarding the allegations, does not provide an explanation of what the violation actually meant, nor does it provide any actual records from ISAP. *Id.* In addition, Respondents failed to comply with the minute order, which required that “any response SHALL provide the Court with copies of all referenced/relevant portions of Petitioner's A-File and other supporting documents, including, but not limited to portions of Petitioner's A file and any available records documenting and/or detailing the nature of any alleged violations of supervised release.” ECF 7. Respondents state that “A-files contain many documents that are not relevant to the questions presented by this habeas petition, including applications for immigration benefits and immigration court pleadings. Some of these documents may be sensitive, including tax materials or asylum materials.” ECF * 2 fn. 3. However, this court has not requested any taxes nor asylum materials. Instead, this court merely wanted documentation to support the alleged ISAP violations.

³ J.E.H.G. states: “From December 2022 to October 2025, I consistently reported to the ICE office in Stockton and my assigned officers through the mobile reporting app. I followed the instructions diligently, taking and sending photos from my home whenever requested. This photo happened once a month. They never told me what exact time to take the photo; I just knew it would have to be that day. I received the notification in the morning and that same day I took the photo in the afternoon. My officer never told me that I was failing with the photos. When immigration arrested me for the second time, they told me there were more violations, but I didn't know what they were talking about.” ECF 2-1.

Regardless of any alleged violations, Respondents created a reasonable expectation that J.E.H.G. would be permitted to live and work in the United States without being subject to arbitrary arrest, even though she may have occasionally checked in late for her ISAP phone appointments. J.E.H.G. has a viable path to immigration relief and lawful permanent residence through her own and derivative asylum petition; she is supported by family ties, access to legal counsel, and a stable address, which further mitigates any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). Assuming arguendo that facts support the above allegations by Respondents, the question regarding flight risk is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. Here, there is no basis to argue that J.E.H.G., who was arrested by Respondents *while appearing at a scheduled in-person ICE appointment and has never missed a court hearing*, is a flight risk. Evidence of alleged compliance or non-compliance with ISAP requirements would be evidence for the neutral adjudicator to consider in a pre-deprivation hearing that comports with due process requirements. Here, there was no indication that Respondents complied with the due process requirement of showing that the detention was justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690. The record here demonstrates the opposite: a. The government previously determined J.E.H.G. was not a danger to the community and, implicitly, not a flight risk; b. J.E.H.G. subsequently validated that assessment by retaining an immigration lawyer, filing her principal and derivative asylum petitions, attending all of her court hearings, and ICE appointments. Regardless, the fact "that the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation

to effectuate the detention in a manner that comports with due process.” See *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *4 (W.D. Wash. Sept. 12, 2025);

In addition, J.E.H.G. lived in liberty for over three years, during which time she established herself as an exemplary resident and a valuable asset to her community. J.E.H.G. has never committed any crimes, nor been arrested for any reason. ECF 2-1. She is demonstrably not a flight risk, and her detention is not reasonably necessary to ensure her appearance at future proceedings.

iii. J.E.H.G. is not an applicant for admission under 8 U.S.C. § 1225(b)

Respondents assert that J.E.H.G. is mandatorily detained during her removal proceedings under 8 U.S.C. § 1225(b)(1). See ECF 9 * 1. 8 U.S.C. § 1225(b)(1) lays out the expedited removal process applied to applicants for admission. The plain meaning of the term “seeking admission” or being an applicant for admission does not refer to individuals who have been in the country for a period of time. See *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025). J.E.H.G. has been living in the United States since 2022, when the Respondents released her on her recognizance, and placed her on 8 U.S.C. § 1229a(a)(1) proceedings. See ECF 2-3. Therefore, she cannot possibly be seeking admission at this moment. Respondents’ arguments also rely on *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). Respondents fail to acknowledge that *Jennings* was a statutory interpretation case, where the Supreme Court found that the statute (§ 1225(b)) did not grant bond hearings. It explicitly did not rule on the constitutional question and remanded it, stating, “we leave the Ninth Circuit’s constitutional holding to be resolved on remand” *Id.* at 284. *Jennings* therefore did not rule on the question of whether re-detention without a bond hearing

violates due process, and it did not preclude as-applied challenges. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (“Petitioner has established a strong likelihood of success in showing that he has an interest in his continued liberty and that mandatory detention under section 1225(b)(1)(B)(ii) would violate his due process rights unless he is afforded adequate process”).

iv. Even if 8 U.S.C. § 1225(b)(1) proceedings applied here, this is a constitutional question, not a statutory one.

