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12 UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **ROSA AGUILAR-PEREZ,**
15
16 Petitioner,

17 vs.

18 **CHRISTOPHER J. LAROSE, WARDEN**
19 **OF OTAY MESA DETENTION CENTER,**

20 **GREGORY J. ARCHAMBEAULT, IN**
21 **HIS OFFICIAL CAPACITY AS SAN**
22 **DIEGO FIELD OFFICE DIRECTOR, ICE**
23 **ENFORCEMENT AND REMOVAL**
24 **OPERATIONS;**

25 **KRISTI NOEM, SECRETARY OF THE**
26 **U.S. DEPARTMENT OF HOMELAND**
27 **SECURITY; AND**

28 **PAM BONDI, ATTORNEY GENERAL OF**
29 **THE UNITED STATES,**

30 **IN THEIR OFFICIAL CAPACITIES,**

31 Respondents

PETITIONER'S NOTICE OF MOTION
AND EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION

POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION

Case No. 3:25-cv-03409-LL-DDL

PETITIONER'S NOTICE OF MOTION AND EX PARTE MOTION FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR PRELIMINARY INJUNCTION

NOTICE OF MOTION

Petitioner Ms. Aguilar-Perez applies to this Honorable Court for a temporary restraining order enjoining Respondents—the U.S. Department of Homeland Security (DHS), the Warden of the California City Detention Center, the Field Office Director of ICE Enforcement and Removal Operations in Los Angeles, and the Attorney General of the United States— (1) from transferring Petitioner out of this District, transferring her to any other detention facility, removing her from the United States, or re-arresting or re-detaining her while this action is pending, except as authorized after a hearing before a neutral adjudicator at which the Government must prove by clear and convincing evidence that detention is necessary and is the least restrictive means of ensuring appearance and community safety; (2) from continuing to detain her under 8 U.S.C. § 1225(b); and (3) ordering her immediate release or, in the alternative, requiring that Respondents provide an individualized custody hearing under 8 U.S.C. § 1226(a) within seven (7) days, at which the Government must demonstrate by clear and convincing evidence that detention is necessary and that no less restrictive conditions of supervision—such as release on bond, parole, or electronic monitoring—would reasonably assure appearance and public safety.

DATED: December 4, 2025

Respectfully submitted,

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1
2 **INTRODUCTION**

3 1. This case challenges the government’s attempt to summarily revoke a
4 decade-old decision to release Rosa Aguilar-Perez to her family and community,
5 and to convert her overnight into a “mandatory” detainee with no right to a custody
6 hearing. Ms. Aguilar-Perez is a 53-year-old mother of three U.S. citizen children
7 who has lived in San Diego for more than thirty-five years. In 2014, after a traffic-
8 related offense for which she took responsibility in state court, DHS issued a
9 Notice to Appear, placed her in § 240 removal proceedings, and—critically—
10 affirmatively released her on her own recognizance under 8 U.S.C. § 1226(a). With
11 full knowledge of her history and equities, the agency determined she was neither a
12 danger nor a flight risk and allowed her to remain at home with her family.

13 2. For the next ten years, nothing about that assessment changed. Ms.
14 Aguilar-Perez lived at the same long-term address with her lawful permanent
15 resident husband, raised their three U.S. citizen children, maintained steady
16 employment, and complied meticulously with every ICE check-in and
17 immigration-court obligation. She accrued no new criminal history, received no
18 violations, and continued to do exactly what DHS had implicitly promised would
19 allow her to remain out of custody: live peacefully in the community and follow
20 the rules.

21 3. In October 2025, without any allegation of new conduct or changed
22 circumstances, DHS abruptly seized Ms. Aguilar-Perez at a routine ICE check-
23 in—the same type of appointment she had dutifully attended for a decade. She
24 received no advance notice, no explanation, and no opportunity to contest this
25 about-face before losing her liberty. She was transported to the Otay Mesa
26 Detention Center, where she remains incarcerated today, separated from her

1 family, deprived of her job, and subjected to the severe physical and psychological
2 burdens of immigration detention.

3 4. The government now attempts to justify this summary re-detention by re-
4 labeling Ms. Aguilar-Perez as a mandatory detainee under 8 U.S.C. § 1225(b)(2),
5 as though she were a newly arrived “applicant for admission” at the border rather
6 than a long-term San Diego resident who has been in § 240 proceedings and on
7 supervised release for a decade. That position cannot be reconciled with the
8 statutory scheme Congress enacted—under which § 1226(a) is the default
9 detention authority for noncitizens in pre-final-order removal proceedings—or
10 with the government’s own decision in 2014 to release her under § 1226(a) after
11 reviewing her record.

12 5. Nor can the government’s position be squared with the Fifth
13 Amendment. Once DHS chose to release Ms. Aguilar-Perez on her own
14 recognizance, it created a protectable liberty interest in remaining free absent
15 constitutionally adequate procedures and a lawful basis for revocation. Due process
16 does not permit the government to seize a long-released, fully compliant noncitizen
17 at a routine check-in, without notice or hearing, and consign her to months of
18 incarceration without any showing that she has become dangerous or a flight risk.
19 Civil immigration detention is justified, if at all, only where it is narrowly tailored
20 to preventing danger or non-appearance and accompanied by procedures that
21 meaningfully reduce the risk of error. None of that happened here.

22 6. The procedural history underscores the constitutional problem. After her
23 arrest, Ms. Aguilar-Perez promptly requested a custody redetermination in
24 immigration court. On November 21, 2025, the Immigration Judge denied
25 jurisdiction based solely on Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA
26 2025), without considering her decade of impeccable compliance, her 35-year


1 residence in San Diego, her role as the primary caregiver in a mixed-status family,
2 or any evidence of danger or flight risk. As a result, she has never received any
3 individualized custody hearing at all—not in 2014, and not in connection with her
4 2025 re-detention.

5 7. Under well-established principles, this “track-switching” re-detention is
6 both unlawful and unconstitutional. Statutorily, Respondents are acting in excess
7 of their authority by invoking § 1225(b)(2) to detain someone whom they
8 themselves placed into § 240 proceedings and released under § 1226(a).
9 Constitutionally, they have violated due process by revoking a longstanding grant
10 of liberty without any pre-deprivation process, without any evidence of changed
11 circumstances, and without any individualized determination that detention is
12 necessary to prevent danger or flight. Applying the familiar *Mathews v. Eldridge*
13 framework to these facts, each factor—Petitioner’s powerful liberty interest, the
14 acute risk of erroneous deprivation, and the government’s minimal interest in
15 dispensing with a hearing—confirms that due process required, at minimum, an
16 individualized custody hearing before re-detention, and that immediate release is
17 now the only adequate remedy.

18 8. Petitioner easily satisfies the standard for temporary injunctive relief. She
19 is likely to succeed on her statutory and constitutional claims; she is suffering
20 ongoing irreparable harm every day she remains in unlawful custody; the balance
21 of equities overwhelmingly favors restoring her to the status quo ante after a
22 decade of peaceful, compliant community life; and the public interest is served—
23 not harmed—by ensuring that the government adheres to the limits Congress
24 placed on detention authority and to the constitutional guarantees that protect all
25 persons from arbitrary imprisonment.

1 9. For these reasons, and as detailed in the sections that follow, the Court
2 should issue a temporary restraining order and preliminary injunction ordering Ms.
3 Aguilar-Perez’s immediate release, prohibiting her re-detention absent a
4 constitutionally adequate custody hearing under § 1226(a), and preserving her
5 ability to pursue her immigration case and care for her family while these
6 proceedings remain pending.

7 **FACTUAL AND PROCEDURA BACKGROUND**

8 10. Facts Rosa Aguilar-Perez is a 53-year-old mother of three U.S. citizen
9 children who has lived continuously in the United States for more than thirty-five
10 years. She entered the United States near San Ysidro, California at age fourteen in
11 1992 and has remained here ever since, building a life, a family, and deep roots in
12 San Diego. She has been married to her husband, lawful permanent resident
13 Miguel A. Perez González, for over twenty-five years. Together they raised their
14 three U.S. citizen children—Ismael (born 1992), Miguel (born 1994), and Rosita
15 (born 1998)—in their longtime family home at  where they
16 have resided for decades.

