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9 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
10 **FRESNO DIVISION**

11  
12 Karina Alejandra GARCIA MARIAGUA,

13 **Petitioner,**

14 **v.**

15 Christopher CHESTNUT, Warden, California City  
Detention Facility; Sergio ALBARRAN, Acting  
16 Field Office Director of the San Francisco  
Immigration and Customs Enforcement Office;  
17 Todd LYONS, Acting Director of United States  
Immigration and Customs Enforcement; Kristi  
18 NOEM, Secretary of the United States  
Department of Homeland Security, Pamela  
19 BONDI, Attorney General of the United States,  
acting in their official capacities,

20 **Respondents.**  
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Case No. 1:25-CV-1744-DJC-CKD

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

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**I. INTRODUCTION**

Petitioner Karina Alejandra Garcia Mariagua is an asylum seeker from Venezuela who entered the United States on or around May 1, 2024, and was subsequently detained and released by the Department of Homeland Security (“DHS”). On December 3, 2025, she was detained by Immigration and Customs Enforcement (“ICE”) officers in San Francisco during an immigration check-in. Petitioner has no criminal history and has an application for asylum pending in immigration court. She believes she is pregnant.

Petitioner’s due process claim is clear. Her release by DHS necessarily required an assessment that she was neither a danger nor a flight risk, and the release created a protected reliance liberty interest. No changed circumstances are alleged: Petitioner, *who was arrested while attending an ICE check-in* and has no criminal history, remains neither a flight risk nor a danger to the public, the only two constitutionally permissible reasons to detain a noncitizen. Her re-arrest, without a pre-deprivation hearing by a neutral arbiter, showing changed circumstances, was a violation of due process.

Nevertheless, Respondents assert that noncitizens like Petitioner are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and that they lack any due process rights except those expressly afforded to them to by statute. This position has been overwhelmingly rejected by district courts across the nation. Binding precedent squarely holds that the Due Process Clause protects noncitizens like Petitioner from unlawful detention, and the government’s only legitimate interest in civil immigration detention is the mitigation of danger and flight risk. When these interests are not present, re-detention violates due process and the

1 detained individual must be released. Multiple courts faced with cases nearly indistinguishable  
2 from Petitioner's have issued precisely that relief.<sup>1</sup>

### 3 II. LEGAL STANDARD

4 To warrant a Temporary Restraining Order ("TRO"), a movant must show (1) they are  
5 "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence  
6 of preliminary relief," (3) "the balance of equities tips in [their] favor," and that (4) "an  
7 injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
8 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see*  
9 *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting  
10 the analysis for issuing a temporary restraining order and a preliminary injunction is  
11 substantially the same). Even if the movant raises only "serious questions" as to the merits of  
12 their claims, the court can grant relief if the balance of hardships tips "sharply" in their favor.  
13 *All. for the Wild Rockies*, 632 F.3d at 1135.

### 17 III. ARGUMENT

18 The Respondents' opposition maintains that Petitioner is unlikely to prevail because,  
19 as an "applicant for admission," she is subject to mandatory detention under 8 U.S.C. §  
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22 <sup>1</sup> *See Vilela v. Robbins*, No. 1:25-cv-01392-KES-HBK, 2025 WL 3101334, at \*7 (E.D. Cal. Nov. 6, 2025)  
23 (ordering asylum seeker re-detained at ICE check-in released to return her to status quo ante);  
24 *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB, 2025 WL 3083934, at \*7 (E.D. Cal., Nov. 4, 2025);  
25 *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 WL 3013377, at \*8 (E.D. Cal., Oct. 27, 2025);  
26 *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 WL 2959250, at \*8 (E.D. Cal., Oct. 17, 2025);  
27 *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2908740, at \*8 (E.D. Cal., Oct. 14, 2025);  
28 *Paz Hernandez v. Wofford et al*, No. 1:25-cv-00986, 2025 WL 2624226, at \*2 (E.D. Cal. Sept. 10, 2025);  
*Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at \*9 (N.D. Cal. Aug. 21, 2025);  
*Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 499 (S.D.N.Y. Aug. 13, 2025); *Pinchi v. Noem*, 792  
F.Supp.3d 1025, 1038 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, \*8-10 (E.D. Cal.  
July 11, 2025); *Valdez v. Joyce*, No 25 Civ. 4627 (GBD), 2025 WL 1707737, at \*5 (S.D.N.Y. June 18,  
2025).