The Due Process Clause of the Fifth Amendment guarantees that the government may not deprive any person of liberty without due process of law. *See* U.S. Const. amend. V. “Freedom from imprisonment -- from government custody, detention, or other forms of physical constraint - - lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The guarantee applies in full force to “all persons’ in the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent, and to “an alien subject to a final deportation order.” *Id.* at 693. The due process required by the Fifth Amendment typically entails a pre-deprivation hearing. *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (“the Constitution requires some kind of hearing *before* the State deprives a person of liberty or property” (emphasis in original)). *See Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *2 (N.D. Cal. Sept. 9, 2025).

Therefore, regardless of the specific statute, the core issue is constitutional, not statutory. The Fifth Amendment protects the profound liberty interest of individuals who have been previously released from custody, placing a constitutional limit on the government’s authority to re-detain them without due process. Individuals released from custody, even conditionally, retain a profound liberty interest protected by the Fifth Amendment, which limits the government’s broad authority to detain. *See Morrissey v. Brewer*, 408 U.S. 471 (1972); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *5 (E.D. Cal. Aug. 21, 2025) (finding that

petitioner had a protected liberty interest in his release; allowing for an as-applied constitutional challenge arguing that the Due Process Clause barred the government from re-detaining him without first providing a bond hearing).

Respondents assert that J.E.H.G. lacks any constitutional due process rights. ECF 11. For the reasons stated *supra*, the Respondents' position misapprehends the law. The government's reliance on *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) and *DHS v. Thuraissigiam*, 591 U.S. 103, 139–40 (2020) is also misplaced. Those cases dealt with admission into the United States and individuals currently stopped at the border, not with the unlawful re-detention of an individual who is already inside the United States. Other cases relied upon by the government, namely *Barrera-Echavarria v. Rison, infra*, and *Angov v. Lynch, infra*, equally fail to support their arguments. ECF 11. *Barrera-Echavarria v. Rison, infra*, deals with an individual detained under 8 U.S.C. § 1231, which pertains to noncitizens who were previously ordered removed. ECF 11 * 3. The text on page 1450 of *Barrera-Echavarria, infra*, refers to "excludable aliens," who are detained under a different statutory authority than the Petitioner here, who has never been ordered deported from the United States. *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995). *Barrera-Echavarria v. Rison, infra*, has been superseded by statute, as Respondents admitted and as stated in *Rodriguez v. Robbins*, 715 F.3d 1127, 1140-41 (9th Cir. 2013). *Angov v. Lynch, infra*, deals with whether the admission of certain documents violated an "arriving alien's" statutory and constitutional rights, which is distinguishable from the case at hand, which is regarding the deprivation of liberty. *Angov v. Lynch*, 788 F.3d 893, 897 (9th Cir. 2015). Lastly, in *Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010), the court recognized the substantial costs of undoing liberty and found a procedural due process violation, even though the outcome there rested on

case-specific grounds. *See Gonzalez-Fuentes v. Molina*, 607 F.3d 864 (1st Cir. 2010) (“Prisoners convicted of murder, who had been released for several years pursuant to electronic supervision program (ESP), had a protected due process liberty interest in their continued participation in the ESP program”).

8 U.S.C. § 1182(d)(5)(A) creates an exception for § 1225(b) detention at the border, namely, that an individual “may be temporarily paroled ‘for urgent humanitarian reasons or significant public benefit.’ *Id.*; 8 U.S.C. § 1182(d)(5)(A). 8 C.F.R. § 212(a)(5)(a) grants authority to ICE officers to grant parole. 8 CFR § 212(a)(5)(b) explains that such parole could be granted to individuals identified under that section “on a case-by-case basis for ‘urgent humanitarian reasons’ or ‘significant public benefit,’ **provided the aliens present neither a security risk nor a risk of absconding.**” 8 CFR § 212(a)(5)(b) (emphasis added). *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007).

ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process”). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-deprivation hearing before revocation of probation); *Morrissey*, 408 U.S. at 482 (same, in the parole context). J.E.H.G.’s release from custody in 2021 and ties to her community provide her with a protected liberty interest. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019); *See e.g. J.O.L.R. v. Wofford*, No. 1:25-CV-01241-KES-SKO (HC), 2025 WL 2908740, at *3 (E.D. Cal. Oct. 14, 2025) (“The Due Process Clause protects petitioner, a person inside the United States, from unlawful detention”); *Pinchi v. Noem*, Slip Copy, 2025 WL 1853763 (N.D. Cal. July 4, 2025).

To comply with substantive due process, a sufficient purpose must justify the government's deprivation of an individual's liberty. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him"). As explained *supra*, Respondents have not made such a showing here.

The government also cites *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), a distinguishable case. *Rodriguez Diaz* addressed whether due process requires a second bond hearing for a noncitizen facing prolonged detention under § 1226(a). Here, the challenge is not to prolonged detention, but to the very inception of detention. Unlike the petitioner in *Rodriguez Diaz*, J.E.H.G. had not previously received a bond hearing for this period of detention. Because she was unlawfully taken into custody from a state of liberty, the proper remedy was an immediate return to the *status quo ante* - her release - not a determination of what process is due after months or years of confinement.

Contrary to the Respondents' position, several federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's release from custody, as set out in DHS's stated practice and *Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981) both require a pre-deprivation hearing for a noncitizen on bond, like J.E.H.G., *before* ICE re-detains her. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega*, 415 F. Supp. 3d at 963; *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, at *4 (holding the Constitution requires a hearing before any re-arrest); *Arzate v. Andrews*, Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (The court found Mr. Arzate was likely to succeed on his claim that his re-detention without a new bond hearing violated the Due Process Clause; the court enjoined the government from re-detaining him without first providing a bond hearing where it must prove by clear and convincing evidence that he is a flight risk or a danger to the community); *Pinchi v. Noem*, Slip Copy, 2025 WL 1853763 (N.D. Cal. July 4, 2025). *See Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO, 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (analogizing to *Morrissey*) and *Arzate v. Andrews* at *7 (enjoining and restraining Respondents from re-detaining petitioner without first providing petitioner with a bond hearing before an immigration judge at which the

government must prove by clear and convincing evidence that petitioner is a flight risk or danger to the community such that his re-detention is warranted.).

Further, the Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges, that is, constitutional challenges to applications of the statute as we have now read it.”).

The proper remedy for this due process violation is a return to the *status quo ante*. The inception of her current detention was unlawful, and a return to the *status quo* requires J.E.H.G.’s freedom without any additional restrictions, such as GPS monitor devices, and the return of her confiscated property.

B. J.E.H.G. has established the requisite Irreparable Harm

The government claims that there was no irreparable harm. The government seeks to disturb the well-established precedent under *Hernandez*, 872 F.3d at 976, where the Ninth Circuit held that the conditions experienced in immigration detention constitute irreparable harm. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth

Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration detention,” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. While detained at California City, J.E.H.G. suffered from food, hygiene, and sleep deprivation. *Id.* She developed hives and pimples on her body. *Id.* She is also dealing with the emotional aftermath of an episode due to an officer’s inappropriate sexual conduct towards her by staring at her through a window. At that moment, she was undressed and applying a lotion to treat hives while she was inside her room. *Id.* J.E.H.G. has sought psychological and officer help from the facility and is currently terrified of retaliation. *Id.* J.E.H.G. is also suffering from being away from her parents and little brother. *Id.* Every additional day J.E.H.G. spends in unlawful detention subjects him and others to further irreparable harm.⁴ See ECF 2-3.

C. Balance of interests/public interest

When “the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction.” *Hernandez*, 872 F.3d at 996 (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009)). “[I]n addition to [evaluating] the potential hardships facing Plaintiff[] in the absence of the injunction, the court may consider ... the indirect hardship to their friends and family members.’ ” *Id.* (quoting *Golden Gate Rest. Ass’n v. City & Cty. of San*

⁴ Respondents state that a “habeas petition is not the proper mechanism for challenging conditions of detention.” ECF 11 *9. This is a habeas petition and not a challenge to detention conditions lawsuit. Respondents misapprehend the rationale for presenting these facts. Such facts are relevant because Petitioner claims irreparable harm. Importantly, Respondents do not challenge the facts brought forward by Petitioner, nor do they try to allege that the conditions are any better. In fact, Petitioner is aware that other individuals detained at California City have sued the facility over conditions. *See* Complaint, Notice and Motion for TRO, 3:25-cv-09757-MMC, filed in the Northern District of California on 12/01/2025, hearing scheduled for 01/06/2025.