17 11. Throughout her adult life, Ms. Aguilar-Perez has been a central figure in
18 an extended, interdependent family unit. She helped operate the family’s janitorial
19 business, served as the primary homemaker, and provided daily emotional,
20 logistical, and financial support to her children and husband. A licensed clinical
21 psychologist who evaluated her in 2014 described her as emotionally stable,
22 cooperative, and deeply family-oriented, noting her consistent caregiving role,
23 strong family bonds, and longstanding community involvement Her bond packet
24 includes extensive letters and records documenting her caregiving role, consistent
25 work history, community involvement, and deep ties to San Diego.

1 12. In 2014, following a traffic-related incident for which she took
2 responsibility in state court, DHS issued her a Notice to Appear and executed an
3 administrative arrest warrant. However, after reviewing her background, equities,
4 and stability, DHS issued a Notice of Custody Determination releasing her on her
5 own recognizance, without bond. See *Ex. B, 2023 NTA; Notice of Custody*
6 *Determination* (reflecting “released” status). From that point forward—and for the
7 next decade—Ms. Aguilar-Perez lived peacefully in the community, fully
8 compliant with all immigration supervision requirements. She attended every ICE
9 check-in, remained at her long-term residence, and worked continuously. For the
10 past six years, she has held steady employment with DMSD Foods, Inc.,
11 contributing significantly to her household and supporting her children and LPR
12 husband.

13 13. Nothing in her circumstances changed during those ten years. She
14 accrued no criminal history, missed no ICE appointments, violated no conditions
15 of supervision, and consistently demonstrated her reliability, stability, and deep
16 community integration.

17 14. Despite this decade of perfect compliance, Ms. Aguilar-Perez was
18 suddenly arrested by DHS at a routine ICE check-in in San Diego in October
19 2025—the same type of appointment she had dutifully attended for years. She
20 received no advance notice and no explanation. Her arrest was abrupt and
21 disorienting, tearing her away from her family in the middle of their holiday
22 preparations and leaving her husband and children in immediate emotional and
23 logistical crisis. Her daughter Rosita described the detention as devastating, noting
24 that her mother “is the backbone of our family” and “the one who holds all six of
25 us together.” Letters in the bond packet describe her as the central emotional
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1 anchor, the family’s primary caregiver, and an active community volunteer who
2 distributes food and assists neighbors in need.

3 15. After her arrest, DHS transferred her to the Otay Mesa Detention Center.
4 Since October, she has been held there without any opportunity for an
5 individualized assessment of custody, without any explanation of changed
6 circumstances, and without any notice-based process.

7 16. Recent reporting and state oversight reviews confirm that Otay Mesa
8 Detention Center is experiencing severe and deteriorating conditions, including
9 chronic overcrowding, inadequate access to medical care, and the expanded use of
10 solitary or “segregated” confinement for non-disciplinary reasons. Independent
11 investigations in 2025 described dorms filled beyond capacity, significant delays in
12 basic medical evaluation, and prolonged isolation placements associated with
13 psychological harm. Community advocates and the California Attorney General
14 likewise identified OMDC as among the state’s most troubled immigration
15 detention facilities, where systemic failures place detainees—particularly older
16 adults like Ms. Aguilar-Perez—at heightened risk of deterioration and neglect.
17 These conditions form the backdrop to her continued confinement.¹

18 17. Seeking relief, Ms. Aguilar-Perez requested a custody redetermination
19 before the Otay Mesa Immigration Court. On November 21, 2025, Immigration
20 Judge Guy Grande denied the request solely on jurisdictional grounds, stating that

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23 ¹ [https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-](https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-other-immigrant-detention-facilities)
24 [other-immigrant-detention-facilities](https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing)
[https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-](https://www.10news.com/completely-unacceptable-california-attorney-general-report-finds-immigration-detention-centers-are-failing)
25 [immigration-detention-centers-are-failing](https://timesofsandiego.com/life/2025/10/29/advocates-hold-dia-de-los-muertos-vigil-immigration-detainees-died-in-custody/)
[https://timesofsandiego.com/life/2025/10/29/advocates-hold-dia-de-los-muertos-vigil-](https://timesofsandiego.com/life/2025/10/29/advocates-hold-dia-de-los-muertos-vigil-immigration-detainees-died-in-custody/)
26 [immigration-detainees-died-in-custody/](https://inewssource.org/2025/09/16/otay-mesa-detention-center-san-diego-immigration-solitary-segregation/)
[https://inewssource.org/2025/09/16/otay-mesa-detention-center-san-diego-immigration-solitary-](https://inewssource.org/2025/09/16/otay-mesa-detention-center-san-diego-immigration-solitary-segregation/)
27 [segregation/](https://inewssource.org/2025/09/16/otay-mesa-detention-center-san-diego-immigration-solitary-segregation/)

1 he lacked authority to review custody under *Matter of Yajure Hurtado*, 29 I&N
2 Dec. 216 (BIA 2025). The IJ did not address Ms. Aguilar-Perez’s individual
3 circumstances, her decade-long record of compliance, her extensive family
4 support, or any evidence of danger or flight risk. See *Ex. C, IJ Order* (checking
5 only the box for “Court lacks jurisdiction to redetermine custody”)

6 18. . As a result, she has received no bond hearing whatsoever since being re-
7 detained.

8 19. At no point has DHS identified any conduct, event, or change in
9 eligibility that would justify re-arresting her after ten years of safe and stable
10 release. Nothing in the bond packet or her immigration file suggests any basis for
11 reconsidering the government’s long-standing determination that she poses neither
12 danger nor flight risk. The government has initiated no new proceedings, issued no
13 new charges, and offered no explanation for why she is suddenly detained now,
14 after decades of lawful behavior and complete compliance.

15 20. Today, more than two months later, Ms. Aguilar-Perez remains
16 incarcerated at the Otay Mesa Detention Center —without charges, without a
17 hearing, without an explanation, and without any opportunity to contest the
18 deprivation of her liberty. Her detention has disrupted her employment, separated
19 her from the family she has supported for more than thirty years, caused profound
20 psychological and emotional hardship, and fractured a stable household that relies
21 on her daily presence. Nothing in the administrative record suggests that her
22 detention was necessary, justified, or consistent with due process. She remains held
23 solely because of a jurisdictional barrier that precluded the IJ from considering her
24 case at all—not because of any individualized finding that she poses danger or
25 flight risk, or that detention is necessary in lieu of less-restrictive alternatives.

LEGAL STANDARD

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21. Petitioner is entitled to temporary injunctive relief upon demonstrating that she is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (TRO and preliminary injunction standards are “substantially identical”).

22. Even if Petitioner does not show a likelihood of success on the merits, the Court may grant a temporary restraining order where she raises “serious questions” going to the merits, the balance of hardships tips “sharply” in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

23. As set forth below, Petitioner easily satisfies each requirement.

ARGUMENT

PETITION WARRANTS A TEMPORARY RESTRAINING ORDER

24. A temporary restraining order should issue if “immediate and irreparable injury, loss, or irreversible damage will result” absent relief. Fed. R. Civ. P. 65(b). The purpose is to prevent irreparable harm before the Court can hold a preliminary-injunction hearing. *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974). Here, without intervention, Ms. Hortua will remain in unlawful custody—detained under a statutory regime that does not apply to her and without any bond hearing—in violation of the INA and the Due Process Clause.