1 1225(b)(2)(A) , and her only due process rights are coextensive with that statute. The  
2 Respondents' arguments fail. The Due Process Clause applies to "all 'persons' within the  
3 United States, including [noncitizens], whether their presence here is lawful, unlawful,  
4 temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Petitioner is not  
5 subject to mandatory detention.  
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7 Respondents on May 08, 2024 released Petitioner on her own recognizance and  
8 therefore determined then that she was not a danger or a flight risk. At present Respondents  
9 *still do not* make such an allegation. Respondents simply claim that they can detain anyone  
10 who has not been admitted, no matter the circumstance, and that they will imprison whoever  
11 they feel like, whenever they feel like it.  
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#### 13 **A. The Due Process Clause Protects Petitioner's Liberty Interests**

14 The Due Process Clause applies to noncitizens regardless of whether they are "seeking  
15 admission" or are "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973  
16 (9th Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007). It is well  
17 established that one's rights are more limited while crossing the border – yet Respondents  
18 assert that, unless formally admitted, one is forever deprived of due process . They quote  
19 *Thuraissigiam*: "[A]liens who arrive at ports of entry -- even those paroled elsewhere in the  
20 country for years pending removal -- are 'treated' for due process purposes 'as if stopped at the  
21 border." Opp. at 3, citing *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020.)  
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23 Notwithstanding this well-established principal, Respondents claim that Petitioner has  
24 no due process rights beyond what is provided for her in § 1225. Opp. at 4. However, the case  
25 Respondents cite for this proposition, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. at 139,  
26 was about a noncitizen seeking additional procedures under the credible fear interview process  
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1 and not about a challenge to his re-detention. See 591 U.S. at 157. Numerous courts have  
2 already rejected the government’s attempt to extend *Thuraissigiam* in this way. See, e.g.,  
3 *Oliveros v. Kaiser*, No. 25-cv-07117-BLF, 2025 WL 2677125, at \*5 (N.D. Cal. Sept. 18, 2025)  
4 (accepting Respondents’ request at the PI hearing to consider the applicability of *Thuraissigiam*  
5 and finding it does not apply); *O.P.A.M. v. Wofford*, No. 1:25-CV-01423 JLT SAB, 2025 WL  
6 3120552, at fn 6 (noting that *Thuraissigiam* related to entry, not detention); *Padilla v. U.S.*  
7 *Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) (“The Court stands  
8 unconvinced that the Supreme Court’s decision in *Thuraissigiam* requires dismissal of Plaintiffs’  
9 due process claim.”); *Jatta v. Clark*, No. 19-cv-2086, 2020 WL 7138006, at \*2 (W.D. Wash. Dec.  
10 5, 2020) (finding *Thuraissigiam* “inapposite” to due process challenge to detention); *Leke v.*  
11 *Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021) (“Quite clearly, *Thuraissigiam* does not govern  
12 here, as the Supreme Court there addressed the singular issue of judicial review of credible fear  
13 determinations and did not decide the issue of an Immigration Judge’s review of prolonged and  
14 indefinite detention.”); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844–48 (E.D. Va. 2020) (similar).

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18 Respondents’ other justifications are unavailing. They quote from *Valencia v. Mukasey*  
19 for the proposition that applicants for admission have “virtually no constitutional rights,”  
20 without noting that the quote they offered was summarizing the government’s brief in that  
21 case, nor mentioning that the matter at hand was whether a respondent in immigration court  
22 had a right to be advised of relief for which they were not eligible – a question quite distinct  
23 from the issues in the present case. Opp. at 3, quoting *Valencia v. Mukasey*, 548 F.3d 1261,  
24 1263 (9th Cir. 2008). As reflected in *Thuraissigiam*, when someone is processed at the border,  
25 the Department of Homeland Security has more latitude and the individual has fewer due  
26 process protections. When someone is released into the interior and placed into court  
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1 proceedings, a new statutory scheme and a new set of liberty interests come into play. *See*,  
2 *e.g.*, *O.P.A.M.*, 2025 WL 3120552, at \*4, 9.

3 **1. Since Her Initial Release from Detention, Petitioner Has Accrued an**  
4 **Increased Liberty Interest**