Francisco, 512 F.3d 1112, 1126 (9th Cir. 2008). Finally, the Ninth Circuit has recognized that “neither equity nor the public's interest is furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (holding that the district court did not abuse its discretion in weighing the balance of hardships in favor of plaintiffs who credibly alleged that the government was violating the INA). The government argues that there is a significant interest in exercising its enforcement authority. However, as shown *supra*, the government's interest in detention “without a bond hearing” is outweighed by J.E.H.G.’s liberty interest. *Abdul-Samed v. Warden*, 2025 WL 2099343, at *8 (E.D. Cal. July 25, 2025). The hardships faced by J.E.H.G., her community, and the public interest in granting injunctive relief weigh strongly in her favor. Here, the balance of equities “tips sharply towards” J.E.H.G.

D. Should the Court Order a Bond Hearing, the Burden is on the Government

When there is a substantial liberty interest at stake, the government should have the burden of proof by clear and convincing evidence that an individual is a flight risk or danger before depriving the individual of that liberty. The Ninth Circuit has also held that an individual's private interest in “freedom from prolonged detention” is “unquestionably substantial.” *See Diep v. Wofford*, No. 1:24-CV-01238-SKO (HC), 2025 WL 604744, at *4 (E.D. Cal. Feb. 25, 2025), quoting *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011). J.E.H.G. has established a substantial liberty interest at stake. In addition, because there is a high risk of erroneous deprivation, and the government's interest is low, “the Due Process Clause requires a pre-deprivation bond hearing where the government bears the burden of proving by clear and convincing evidence that the petitioner is a flight risk or danger to the community.” *See Singh v. Andrews*, at *9. Numerous district courts have reached a similar conclusion. *Id.*, citing to *Pinchi*, 2025 WL 1853763, at *3–4; *Ortega*, 415 F. Supp. 3d at 970; *Doe*, 2025 WL

691664, at *6; *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Garcia*, 2025 WL 1676855, at *3; *Romero v. Kaiser* at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings* at *4.

The government rests on the argument that Section 1225(b)(2) “mandate[s] detention of applicants for admission until certain proceedings have concluded,” which is purely a legal question. *Id.* Because the government has no evidence not does the government claim that J.E.H.G. poses a risk of flight or poses a danger to the community, the appropriate remedy here is J.E.H.G.’s immediate release. *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *15 (E.D. Cal. Oct. 9, 2025) (“Because the government has no evidence that Mr. Ortiz poses a risk of flight or poses a danger to the community, Mr. Ortiz **SHALL** be released **IMMEDIATELY** from DHS custody. DHS **SHALL NOT** impose any additional restrictions on him, such as electronic monitoring, unless that is determined to be necessary at a later custody hearing.”); *See also J.C.L.A. v. WOFFORD et al.*, No. 1:25-CV-01310-KES-EPG (HC), 2025 WL 2959250, at *8 (E.D. Cal. Oct. 17, 2025) (Petitioner’s immediate release is required to return him to the *status quo ante* - “the last uncontested status which preceded the pending controversy” citing to *Pinchi*, 2025 WL 1853763, at *3). J.E.H.G. also requests that no security be required in connection with her release. *See Zest Anchors, LLC v. Geryon Ventures, LLC*, 2022 WL 16838806, at *4 (S.D. Cal. Nov. 9, 2022) (“[T]he party affected by the injunction bears the obligation of presenting evidence that a bond is needed.”).

CONCLUSION

For the foregoing reasons, J.E.H.G. respectfully requests that the Court grants a Preliminary Injunction.

Dated: December 6, 2025

Respectfully submitted,

/s/ Natalia Santanna
Natalia Vieira Santanna
Attorney for Petitioner