25. Every additional day of confinement inflicts irreparable harm.

1 **I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS OF**
2 **HER STATUTORY CLAIM CHALLENGING DHS’S**
3 **MISCLASSIFICATION OF HER DETENTION.**

4 26. Petitioner is overwhelmingly likely to prevail on her statutory claim
5 because she is, and always has been, a § 1226(a) noncitizen in full § 240 removal
6 proceedings—not a § 1225(b)(2) “applicant for admission” subject to mandatory
7 detention. DHS made that determination years ago when it (1) placed her into
8 regular removal proceedings under § 1229a, and (2) affirmatively released her on
9 her own recognizance “in accordance with section 236 of the Immigration and
10 Nationality Act,” i.e., 8 U.S.C. § 1226. Since that time, the detention authority
11 “consistently applied by the government” to individuals in her position has always
12 been § 1226. See, e.g., *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16
13 (9th Cir. 2007); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *3–4 (S.D.N.Y.
14 Aug. 13, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 214–15 (D. Mass. 2025);
15 *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025).

16 **A. The Statutory Framework Confirms § 1226(a) Is the Default Authority**
17 **Here**

18 27. Federal immigration detention before a final order is governed by two
19 distinct, mutually exclusive schemes: 8 U.S.C. §§ 1225 and 1226. Section 1226(a)
20 “sets out the default rule”: the Attorney General may arrest and detain a noncitizen
21 “pending a decision on whether the alien is to be removed,” but “may release” that
22 person on bond or conditional parole, subject only to narrow mandatory-detention
23 carve-outs in § 1226(c). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).
24 Implementing regulations confirm that § 1226(a) carries with it a right to an
25 individualized bond hearing and subsequent bond redetermination upon changed
26 circumstances. See 8 C.F.R. §§ 236.1(c)(8), (d)(1), 1003.19(e).

1 28. Section 1225, by contrast, is a border-processing statute. It “applies
2 primarily to [noncitizens] seeking entry into the United States (‘applicants for
3 admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297. Section
4 1225(b)(2)(A) provides that an “alien who is an applicant for admission” shall be
5 detained for a proceeding under § 1229a if “the examining immigration officer”
6 determines that the noncitizen “seeking admission is not clearly and beyond a
7 doubt entitled to be admitted.” 8 U.S.C. § 1225(a)(1), (b)(2)(A). As numerous
8 courts have now held, that language cannot be stretched to cover long-term
9 residents in the interior who were previously released under § 1226(a) and placed
10 into § 240 proceedings.

11 29. Recent decisions across the country have confirmed this understanding,
12 emphasizing that § 1226(a) is the default detention authority for inadmissible
13 noncitizens residing in the United States who do not fall within § 1226(c)’s narrow
14 crime-based mandate. The Laken Riley Act’s addition of § 1226(c)(1)(E)
15 presupposes that inadmissible individuals present without admission, but not
16 charged with certain offenses, fall under § 1226(a)’s ordinary bond framework. See
17 *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (Riley
18 carve-out “lends strong textual support” that inadmissible noncitizens are included
19 within § 1226 when they do not trigger § 1226(c)); *Garcia v. Noem*, 2025 WL
20 2549431, at *5–6 (S.D. Cal. Sept. 3, 2025); *Faizyan v. Casey*, 2025 WL 3208844,
21 at *5–6 (S.D. Cal. Nov. 17, 2025).

22 30. Reading § 1225(b)(2) to cover every inadmissible person already living
23 in the interior would render the Riley amendment largely “unnecessary,” because
24 DHS could simply invoke § 1225(b)(2)(A) and sidestep § 1226 entirely—a
25 construction courts have rejected as incompatible with basic canons of statutory
26 interpretation. See *Garcia*, 2025 WL 2549431, at *5–6; *Mosqueda v. Noem*, 2025

1 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025); *Vazquez v. Feeley*, 2025 WL
2 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Guzman v. Andrews*, 2025 WL
3 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025); *Aparicio Sanchez v. Noem*, 2025 WL
4 3214987, at *3–4 (S.D. Cal. Nov. 18, 2025); *Yohan Diaz-Villatoro v. LaRose*, 2025
5 WL 3251377, at *3–4 (S.D. Cal. Nov. 21, 2025).

6 **B. Courts Now Overwhelmingly Hold That § 1225(b)(2) Does Not Apply to**
7 **Long-Term Residents Arrested in the Interior After Release Under §**
8 **1226(a)**

9 31. The “vast majority” of courts addressing this precise scenario—long-term
10 residents arrested at routine ICE check-ins or in the interior after prior § 1226
11 release—have held that § 1226(a) governs, not § 1225(b)(2). See, e.g., *Helal v.*
12 *Janecka*, 2025 WL 3190132, at *4 (C.D. Cal. Oct. 24, 2025); *Zaragoza Mosqueda*
13 *v. Noem*, 2025 WL 2591530, at *4–5; *Garcia*, 2025 WL 2549431, at *5–8; *Rosado*
14 *v. Figueroa*, 2025 WL 2337099, at *6–11 (D. Ariz. Aug. 11, 2025); *Rodriguez v.*
15 *Bostock*, 779 F. Supp. 3d at 1255–61; *Hasan v. Crawford*, 2025 WL 2682255, at
16 *5–9 (E.D. Va. Sept. 19, 2025); *Salazar v. Dedos*, 2025 WL 2676729, at *4
17 (D.N.M. Sept. 17, 2025); *Garcia Cortes v. Bondi*, 2025 WL 2652880, at *2–3;
18 *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *4–8 (E.D. Mich. Sept. 9, 2024);
19 *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *8–10 (D. Md. Aug. 24, 2025);
20 *Romero v. Hyde*, 2025 WL 2403827, at *8–13 (D. Mass. Aug. 19, 2025).

21 32. These decisions uniformly reject the government’s attempt to treat every
22 inadmissible person present without admission as perpetually “seeking admission.”
23 As *Ledesma Gonzalez v. Bostock* explained, arresting a long-term resident at a
24 routine ICE check-in “is an act of compliance, not an attempt to gain admission.”
25 2025 WL 2841574, at *3 (W.D. Wash. Oct. 7, 2025).

1 33. The text of § 1225(b)(2)(A) reinforces this: an “applicant for admission”
2 detained under that provision must be someone whom an “examining immigration
3 officer” has determined, during inspection, to be “seeking admission” and “not
4 clearly and beyond a doubt entitled to be admitted.” Broadly reading § 1225(b)(2)
5 to cover any noncitizen present without admission ignores the limiting language
6 and renders “seeking admission” superfluous. See *Shulman v. Kaplan*, 58 F.4th
7 404, 410–11 (9th Cir. 2023); *Beltran v. Noem*, 2025 WL 3078837, at *5–7 (S.D.
8 Cal. Nov. 4, 2025); *Lepe v. Andrews*, 2025 WL 2716910, at *4–5 (E.D. Cal. Sept.
9 23, 2025); *Lopez Benitez*, 2025 WL 2371588, at *3–4. As *Beltran* and related
10 decisions hold, the present-participle “seeking” “necessarily implies some sort of
11 present-tense action”; it requires an affirmative act such as presenting at a port of
12 entry or actively applying for admission, not simply existing in the United States
13 without inspection years later. See *Beltran*, 2025 WL 3078837, at *6; *Esquivel-*
14 *Ipina v. LaRose*, 2025 WL 2998361, at *5 (S.D. Cal. Oct. 24, 2025).

15 34. District courts within this circuit have now squarely adopted this view. In
16 *Estrada-Samayoa v. Cruz*, the court synthesized the case law and held that §
17 1225(b) “cannot apply to those noncitizens who are already present in the United
18 States and who had previously been released under section 1226.” 2025 WL
19 3268280, at *3–4 (E.D. Cal. Nov. 24, 2025); see also *Menjivar Sanchez v. Wofford*,
20 2025 WL 2959274, at *3–7 (E.D. Cal. Oct. 17, 2025); *Lepe*, 2025 WL 2716910, at
21 *4–9; *Reyes v. Larose*, 2025 WL 3171743, at *5 (S.D. Cal. Nov. 13, 2025);
22 *Salvador v. Bondi*, 2025 WL 2995055, at *7 (C.D. Cal. Sept. 2, 2025); *Gomes v.*
23 *Hyde*, 2025 WL 1869299, at *5–7 (D. Mass. July 7, 2025); *Estrada Elias v.*
24 *Knight*, 2025 WL 3228262, at *1 (D. Idaho Nov. 19, 2025) (collecting cases).
25 These courts “join the majority” nationwide in rejecting DHS’s effort to expand §
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1 1225(b)(2)(A) to noncitizens who have long resided in the United States and been
2 released under § 1226(a).

3 **C. Petitioner’s Custody History Places Her Squarely Within § 1226(a)**

4 35. Respondents nevertheless purport to detain Ms. Aguilar-Perez under §
5 1225(b)(2) based solely on the fact that she is charged as inadmissible under §
6 212(a)(6)(A)(i). But her custody history places her squarely within § 1226(a), not §
7 1225(b)(2).

8 36. In 2014, DHS served her with a Notice to Appear, charged her under §
9 212(a)(6)(A)(i), and then affirmatively released her on her own recognizance “in
10 accordance with section 236 of the Immigration and Nationality Act”—the
11 provision codified as § 1226. She thereafter spent more than a decade living in the
12 community, raising her U.S. citizen children, caring for her LPR husband,
13 maintaining steady employment, and complying with all supervision obligations
14 while her § 240 proceedings remained pending. Respondents’ own documents
15 therefore establish that she was detained and released pursuant to § 1226(a), not §
16 1225. See *Ortega-Cervantes*, 501 F.3d at 1115–16; *Lopez Benitez*, 2025 WL
17 2371588, at *4; *Martinez*, 792 F. Supp. 3d at 215; *Salcedo Aceros*, 2025 WL
18 2637503, at *7–8; *Faizyan*, 2025 WL 3208844, at *5.

19 37. Once DHS chose to exercise § 1226(a) authority and release Ms. Aguilar-
20 Perez on recognizance, its detention power derived from § 1226, not § 1225.
21 Federal courts confronting nearly identical “track-switching” re-detentions have
22 held that DHS cannot revoke § 1226(a) release years later and invoke § 1225(b)
23 absent new evidence of danger or flight risk. See *Cordero Pelico v. Kaiser*, 2025
24 WL 2822876, at *8 (N.D. Cal. 2025); *Faizyan*, 2025 WL 3208844, at *4–6. Here,
25 Respondents identify no changed circumstances at all; they rely solely on a legal
26 theory that has been repeatedly rejected.

1 38. Nor does merely charging Ms. Aguilar-Perez as inadmissible under §
2 212(a)(6)(A)(i) convert her into a perpetual § 1225(b) detainee. As *Rodriguez v.*
3 *Bostock* and related decisions explain, the Riley amendment to § 1226(c)
4 demonstrates that inadmissible noncitizens present without admission, but not
5 charged with specified crimes, belong within § 1226(a)'s discretionary bond
6 regime. See *Rodriguez*, 779 F. Supp. 3d at 1256–57; *Singh v. Bondi*, 2025 WL
7 3251437, at *5–6. Ms. Aguilar-Perez has no qualifying criminal charges; she
8 therefore falls within § 1226(a)'s default framework.

9 39. Finally, Respondents' reliance on *Matter of Yajure Hurtado*, 29 I. & N.
10 Dec. 216 (BIA 2025), cannot override this statutory scheme. As several courts
11 have held, agency interpretations like *Hurtado* carry little, if any, weight after
12 *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), and cannot displace
13 Congress's carefully drawn line between §§ 1225 and 1226 or controlling Article
14 III precedent. See *Garcia*, 2025 WL 2549431, at *5–6; *Estrada-Samayoa*, 2025
15 WL 3268280, at *3–4; *Estrada Elias*, 2025 WL 3228262, at *1.

16 **D. Because § 1226(a) Governs, Petitioner Is Entitled to an Individualized**
17 **Custody Determination**

18 40. In short, Ms. Aguilar-Perez is not an “applicant for admission” “seeking
19 admission” within the meaning of § 1225(b)(2)(A). She is a long-time resident who
20 was previously released on her own recognizance under § 1226(a) and who
21 complied with supervision for more than a decade while her § 240 case proceeded.
22 Under the INA, her custody is governed—if at all—by § 1226(a), and thus she is
23 entitled to a discretionary bond framework, including an individualized custody
24 hearing and bond redetermination based on any material change in circumstances.
25 See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(c)(8), (d)(1), 1003.19(e); *Matter of E-R-*
26 *M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011).

1 41. Because Respondents have instead re-labeled her as a § 1225(b) detainee
2 and denied her any custody hearing, they are acting in excess of their statutory
3 authority. Petitioner is therefore likely to succeed on the merits of her statutory and
4 APA claims, and this Court should order her immediate release or, at minimum, a
5 bond hearing that complies with § 1226(a) and due process.

6 **II. PETITIONER IS LIKELY TO SUCCEED ON THE CLAIM THAT**
7 **HER DETENTION VIOLATES DUE PROCESS**

8 42. Federal courts have nearly uniformly held that DHS violates the Fifth
9 Amendment when it re-detains individuals previously released under § 1226(a)
10 without providing an individualized due-process hearing. *See Estrada-Samayoa v.*
11 *Cruz*, 2025 WL 3268280, at *3–6 (E.D. Cal. Nov. 24, 2025); *Garcia v. Noem*,
12 2025 WL 2549431, at *5–8 (S.D. Cal. Sept. 3, 2025); *Rodriguez v. Bostock*, 779 F.
13 Supp. 3d 1239, 1256–57 (W.D. Wash. 2025); *Menjivar Sanchez v. Wofford*, No.
14 1:25-CV-01187-SKO (HC), 2025 WL 2959274, at *3–7 (E.D. Cal. Oct. 17, 2025)
15 (collecting cases); see also *Reyes v. Larose*, No. 25-CV-2938 JLS (VET), 2025
16 WL 3171743, at *5 (S.D. Cal. Nov. 13, 2025); *Lepe v. Andrews*, No. 1:25-CV-
17 01163-KES-SKO (HC), 2025 WL 2716910, at *4–9 (E.D. Cal. Sept. 23, 2025);
18 *Salvador v. Bondi*, No. 2:25-CV-07946-MRA-MAA, 2025 WL 2995055, at *7
19 (C.D. Cal. Sept. 2, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
20 1869299, at *5–7 (D. Mass. July 7, 2025); *Lepe v. Andrews*, 2025 WL 2716910, at
21 *4–9; *Pinchi v. Noem*, 2025 WL 2084921, at *4–5; *Espinoza v. Kaiser*, 2025 WL
22 2675785, at *14; *Hernandez v. Wofford*, 2025 WL 2420390, at *12–15 (E.D. Cal.
23 Aug. 21, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *8–10 (N.D. Cal.
24 Sept. 12, 2025) (holding that § 1225(b) “cannot serve as an endless source of
25 detention authority once DHS has made the choice to release an individual”);
26 *Espinoza v. Kaiser*, 2025 WL 2675785, at *5–8 (E.D. Cal. Sept. 18, 2025) (release

1 reflects DHS’s determination that the person is neither a danger nor a flight risk
2 and that § 1226(a) governs subsequent custody); see also *Reyes v. Larose*, 2025
3 WL 3171743, at *4–5 (S.D. Cal. Nov. 13, 2025); *Estrada-Samayoa v. Cruz*, 2025
4 WL 3268280, at *5–6 (E.D. Cal. Nov. 24, 2025); *Arzate v. Andrews*, 2025 WL
5 2230521, at *3–4 (E.D. Cal. Aug. 4, 2025); *Guillermo M.R. v. Kaiser*, 2025 WL
6 1983677, at *3–4 (N.D. Cal. July 17, 2025); *Ledesma Gonzalez*, 2025 WL
7 2841574, at *1, 8; *Guzman v. Andrews*, No. 25-CV-1015-KES-SKO (HC), 2025
8 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025); *Jorge M.F. v. Jennings*, 534 F.
9 Supp. 3d 1050, 1055 (N.D. Cal. 2021); see also *E.A. T.-B. v. Wamsley*, --- F. Supp.
10 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. 2025); *Majid Faizyan v. Casey*, No.
11 3:25-CV-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025);
12 *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal.
13 July 14, 2025).

14 **A. DHS’s Longstanding Decision to Release Petitioner Created a**
15 **Protectable Liberty Interest in Remaining Out of Custody**

16 43. The Due Process Clause protects individuals from arbitrary government
17 detention, and once the government affirmatively chooses to release a noncitizen
18 into the community, that release creates a protectable liberty interest in remaining
19 free absent constitutionally sufficient procedures. See *Morrissey v. Brewer*, 408
20 U.S. 471, 482 (1972) (release creates an “implicit promise” that liberty will only be
21 revoked if the individual fails to comply with the conditions of release). This
22 fundamental interest applies with full force in the immigration context: “Freedom
23 from imprisonment—from government custody, detention, or other forms of
24 physical restraint—lies at the core of the liberty protected by the Due Process
25 Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, although DHS
26 possesses discretion in making an initial custody determination, once it releases a
27

1 noncitizen, it “creates an implicit promise upon which that individual may rely,
2 that their liberty will be revoked only if they fail to live up to the conditions of
3 release.” *Pinchi v. Garland*, 792 F. Supp. 3d 1021, 1032 (N.D. Cal. 2025).

4 44. Courts applying these principles have repeatedly held that noncitizens—
5 like Ms. Aguilar-Perez—who were released by DHS and remained in the
6 community for substantial periods accrue a significant liberty interest against
7 summary re-detention. In *Singh v. Andrews*, the court held that a petitioner who
8 had lived in the community for over a year, maintained full-time employment,
9 volunteered in his community, and complied with all obligations “has a substantial
10 private interest in remaining free from detention.” No. 1:25-cv-00801-KES-SKO
11 (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025). Likewise, in *Gonzalez*
12 *Salazar v. Casey*, the court explained that a noncitizen with months of community
13 residence, steady engagement in medical care, and compliance with immigration
14 obligations “is not merely an applicant for admission at the border” but someone
15 with a “protected liberty interest in remaining out of custody.” No. 25-cv-2784 JLS
16 (VET), 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025). And in *Ledesma*
17 *Gonzalez v. Bostock*, the court reaffirmed that a noncitizen previously released on
18 DHS supervision has “a protected liberty interest in his continuing release from
19 custody,” which due process protects against arbitrary revocation. No. 2:25-cv-
20 01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025).

21 45. Ms. Aguilar-Perez’s liberty interest is even stronger. DHS released her on
22 her own recognizance in 2014—over ten years ago—after concluding she
23 presented no danger or flight risk. She then lived in San Diego for a decade
24 without incident, maintained long-term residence and employment, supported her
25 family, complied meticulously with every ICE obligation, and lived a life fully
26 integrated into her community. Courts have repeatedly emphasized that such

1 prolonged release greatly heightens the individual’s liberty interest. See *Faizyon v.*
2 *Casey*, No. 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov.
3 17, 2025) (petitioner released for over a year had “a significant liberty interest in
4 remaining out of custody”).

5 46. These cases collectively demonstrate that DHS’s decision to allow Ms.
6 Aguilar-Perez to live freely in the community for a full decade created a substantial
7 liberty interest that the government cannot extinguish through a sudden,
8 unexplained arrest at a routine check-in. Her decade of release—combined with
9 unwavering compliance, stable employment, deep community ties, and her central
10 role in her family—squarely places her within the body of cases holding that due
11 process protections attach to long-standing release from immigration custody. As
12 in *Singh*, *Gonzalez Salazar*, *Ledesma Gonzalez*, *Faizyon*, and *Pinchi*, Ms. Aguilar-
13 Perez’s history confirms that she holds a robust constitutional interest in remaining
14 free, and DHS’s abrupt revocation of her liberty without notice or hearing violates
15 that constitutional protection.

16 **B. Petitioner Is Neither a Danger Nor a Flight Risk, and DHS Identifies No**
17 **Changed Circumstances Justifying Re-Detention**

18 47. Petitioner’s continued detention violates due process because the
19 Government lacks any lawful basis to conclude that she is a danger or flight risk.
20 Noncitizens may be civilly detained only when confinement serves a legitimate
21 purpose—ensuring appearance or protecting the public—and the Government
22 bears the burden of justifying that detention with concrete, individualized
23 evidence. See *Young v. Harper*, 520 U.S. 143, 147-49 (1997); *Morrissey v.*
24 *Brewer*, 408 U.S. 471, 482 (1972) (in the parole context); *Hernandez v. Sessions*,
25 872 F.3d 976, 990–92 (9th Cir. 2017); *Young v. Harper*, 520 U.S. 143, 147-49
26

1 (1997); *Salazar v. Casey*, No. 25-CV-2784 JLS (VET), 2025 WL 3063629, at *6
2 (S.D. Cal. Nov. 3, 2025).

3 48. Longstanding agency and judicial authority make clear that revocation of
4 release requires a material change in circumstances. The BIA has held that a
5 “change of circumstance” is required to alter a prior bond determination. *Matter of*
6 *Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). Reflecting that principle, federal
7 courts have recognized that DHS in practice may re-arrest individuals only after a
8 material, individualized change in circumstances, and that due process requires that
9 those changed circumstances supply the actual legal justification for detention. See
10 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019); *Sanchez v. LaRose*,
11 No. 25-cv-2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025);
12 *Lesic v. LaRose*, No. 25-cv-2746-LL-BJW, 2025 WL 3158675, at *2 (S.D. Cal.
13 Nov. 12, 2025); *Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025
14 WL 2420390, at *18–20 (E.D. Cal. Aug. 21, 2025); *Pablo Sequen v. Albarran*, No.
15 25-cv-06487-PCP, 2025 WL 2935630, at *7–9 (N.D. Cal. Oct. 15, 2025).

16 49. Here, the Government cannot make that showing. For ten years, after
17 DHS released Ms. Aguilar-Perez on her own recognizance under § 1226(a), she
18 lived openly in the community, maintained continuous employment, raised her
19 three U.S. citizen children, cared for her LPR husband, and appeared at every
20 hearing and check-in. These same factors—longstanding residence, consistent ICE
21 compliance, and the absence of any new conduct—are precisely the circumstances
22 in which courts have found DHS’s misclassification re-detentions unconstitutional.
23 See *Salazar v. Casey*, No. 25-CV-2784 JLS (VET), 2025 WL 3063629, at *4 (S.D.
24 Cal. Nov. 3, 2025) (ordering immediate release where DHS re-arrested a fully
25 compliant noncitizen at a call-in appointment without identifying any new
26 evidence of danger or flight risk); *Salazar v. Casey*, No. 25-CV-2784 JLS (VET),

1 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025) (“Once a noncitizen has been
2 released, the law prohibits federal agents from rearresting [her] merely because
3 [she] is subject to removal proceedings. Rather, the federal agents must be able to
4 present evidence of materially changed circumstances—namely, evidence that the
5 noncitizen is in fact dangerous or has become a flight risk....” quoting *Saravia v.*
6 *Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017)); *Hernandez v. Wofford*,
7 2025 WL 2420390, at *18–20 (E.D. Cal. Aug. 21, 2025) (holding re-detention
8 unlawful where the petitioner had “consistently complied with ICE supervision”
9 and the government identified no changed circumstances); *Pablo Sequen v.*
10 *Albarran*, 2025 WL 2935630, at 7–9 (N.D. Cal. Oct. 15, 2025) (ordering release
11 where DHS seized a fully compliant individual at a routine check-in “without
12 explanation and without identifying any new conduct”); *Valencia-Zapata v.*
13 *Kaiser*, 2025 WL 2741654, at 12 (N.D. Cal. Sept. 26, 2025) (holding detention
14 unlawful where the government admitted it had no evidence of danger or flight
15 risk).

16 50. Nor is there any current evidence of dangerousness. Whatever concern
17 may have existed at the time of the 2014 offense was fully accounted for in
18 criminal court: Petitioner served her custodial sentence and probation, and DHS
19 then released her to the community with that history in mind.

20 51. DHS supervised her for years without incident, never alleging that she
21 violated conditions, engaged in new criminal conduct, or posed any risk to public
22 safety. As other courts have explained in analogous re-detention cases, where the
23 Government has no evidence that a noncitizen presently poses a danger or is likely
24 to abscond, continued civil detention “does not bear a reasonable relation to the
25 statutory purposes motivating it” and violates due process. *Valencia Zapata*, 2025
26
27

1 WL 2741654, at *12 (finding detention unlawful where the Government
2 acknowledged no evidence of danger or flight risk).

3 52. Critically, the Government identifies no changed circumstances at all.
4 Petitioner was seized at a routine ICE check-in—the same type of appointment she
5 had attended faithfully for a decade—with no allegation of any violation, no new
6 criminal event, and no suggestion that her family, work, or community ties had
7 eroded. Courts confronted with similar “track-switching” re-detentions, in which
8 DHS summarily arrests compliant individuals at check-ins without any new
9 information, have consistently found due-process violations and ordered relief. See
10 *Hernandez*, 2025 WL 2420390, at *18–20; *Pablo Sequen*, 2025 WL 2935630, at
11 *7–9; *Valencia Zapata*, 2025 WL 2741654, at *12.

12 53. Because Petitioner is neither a current danger nor a flight risk, and
13 because DHS has identified no material change in circumstances that could justify
14 revoking her decade-long release, her confinement is arbitrary and impermissible
15 under the Fifth Amendment. Civil immigration detention “must be narrowly
16 tailored to a compelling governmental interest,” *Hernandez v. Sessions*, 872 F.3d
17 at 991–92, and cannot be maintained in the absence of concrete, individualized
18 evidence supporting one of the only legitimate purposes of detention. See
19 *Zadvydas*, 533 U.S. at 690; *Diouf v. Napolitano* (“Diouf II”), 634 F.3d 1081,
20 1091–92 (9th Cir. 2011).

21 54. On this record, due process forbids her continued detention.

22 **C. The Mathews Factors Confirm That Due Process Was Violated and**
23 **Require Immediate Release Pending an Individualized Custody Hearing**

24 55. Due process prohibits the Government from revoking conditional release
25 and re-detaining a noncitizen without providing the minimal procedural safeguards
26 necessary to prevent the erroneous deprivation of liberty. *Mathews v. Eldridge*, 424

1 U.S. 319, 335 (1976). Application of the Mathews factors to Ms. Aguilar-Perez’s
2 circumstances demonstrates a clear due-process violation—and confirms that
3 immediate release is required because no post-hoc bond hearing can remedy the
4 harm already inflicted.

5 56. First, the private interest at stake is extraordinarily strong. Having lived
6 in the United States for thirty-five years and on supervised release for the past
7 decade, Ms. Aguilar-Perez developed a powerful liberty interest in remaining at
8 home with her husband and her three U.S. citizen children. Courts consistently
9 recognize that long-term release under § 1226(a) creates a substantial protected
10 interest that cannot be revoked absent constitutionally adequate procedures. See
11 *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at 7
12 (*E.D. Cal. July 11, 2025*) (petitioner developed “a significant liberty interest in
13 remaining out of custody” after a year and a half of release, work, and community
14 involvement); *Salazar v. Casey*, No. 25-cv-2784-JLS (VET), 2025 WL 3063629, at
15 4 (*S.D. Cal. Nov. 3, 2025*) (petitioner “has a protected liberty interest in remaining
16 out of custody”). The Supreme Court has held that “freedom from imprisonment—
17 from government custody, detention, or other forms of physical restraint—lies at
18 the heart of the liberty” the Fifth Amendment protects. *Zadvydas v. Davis*, 533
19 U.S. 678, 690 (2001). DHS’s past conduct confirms this interest: in 2014, with full
20 knowledge of her vehicle-related conviction, the agency released her on her own
21 recognizance, determining she posed neither danger nor flight risk. She relied on
22 that determination for a decade, shaping every aspect of her family life,
23 employment, and community ties.

24 57. Second, the risk of erroneous deprivation was unacceptably high because
25 DHS re-detained Ms. Aguilar-Perez without any hearing, notice, or identified
26 change in circumstances. The Ninth Circuit has emphasized that civil immigration
27

1 detention is constitutional only when tailored to preventing danger or flight.
2 *Zadvydas*, 533 U.S. at 690; *Hernandez v. Sessions*, 872 F.3d 976, 990–92 (9th Cir.
3 2017). Here, DHS identified no new information whatsoever. Ms. Aguilar-Perez
4 had complied faithfully with supervision for ten years, attended every ICE
5 appointment, and maintained stable employment and residence. Her sole criminal
6 conviction predated her release and was explicitly considered by DHS; nothing
7 about it changed. Multiple courts have found substantial due-process violations
8 under nearly identical circumstances. See *Gonzalez Salazar v. Casey*, No. 25-cv-
9 2784-JLS (VET), 2025 WL 3063629, at 4 (*S.D. Cal. Nov. 3, 2025*) (risk of
10 erroneous deprivation is “high” when DHS re-detains without an opportunity to be
11 heard); *Singh*, 2025 WL 1918679, at 7 (same); *Pinchi v. Wofford*, 792 F. Supp. 3d
12 1021, 1035 (E.D. Cal. 2025) (civil detention permissible only to prevent flight or
13 danger, and only with adequate safeguards). The government’s failure to identify
14 any change at all—let alone evidence suggesting danger or flight risk—places this
15 case squarely within the line of decisions holding that summary re-detention after
16 long-term release poses a severe risk of error. See *Valencia-Zapata v. Kaiser*, No.
17 25-cv-07492-RFL, 2025 WL 2741654, at 12 (*N.D. Cal. Sept. 26, 2025*) (“In the
18 absence of evidence suggesting danger or flight risk,” detention is not reasonably
19 related to statutory purposes).

20 58. Third, the Government’s interest in re-detaining Ms. Aguilar-Perez
21 without a hearing is minimal. DHS may take steps to re-arrest an individual if
22 genuine new information emerges, but its interest in doing so without due process
23 is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). The
24 Government identifies no new conduct, no violation of release conditions, no
25 safety concern, and no administrative necessity that could justify dispensing with a
26 hearing. As courts have repeatedly held, “detention for its own sake” or for

1 “administrative convenience” is not a legitimate governmental interest under the
2 Fifth Amendment. *Pinchi*, 792 F. Supp. 3d at 1036. Indeed, courts addressing
3 misclassification re-detention consistently find that when DHS had full knowledge
4 of a petitioner’s history—and supervised them without incident—the
5 Government’s interest in summary re-detention is negligible. See *E.A.T.-B. v.*
6 *Wamsley*, 2025 WL 2402130, at 6 (*W.D. Wash. 2025*); *Domingo v. Kaiser*, 2025
7 WL 1940179, at 3 (*N.D. Cal. July 14, 2025*).

8 59. Because all three Mathews factors weigh decisively in Petitioner’s favor,
9 DHS’s re-detention of Ms. Aguilar-Perez without any pre-deprivation process
10 violated due process. And critically, as multiple courts have emphasized, a post-
11 deprivation bond hearing cannot cure the violation because “if Petitioner is
12 detained, he will already have suffered the injury he is now seeking to avoid.”
13 *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021); *Faizyan v.*
14 *Casey*, 2025 WL 3208844, at 7 (due process requires release pending a bond
15 hearing because a post-hoc hearing “cannot prevent an erroneous deprivation of
16 liberty”); *see also E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *6 (*W.D. Wash.*
17 *2025*) . Accordingly, the appropriate remedy under Mathews is immediate release
18 while Petitioner awaits a constitutionally adequate custody determination.

19 **D. Because Petitioner Has a Protected Liberty Interest, Presents No**
20 **Danger or Flight Risk, and Was Re-Detained Without Changed**
21 **Circumstances or Any Hearing, Due Process Requires Immediate**
22 **Release and Restoration of the Status Quo Ante**

23 60. Petitioner’s detention violates due process for the independent and
24 combined reasons set forth above.

25 61. First, DHS’s 2014 decision to release her on her own recognizance under
26 § 1226(a) created a protected liberty interest in remaining in the community unless

1 and until the Government could lawfully justify revocation. *See Morrissey v.*
2 *Brewer*, 408 U.S. 471, 482 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001);
3 *Pinchi*, 792 F. Supp. 3d at 1032. For more than a decade following that release,
4 Petitioner lived and worked openly, raised her family, complied fully with ICE
5 supervision, and developed the deep community ties that constitute a significant
6 private interest under the Due Process Clause. *See Singh v. Andrews*, 2025 WL
7 1918679, at 7 (E.D. Cal. July 11, 2025) (long-term residence, lawful employment,
8 and community participation establish substantial liberty interest).

9 62. Second, as shown, Petitioner is neither a danger nor a flight risk—now or
10 in 2014, when DHS made the last lawful custody determination based on the same
11 facts. Her sole criminal case, the 2014 hit-and-run incident, was fully known to
12 DHS when it released her on recognizance, reflecting an agency assessment that
13 she did not pose a danger to the community. Courts consistently hold that such
14 longstanding agency determinations cannot be disregarded in the absence of new
15 evidence. *See Valencia-Zapata v. Kaiser*, 2025 WL 2741654, at 12 (N.D. Cal.
16 Sept. 26, 2025) (finding detention unlawful where the Government admitted it was
17 “aware of no evidence suggesting that Petitioners posed a danger to the community
18 or a flight risk,” and concluding that civil detention lacked any valid relation to its
19 statutory purposes); *Gamez Lira v. Noem*, 2025 WL 2581710, at 2–3 (D.N.M. Sept.
20 5, 2025).

21 63. Third, DHS identifies no changed circumstances to justify revoking
22 Petitioner’s release after a decade of stability. Courts addressing re-detention under
23 these circumstances uniformly recognize that DHS may not revoke conditional
24 release without new, individualized justification. *See Hernandez v. Wofford*, 2025
25 WL 2420390, at 18–20 (E.D. Cal. Aug. 21, 2025); *Pablo Sequen v. Albarran*, 2025
26 WL 2935630, at 7–9 (N.D. Cal. Oct. 15, 2025); *Lesic v. LaRose*, 2025 WL

1 3158675, at 2 (S.D. Cal. Nov. 12, 2025). DHS’s own regulations and BIA
2 precedent reinforce this requirement: although the Government may theoretically
3 revoke release “at any time,” the BIA has held that “a change of circumstance” is
4 required to “change” a prior custody determination, and federal courts within this
5 Circuit apply this principle in the due-process context. *Matter of Sugay*, 17 I. & N.
6 Dec. 637, 640 (BIA 1981); *Ortega v. Bonnar*, 415 F. Supp. 3d at 968; *Sanchez v.*
7 *LaRose*, 2025 WL 2770629, at 3 (S.D. Cal. Sept. 26, 2025). DHS identifies no
8 such change here.

9 64. Fourth, under *Mathews v. Eldridge*, each factor confirms that DHS was
10 constitutionally required to provide Petitioner with a hearing before re-detaining
11 her. Petitioner’s liberty interest was substantial; the risk of erroneous deprivation
12 was acute where she received no notice or opportunity to respond; and DHS’s
13 interest in re-detaining a fully compliant noncitizen without process is minimal.
14 Courts applying *Mathews* to virtually identical re-detention scenarios hold that due
15 process requires immediate release and an individualized hearing before any future
16 detention may lawfully occur. *See Faizyon v. Casey*, 2025 WL 3208844, at 7 (S.D.
17 Cal. Nov. 17, 2025) (holding that under *Mathews*, due process required “Petitioner
18 to be released from custody and receive a bond hearing before an immigration
19 judge before he can be re-detained”); *Gonzalez Salazar v. Casey*, 2025 WL
20 3063629, at 5 (S.D. Cal. Nov. 3, 2025); *Domingo v. Kaiser*, 2025 WL 1940179, at
21 3 (N.D. Cal. July 14, 2025) (finding that even a prompt post-detention hearing
22 cannot cure the injury because “the harm that is the subject of his motion” occurs
23 the moment detention begins).

24 65. Taken together, these principles compel a single conclusion:
25 Because Petitioner has a protected liberty interest, because DHS lacks any
26 evidence of danger or flight risk, because no changed circumstances justify

1 revocation of her decade-long release, and because *Mathews* requires a hearing
2 before detention can occur, her present custody is unconstitutional. The only
3 constitutionally permissible remedy is immediate release, restoring her to the status
4 quo ante, with any future custody decision made only after an individualized
5 hearing before a neutral adjudicator.

6 **III. PETITIONER WILL SUFF IRREPARABLE HARM ABSENT A**
7 **TRO**

8 66. Petitioner faces immediate and compounding irreparable harm every day
9 she remains in unlawful detention. “[D]eprivation of physical liberty by detention
10 constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir.
11 2018). “ ‘Freedom from imprisonment—from government custody, detention, or
12 other forms of physical restraint—lies at the heart of the liberty’ that the Fifth
13 Amendment Due Process Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690
14 (2001). It is “well established that the deprivation of constitutional rights
15 ‘unquestionably constitutes irreparable injury.’ ” *Melendres v. Arpaio*, 695 F.3d
16 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); see
17 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“unlawful detention
18 certainly constitutes extreme or very serious damage, and that damage is not
19 compensable in damages”). When an alleged deprivation of a constitutional right is
20 involved, “most courts hold that no further showing of irreparable injury is
21 necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005).
22 Applying these principles in the re-detention context, courts repeatedly hold that
23 likely unconstitutional immigration detention automatically satisfies the
24 irreparable-harm requirement. See, e.g., *Uzzhina v. Chestnut*, 2025 WL 3458787,
25 at *5 (E.D. Cal. Dec. 2, 2025); *Garcia v. Noem*, 2025 WL 2549431, at *6–7 (S.D.

1 Cal. Sept. 3, 2025); *O.A.C.S. v. Wofford*, 2025 WL 3485221, at *5 (E.D. Cal. Dec.
2 4, 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036–37 (N.D. Cal. 2025).

3 67. That doctrine applies with full force here. As explained above, Petitioner
4 is detained under the wrong statute and denied the procedures Congress provided
5 under § 1226(a). DHS summarily revoked a decade-long grant of liberty—after ten
6 years of perfect compliance—without any pre-deprivation hearing before a neutral
7 decisionmaker. Courts in nearly identical re-detention cases have found that where
8 continued detention is likely unconstitutional, the irreparable-harm inquiry
9 “follows inexorably” from that conclusion. *Hernandez*, 872 F.3d at 995; see
10 *Uzzhina*, 2025 WL 3458787, at *5 (finding irreparable harm where continued
11 detention without further review was likely unconstitutional); *O.A.C.S.*, 2025 WL
12 3485221, at *5 (“it follows inexorably” from likely unconstitutional detention that
13 plaintiffs have carried their burden as to irreparable harm); *Garcia*, 2025 WL
14 2549431, at *6 (same).

15 68. Respondents may suggest that any harm can be cured by a later § 1226(a)
16 bond hearing. Courts have squarely rejected that argument: a post-detention bond
17 hearing cannot undo the injury of being wrongfully detained in the first place. As
18 one court explained, the government “misapprehend[s] the purpose of a pre-
19 detention hearing: if Petitioner is detained, he will already have suffered the injury
20 he is now seeking to avoid.” *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055
21 (N.D. Cal. 2021); see *Faizyan v. Casey*, 2025 WL 3208844, at *7 (S.D. Cal. Nov.
22 17, 2025) (bond hearing after detention “cannot prevent an erroneous deprivation
23 of liberty”); *E.A.T.-B. v. Wamsley*, 2025 WL 2402130, at *6 (W.D. Wash. 2025)
24 (post-deprivation bond hearing “cannot serve as an adequate procedural safeguard
25 because it is after the fact”); *Domingo v. Kaiser*, 2025 WL 1940179, at *3 (N.D.
26 Cal. July 14, 2025). Here, too, “[e]ven if Petitioner received a prompt post-

1 detention bond hearing ... she will have already suffered the harm that is the
2 subject of [her] motion; that is, [her] potentially erroneous detention.” *Domingo*,
3 2025 WL 1940179, at *3; see also *Faizyan*, 2025 WL 3208844, at *7.