5 The due process injury is particularly acute for cases like the instant one, where  
6 Petitioner has spent 19 months at liberty, and has used that time well – complying with all  
7 requirements, timely filing for asylum, obtaining work authorization, landing steady  
8 employment, enrolling in educational courses, attending church, forming a romantic  
9 partnership, and potentially being in the position of becoming a mother. *Gavigan Dec.* at ¶¶ 7-  
10 10 (ECF 3); *Garcia Diaz Dec.* at ¶¶ 5-7 (*Gavigan Dec.*, Exh. E) (ECF 3). She and her partner think  
11 she is pregnant. *Id.* at ¶ 11. When she was originally apprehended, DHS necessarily found that  
12 she was not a flight risk or a danger; otherwise, they could not have released her under  
13 controlling regulations. 8 C.F.R. § 1236.1(c)(8); *see also Saravia v. Sessions*, 280 F. Supp. 3d  
14 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.  
15 2018). The decision to release creates an “implicit promise” that the government will not re-  
16 detain an individual unless they violate the terms of their release. *Morrissey v. Brewer*, 408 U.S.  
17 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972). Petitioner has committed no such  
18 violation, and has done nothing to contradict DHS’ initial judgment. Respondents do not claim  
19 any risk that she will offend or abscond.

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Petitioner’s time in the United States, developing connections and embedding into the  
local community, develops a liberty interest and the due process rights that flow from it. A man  
who had 22 years in jail for seven counts of attempted murder, before being transferred to ICE  
custody, was found to have a liberty interest developed after 18 months of ICE parole. *Ortega v.*

1 *Bonnar*, 415 F. Supp. 3d 963, 969, 970 (N.D. Cal. 2019) (“Given the civil context, his liberty  
2 interest is arguably greater than the interest of parolees in *Morrissey*”). For Petitioner, the only  
3 rational government purpose of immigration detention is to mitigate flight risk and danger to  
4 society. The other potential purpose – the infliction of suffering – is not a valid reason for civil  
5 detention, and certainly cannot outweigh a legitimate liberty interest.  
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7       Once a liberty interest is accrued, absent urgent circumstances, the government need  
8 justify detention at a pre-deprivation hearing. “[T]he Constitution requires some kind of a  
9 hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.  
10 113, 127 (1990) (emphasis in original.) *See also Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL,  
11 2025 WL 1983677, at \*9 (N.D. Cal. July 17, 2025) (“absent evidence of urgent concerns, a *pre-*  
12 *deprivation* hearing is required to satisfy due process, particularly where an individual has been  
13 *released on bond by an IJ*”).  
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15       **B. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225**  
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17       The Government claims that Petitioner is subject to mandatory detention 8 U.S.C. §  
18 1225(b)(2). They entertain no possibility that anything other than mandatory detention is  
19 required, and do not provide any other authorities under which she may be detained. Their  
20 claims are refuted by the facts of the case and the applicable law.  
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22       Although not necessary to grant relief in this case, if the court chooses to reach the  
23 detention statute question, it should find Petitioner is subject to 8 U.S.C. § 1226(a) and not  
24 Section 1225(b)(2), as Respondents now claim. *Opp.* at 4. It is undisputed that at the time of  
25 her entry to the United States, Petitioner was issued a Form I-220A Order of Release on  
26 Recognizance and a Notice of Custody Determination, each which explicitly stated that she  
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1 was being released under 8 U.S.C. § 1226.<sup>2</sup> Opp. at 5; Gavigan Dec., Exh. B at 12, 14 (ECF 3).  
2 See *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at \*2 (taking judicial notice of the fact  
3 that Form I-220A Order of Release cites release subject to 8 U.S.C. § 1226). However,  
4 Respondents now seek to “unilaterally reclassify her as ‘detained’ pursuant to Section  
5 1225(b)(2)” after making an initial determination that she was detained under § 1226(a). *Id.*  
6 at \*9. Courts have overwhelmingly concluded that the government cannot simply “switch[]  
7 tracks” mid-litigation without regard for a noncitizens’ liberty interest. *Salcedo Aceros v.*  
8 *Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at \*8 (N.D. Cal. Sept 12, 2025); see also  
9 *Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 U.S. Dist. LEXIS 228110, at \*10-11 (N.D. Cal.,  
10 Nov. 19, 2025) (“The Court is persuaded by the many district courts that have found Section  
11 1225 inapplicable to noncitizens who were conditionally released in the past under Section  
12 1226”). To do so would amount to an impermissible post hoc rationalization. *Lopez Benitez*,  
13 795 F.Supp.3d. at 486.

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17 **1. The Government’s Position Is at Odds with the Statutory and**  
18 **Regulatory Framework in Place for Three Decades**

19 Even if Petitioner were not initially released Section 1226(a), district courts across the  
20 nation have overwhelmingly rejected the government’s novel application of Section 1225(b)(2)  
21 to people arrested in the interior of the United States, like Petitioner. See, e.g., *J.O.L.R.*, 2025  
22 WL 2908740, at \*3–8; *Ortiz Donis v. Chestnut*, 1:25-CV-01228-JLT, 2025 WL 2879514 at \*6-9  
23 (E.D. Cal. Oct. 9, 2025); *O.P.A.M.*, 2025 WL 3120552, at \*8; *Orozco Acosta v. Bondi*, No. 25-cv-  
24 09601-HSG, 2025 WL 3229097, at \*2–5 (N.D. Cal. Nov. 19, 2025); *Caicedo Hinestroza v. Kaiser*,  
25 No. 25-cv-07559-JD, 2025 WL 3090767, at \*1 (N.D. Cal. Nov. 5, 2025) (adopting reasoning from  
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28 <sup>2</sup> On the form, 8 U.S.C. § 1226 is referred to as Section 236 of the Immigration and Nationality Act.

1 order granting temporary restraining order, 2025 WL 2606983, at \*2–3); *Pablo Sequen v.*  
2 *Albarran*, \_\_\_ F. Supp. 3d \_\_\_, No. 25-cv-06487-PCP, 2025 WL 2935630, at \*5–13 (N.D. Cal. Oct.  
3 15, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025); *Beltran Barrera*  
4 *v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v.*  
5 *Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez Benitez*, 795  
6 F. Supp. 3d, 475; *Romero v. Hyde*, Civ. Action No. 25-11631-BEM, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL  
7 2403827 (D. Mass. Aug. 19, 2025).

9         Since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of  
10 1996 (“IIRAIRA”), there has been a broad consensus that detention of people who had entered  
11 without inspection is controlled by 8 U.S.C. § 1226(a). Regulations published three weeks  
12 before IIRAIRA’s effective date stated, “Despite being applicants for admission, aliens who are  
13 present without having been admitted or paroled (formerly referred to as aliens who entered  
14 without inspection) will be eligible for bond and bond redetermination” under § 1226. 62 Fed.  
15 Reg. 10312, 10323 (Mar. 6, 1997). For over 28 years Respondents followed that analysis until  
16 abruptly changing their position this year. *See, e.g., Matter of Garcia-Garcia*, 25 I. & N. Dec. 93  
17 (BIA 2009); *Matter of D-J-*, 23 I. & N. Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument  
18 at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: “DHS’s  
19 long-standing interpretation has been that 1226(a) applies to those who have crossed the  
20 border between ports of entry and are shortly thereafter apprehended.”).

21         The government now seeks to upend that consensus, asserting that those people are in  
22 fact covered by 1225(b)(2) and its mandate of detention. That statute reads, “[I]n the case of *an*  
23 *alien who is an applicant for admission*, if the examining immigration officer determines that *an*  
24 *alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien  
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1 shall be detained...” 8 U.S.C. 1225(b)(2)(A) (emphasis added). In their interpretation,  
2 Respondents elide the distinction between being an “applicant for admission” – a *status*, clearly  
3 defined in Sec. 1225(a)(1) – and the limiting phrase “seeking admission,” an *action* which is left  
4 undefined but whose meaning is illuminated to the structure and history of the statute. They  
5 simply claim that Sec. 1225(b)(2)(A) mandatory detention applies to anyone who has not been  
6 formally admitted (the definition of “applicant for admission”), no matter whether they have  
7 been in the United States for five minutes or five decades. Their unspoken assumption is that  
8 one is forever “seeking admission,” no matter how long they have been in the country. A long  
9 line of courts have disagreed with that interpretation. *See, e.g., Ortiz Donis*, 2025 WL 2879514  
10 at \*6-9; *O.P.A.M.*, 2025 WL 3120552, at \*8; *Valencia Zapata v. Kaiser*, No. 25-cv-07492-RFL,  
11 2025 WL 2741654, at \*10 (N.D. Cal. Sept. 26, 2025); *Salcedo Aceros*, 2025 WL 2637503, at \*9;  
12 *Guerrero Lepe v. Andrews, et al.*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*4  
13 (E.D. Cal. Sept. 23, 2025); *F.M.V.*, 2025 WL 3083934, at \*4; *Guzman v. Andrews*, No. 1:25-CV-  
14 01015-KES-SKO (HC), 2025 WL 2617256, at \*3-4 (E.D. Cal. Sept. 9, 2025); *Garcia v. Noem*, No.  
15 25-CV-02180-DMS-MMP, 2025 WL 2549431, at \*6 (S.D. Cal. Sept. 3, 2025); *Lopez Benitez v.*  
16 *Francis*, 795 F. Supp. 3d at 487; *Martinez v. Hyde*, 792 F. Supp. 3d 211, 214-221 (D. Mass. 2025);  
17 *Rodriguez*, 779 F. Supp. 3d at 1256-60; *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB),  
18 2025 WL 2337099, at \*6-8 (D. Ariz. Aug. 11, 2025). They have good reason for doing so.

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23 The meaning of “applicant for admission” – a broad term covering those entering the  
24 county and those present without formal admission – is clearly delineated in Sec.1225(a)(1) and  
25 is undisputed. The action of “seeking admission,” being undefined in the statute, can be  
26 understood by its plain meaning, the statutory context, and the presumption against  
27 surplusage, and the implementing regulations. In its plain meaning, “seeking” is a present tense  
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1 verb, related to the common-sense meaning of trying to come to the United States. If the terms  
2 “applicant for admission” and “seeking admission” were synonymous, using both in the same  
3 phrase would run against the doctrine of surplusage. Moreover, such an interpretation would  
4 render other statutory sections irrelevant. 8 USC 1226(c) already specifies categories of  
5 noncitizens who are subject to mandatory detention; just this year, through the Lakin Riley Act,  
6 Congress amended 8 USC 1226(c) to include new categories of inadmissible noncitizens. Were  
7 Petitioners’ interpretation correct, every single person covered by the Lakin Riley Act would  
8 have already been subject to mandatory detention, and the act would have been wholly  
9 redundant.  
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12 The regulatory structure also weighs against Petitioners’ argument. Implementing  
13 regulations at 8 CFR 235.3(c) make it clear that 1225(b)(2)’s mandatory detention provision  
14 applies to “arriving aliens,” defined at 8 CFR 1.2 as a person “coming or attempting to come  
15 into the United States at a port-of-entry...” The implementing regulations use the phrase  
16 “arriving alien” when describing the same subset of applicants for admission described in  
17 1225(b)(2): those who are seeking admission and inadmissible, but who are placed in removal  
18 proceedings rather than Expedited Removal. “[A]ny *arriving alien* who appears to the inspecting  
19 officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of  
20 the Act shall be detained in accordance with section 235(b) of the Act.” 8 CFR 235.3(c). That is  
21 consistent with the long-held understanding, and long-standing practice, that arriving aliens –  
22 those who present at the port of entry – are subject to mandatory detention while others are  
23 not.<sup>3</sup> In the regulations, then, “arriving alien” is the limiting phrase that gives shape to the  
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28 <sup>3</sup> For years, although arriving aliens were subject to mandatory detention, they were often released on parole.

1 limiting phrase “seeking admission” as used in the statute. *Torres v. Barr*, which Respondents  
2 cite to for the uncontested meaning of “applicant for admission,” Opp. at 2, reinforces that the  
3 act of “seeking admission” is something which happens at the border: ““§ 1182(a)(7) [the  
4 statute applied to arriving aliens] signals that the time of application for admission is the time  
5 when a noncitizen seeks permission to physically enter United States territory.” *Torres v. Barr*  
6 976 F.3d 918, 924 (9th Cir. 2020).  
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10 **2. The Documentary Record of the Case Does Not Support the Claim that  
Petitioner Is Subject to 8 U.S.C. § 1225**

11 The Respondents’ paperwork undermines their own argument. Subject to statutory and  
12 regulatory limits, DHS can decide whether to place an individual into expedited removal  
13 proceedings under 8 U.S.C. § 1225(b)(1) or immigration court proceedings pursuant to 8 U.S.C.  
14 § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523 (BIA 2011). At the time of  
15 Petitioner’s initial apprehension, the government could have chosen the path of expedited  
16 removal and charged her accordingly. It did not, and their own paperwork shows that she was  
17 processed not through 8 U.S.C. § 1225 but instead through 8 U.S.C. § 1226. Petitioner’s Form I-  
18 220 Order of Release reads, “In accordance with Section 236 of the Immigration and Nationality  
19 Act [8 U.S.C. § 1226]... you are being released on your own recognizance.” Gavigan Dec., Exh. B  
20 (ECF 3 at 12). Her Notice of Custody Determination references the same statute. *Id.* at 14. In her  
21 Notice to Appear, DHS declined to check the box marking her as an “arriving alien” – the term  
22 that would, under the regulations, trigger the application of the detention authority at 8 U.S.C.  
23 § 1125(b)(2). Gavigan Dec., Exh. A (ECF 3 at 7).  
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**C. Petitioner Has Established the Threat of Irreparable Harm**

1 Respondents make the remarkable assertion that Petitioner cannot show irreparable  
2 harm from her imprisonment because detention is implicit in migrant processing and “she is  
3 being detained en route to her removal” – as if she already had a deportation order, or as if  
4 such an order was foreordained. