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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 NARCISA ANDUNDIA-CARILLO,

13 Petitioner

14 v.

15 SERGIO ALBARRAN, et al.,

16 Respondents
17

) No. 3:25-cv-10380-YGR

)
) **RESPONDENTS' RESPONSE TO ORDER**
) **TO SHOW CAUSE**

1 **I. INTRODUCTION**

2 The legal issues presented in this Petition for Writ of Habeas Corpus concern the statutory
3 authority for U.S. Immigration and Customs Enforcement’s (“ICE”) detention of Petitioner, whether
4 Petitioner is entitled to a bond hearing, and whether that bond hearing must be held before Petitioner is
5 detained. While reserving all rights, including the right to appeal, Respondents submit this abbreviated
6 response in lieu of an exhaustive responsive memorandum to preserve the legal issues and to conserve
7 judicial and party resources.¹ Should the Court prefer to receive a more exhaustive and fulsome
8 opposition brief, Respondents will do so upon the Court’s request.

9 Respondents acknowledge that this Court’s prior rulings concerning similar challenges to the
10 government’s practice and legal arguments in this case would control the result here if the Court adheres
11 to its legal reasoning in those prior decisions. *See, e.g., Jimenez Garcia v. Kaiser*, 4:25-cv-06916-YGR,
12 2025 WL 3500767 (N.D. Cal. Aug. 29, 2025). While Respondents respectfully disagree with those
13 decisions, in the interest of judicial economy, and to expedite the Court’s consideration of this matter,
14 Respondents hereby rely upon and incorporate by reference the legal arguments regarding the
15 petitioners’ likelihood of success on the merits that it presented in *Jimenez Garcia* and other similar
16 cases in this District. *See, e.g., Ayra Leandro v. Albarran, et al.*, No. 25-cv-10042-JD, Dkt. No. 10
17 (November 25, 2025).

18 Should the Court decide that Petitioner is subject to detention under 8 U.S.C. § 1226(a), the
19 appropriate remedy is to order a bond hearing, not to order immediate release, and for Petitioner to bear
20 the burden to demonstrate flight risk or danger to the community.

21 **II. BACKGROUND**

22 Petitioner is a citizen of Ecuador. Pet. for Writ of Habeas Corpus ¶¶ 3, 21, 60, ECF No. 1. She
23 entered the United States without inspection on or about January 15, 2022. ECF No. 1 ¶ 60. The
24

25 ¹ In addition to the arguments raised in this response, Respondents also move for all Respondents
26 other than Petitioner’s immediate custodian to be dismissed from this case. *See Doe v. Garland*, 109
27 F.4th 1188 (9th Cir. 2024) (emphasizing the “clear rule requiring core habeas petitioners challenging
28 their present physical confinement to name their immediate custodian, the warden of the facility where
they are detained, as the respondent to their petition” (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 435
(2004)); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions challenging
detention, “the default rule is that the proper respondent is the warden of the facility where the prisoner
is being held, not the Attorney General or some other remote supervisory official”).

1 Department of Homeland Security apprehended Petitioner upon entry, detained her, and then released
2 her. ECF No. 1 ¶ 60. On October 6, 2022, Petitioner filed an application for asylum with the San
3 Francisco Immigration Court. *Id.* ¶ 61. On December 3, 2025, ICE officers detained Petitioner. *Id.* ¶2.

4 On December 3, 2025, Petitioner filed a Petition for Writ of Habeas Corpus and an Ex Parte
5 Motion for Temporary Restraining Order against Respondents. ECF Nos. 1, 4. That same day, this Court
6 issued an order granting Petitioner's temporary restraining order. ECF No. 6. The Court ordered
7 Respondents to immediately release Petitioner from Respondents' custody and enjoined and restrained
8 Respondents from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral
9 decisionmaker, and from removing Petitioner from the United States. *Id.* The Court issued a parallel
10 order prohibiting Petitioner's removal or transfer. ECF No. 5.

11 **III. ARGUMENT**

12 **A. Petitioner Is Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(2).**

13 Petitioner claims, inter alia, that her detention violates her procedural due process rights under
14 the Fifth Amendment. ECF No. 6 at 3. Petitioner argues that she has a substantial interest in remaining
15 out of custody, and the Due Process Clause entitles her to a bond hearing before an immigration judge
16 prior to any arrest or detention. *Id.*

17 Respondents contend that, based on the plain text of 8 U.S.C. § 1225(b)(2), Petitioner is subject
18 to mandatory detention for the duration of her removal proceedings because Petitioner is an "applicant
19 for admission" and is "seeking admission." In addition, as an individual physically present in the United
20 States without having been admitted, Petitioner is treated for constitutional purposes as if stopped at the
21 border. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139-140 (2020).

22 Respondents acknowledge this Court's statement that its order granting Petitioner's temporary
23 restraining order "accords with many other recent grants of temporary relief in similar circumstances."
24 ECF No. 6 at 5. However, Respondents wish to highlight that several courts in other districts in the
25 Ninth Circuit have recently denied TRO motions or preliminary injunctive relief for individuals, like
26 Petitioner, detained under 8 U.S.C. § 1225(b)(2) following conditional parole. These courts have upheld,
27 at least preliminarily, mandatory detention under § 1225(b)(2).² *See Altamirano Ramos v. Lyons*, No.

28 _____
² Moreover, a growing number of courts in districts under other circuits have also reached the
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1 25-cv-09785, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the court had
2 previously rejected the government’s interpretation of § 1225(b)(2), but “after additional research and
3 analysis, the court has concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a),
4 and that Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)”); *Sixtos Chavez v. Noem*,
5 No. 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir.
6 Nov. 7, 2025); *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025);
7 *Alonzo v. Noem*, No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025).

8 Respondents additionally rely upon the analysis and holding in *Matter of Yajure Hurtado*, 29 I &
9 N Dec. 216 (BIA 2025). There, the BIA examined the plain language of § 1225, the INA’s statutory
10 scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal
11 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and
12 DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section
13 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond
14 requests or to grant bond to aliens, like the respondent, who are present in the United States without
15 admission.” 29 I & N Dec. at 225.

16 Respondents thus request that the Court follow the BIA and the district courts, both in the Ninth
17 Circuit and around the country, that have found that the mandatory detention provision contained in
18 § 1225(b)(2) applies to individuals like Petitioner.

19 Respondents acknowledge that questions of law in this case substantially overlap with those at
20 issue in *Jimenez Garcia* and other cases in this District that have concluded that § 1225(b) is not
21 applicable to individuals who were conditionally released in the past under § 1226(a). Accordingly, while
22 preserving all rights, Respondents incorporate by reference the legal arguments it presented in those
23 cases. Should the Court apply the same reasoning it did in *Jimenez Garcia* to this one, the legal

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25
26 same conclusion. *See, e.g., Suarez v. Noem*, 2025 WL 3312168, *1-2 (E.D. Mo. Nov. 28, 2025);
27 *Tenemasa-Lema v. Hyde*, --- F. Supp. 3d ---, 2025 WL 3280555, *1-4 (D. Mass. 2025); *Cabanas v.*
28 *Bondi*, 2025 WL 3171331, *1, *3-6 (S.D. Tex. Nov. 13, 2025); *Silva Oliveira v. Patterson*, 2025 WL
3095972, *4-7 (W.D. La. Nov. 4, 2025); *Cirrus Rojas v. Olson*, 2025 WL 3033967, *5, *8-9 (E.D. Wis.
Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 25-cv-177, Dkt. No. 9, at 1, 4-9 (N.D. Tex. Oct. 24,
2025); *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351, *2, *6-10 (D. Neb. Sept. 30,
2025).

1 principles espoused in those cases would likely warrant the same conclusion here. Because of this,
2 Respondents submit that further briefing and oral argument in this case on the legal issues already
3 addressed in those cases would not be a good use of judicial or party resources. If, however, the Court
4 prefers to receive a formal and exhaustive opposition brief in this matter, Respondents will provide such
5 a brief upon the Court's request.

6 **B. To the Extent the Court Considers Petitioner Detained Under § 1226(a), It Should**
7 **Order a Bond Hearing to be Held by an Immigration Judge Rather Than**
8 **Immediate Release.**

9 Should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226(a), as
10 Petitioner contends, the appropriate remedy is to order a bond hearing before an immigration judge
11 ("IJ"), during which the IJ can properly determine in the first instance whether Petitioner is a flight risk
12 or danger to the community. This bond hearing is appropriately held post-detention. Under Section
13 1226(a), individuals are not guaranteed pre-detention review and may instead only seek review of their
14 detention by an ICE official once they are in custody—a process that the Ninth Circuit has found
15 constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189,
16 1196–97 (9th Cir. 2022). Moreover, at any bond hearing under 1226(a), Petitioner must bear the burden of
17 demonstrating that she is not a flight risk or danger to the community. *See id.* at 1197 (citing *Matter of*
18 *Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)).

19 This approach to a TRO motion—granting release *unless* an individualized bond hearing is held
20 before an IJ within a specified amount of time—has been followed by some courts in other districts
21 when addressing similar arguments by petitioners. *See, e.g., Garcia v. Noem*, No. 25-cv-02771, 2025
22 WL 2986672, at *6 (C.D. Cal. Oct. 22, 2025) ("Respondents are enjoined from continuing to detain
23 Petitioner unless they provide him with an individualized bond hearing before an immigration judge
24 under 8 U.S.C. § 1226(a) within ten (10) days of the date of this Order."); *Javier Ceja Gonzalez v.*
25 *Noem*, No. 25-cv-02054, 2025 WL 2633187, at *6 (C.D. Cal. Aug. 13, 2025) (ordering the government
26 to "release Petitioners or, in the alternative, provide each Petitioner with an individualized bond hearing
27 before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order");
28 *Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025) ("Respondents
must provide Petitioners with individualized bond hearings under § 1226(a) within fourteen days of this

1 Order. Respondents shall not deny Petitioners' bond on the basis that § 1225(b)(2) requires mandatory
2 detention."); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025) ("the
3 appropriate remedy is to order the Immigration Court to conduct a new hearing at which it considers
4 Gomes' eligibility for bond under Section 1226(a)"). Respondents thus request that this Court adopt this
5 approach if the Court determines that section 1226(a) applies.

6 **IV. Conclusion**

7 Respondents thank the Court for its consideration of this abbreviated submission and respectfully
8 request that the Court deny Petitioner's requested relief.

9 DATED: December 10, 2025

Respectfully submitted,

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