4 69. Petitioner also faces serious and concrete harms independent of the
5 constitutional injury. Her detention has separated her from her LPR husband and
6 three U.S.-citizen children, disrupted her employment, and destabilized the
7 family’s economic and emotional foundation. The Ninth Circuit has recognized the
8 “irreparable harms imposed on anyone subject to immigration detention,”
9 including “the economic burdens imposed on detainees and their families ... and
10 the collateral harms to children of detainees whose parents are detained.”
11 *Hernandez*, 872 F.3d at 995; see *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th
12 Cir. 2011) (separation from family and community is a significant irreparable
13 harm). District courts repeatedly treat loss of work, caregiving responsibilities, and
14 community stability as irreparable injury. See *Salcedo Aceros v. Kaiser*, 2025 WL
15 2637503, at *13 (N.D. Cal. Sept. 12, 2025); *Pinchi*, 792 F. Supp. 3d at 1037;
16 *Valencia-Zapata v. Kaiser*, 2025 WL 2741654, at *13–14 (N.D. Cal. 2025).

17 70. The medical and psychological risks of detention amplify that harm. The
18 Ninth Circuit has emphasized evidence of “subpar medical and psychiatric care in
19 ICE detention facilities” as a core component of irreparable harm. *Hernandez*, 872
20 F.3d at 995; see *O.A.C.S.*, 2025 WL 3485221, at *5 (summarizing *Hernandez*). In
21 *Salcedo Aceros*, the court held that likely exacerbation of serious medical
22 conditions and interference with scheduled treatment “are significant and
23 irreparable.” 2025 WL 2637503, at *13. Petitioner here is a 53-year-old woman
24 confined in a facility with documented overcrowding, inadequate medical care, and
25 expanded use of solitary or “segregated” confinement; those conditions pose
26 immediate risks to her physical and mental health and impede her ability to receive

1 consistent care.* Courts have consistently found such deterioration to be
2 irreparable. See *Salcedo Aceros*, 2025 WL 2637503, at *13; *Valencia-Zapata*,
3 2025 WL 2741654, at *13–14; *Hernandez v. Wofford*, 2025 WL 2420390, at *10–
4 12 (E.D. Cal. 2025).

5 71. Detention also impairs Petitioner’s ability to pursue her immigration case
6 itself. She cannot meaningfully assist in preparing filings, gather evidence, or
7 maintain the stability necessary to present coherent testimony. Courts in similar
8 cases repeatedly recognize that interference with the ability to seek immigration
9 relief is an independent form of irreparable harm. See *Roman v. Noem*, 2025 WL
10 2710211, at *5 (D. Nev. 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 975–76
11 (N.D. Cal. 2019); *Garcia*, 2025 WL 2549431, at *6–7.

12 72. Finally, the psychological toll of re-detention after long-term release is
13 profound. Like other petitioners who rebuilt their lives in the community,
14 Petitioner reasonably understood her decade of compliance and release as a form
15 of stability and safety. ICE’s sudden re-seizure at a routine check-in has inflicted
16 acute anxiety and destabilization—precisely the type of trauma courts have
17 deemed irreparable for survivors and long-released noncitizens alike. See
18 *Valencia-Zapata*, 2025 WL 2741654, at *14; *Jorge M.F.*, 2021 WL 783561, at *2.

19 73. In sum, Petitioner is likely to be unconstitutionally detained for an
20 indeterminate period; she and her family face economic, emotional, and medical
21 harms that deepen each day; and no later remedy can unwind the time she spends
22 in unlawful custody. Thus, the irreparable-harm factor strongly favors granting a
23 TRO.

1 2025); *Domingo-Ros v. Archambeault*, 2025 WL 1425558, at 5 (*S.D. Cal. May 18,*
2 2025).

3 76. By contrast, the government suffers little—if any—cognizable harm from
4 ensuring compliance with the Constitution and the INA. The Ninth Circuit is clear:
5 the government “cannot reasonably assert that it is harmed in any legally
6 cognizable sense by being enjoined from constitutional violations.” *Zepeda v. INS*,
7 753 F.2d 719, 727 (9th Cir. 1983). Any administrative burden associated with
8 providing a lawful pre-detention process is minimal. Courts have repeatedly
9 rejected the argument that temporary release or a pre-detention hearing imposes
10 meaningful harm on the government. See *Pinchi*, 792 F. Supp. 3d at 1037–38; *Diaz*
11 *v. Kaiser*, 2025 WL 1676854, at 3 (*N.D. Cal. June 14, 2025*); *Jorge M.F.*, 2021
12 WL 783561, at 3. As the Ninth Circuit has emphasized, “the government cannot
13 suffer harm from an injunction that merely ends an unlawful practice or reads a
14 statute as required to avoid constitutional concerns.” *Rodriguez v. Robbins*
15 (*Rodriguez II*), 715 F.3d 1127, 1145 (9th Cir. 2013).

16 77. Nor can DHS claim that requiring constitutional pre-detention procedures
17 interferes with immigration enforcement. In fact, courts have noted that DHS’s
18 practice of summarily detaining long-released noncitizens at courthouses or routine
19 check-ins undermines legitimate government interests by chilling access to the
20 courts and destabilizing community cooperation. See *Salcedo Aceros*, 2025 WL
21 2637503, at 14 (citing DHS’s own April 27, 2021 memorandum acknowledging
22 this harm).

23 78. Here, the potential harm to Petitioner is profound—immediate, unlawful,
24 and irreparable—while any harm to the government consists only of the brief delay
25 necessary to provide the procedures Congress mandated under § 1226(a). Faced
26 with “a conflict between minimally costly procedures and preventable human
27

1 suffering,” courts “have little difficulty concluding that the balance of hardships
2 tips decidedly in plaintiffs’ favor.” *Singh v. Andrews*, 2025 WL 1918679, at 9
3 (*E.D. Cal. July 11, 2025*) (quoting *Hernandez v. Sessions*, 872 F.3d at 996); see
4 also *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).

5 79. Because Petitioner is likely being detained under the wrong statutory
6 framework, without the process required by the Fifth Amendment, and because the
7 government suffers no legally cognizable harm from being ordered to comply with
8 constitutional and statutory requirements, both the balance of equities and the
9 public interest overwhelmingly favor granting a temporary restraining order.

10 **CONCLUSION**

11 80. For all the reasons set forth above, this Court should grant Petitioner a
12 temporary restraining order and preliminary injunction ordering that Respondents:

- 13 a. immediately release her from unlawful custody;
- 14 b. refrain from re-arresting or re-detaining her unless and until she is
15 afforded a hearing before a neutral adjudicator at which the
16 Government must prove, by clear and convincing evidence, that she
17 poses a danger or flight risk and that detention is the least restrictive
18 means of ensuring her appearance and community safety;
- 19 c. refrain from removing her or sending her to any place outside of the
20 United States while these proceedings remain pending; and
- 21 d. refrain from transferring her out of this District or to any other
22 detention facility while this action is pending, absent further order of
23 the Court.

24 Dated: December 4, 2025

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26 Respectfully submitted,

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28 PETITIONER'S NOTICE OF MOTION AND EX PARTE MOTION FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR PRELIMINARY INJUNCTION

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EXHIBIT LIST

- Exhibit A: Bond Packet
- Exhibit B: 2023 NTA
- Exhibit C: Nov. 20, 2025 Bond Denial / Jurisdiction Order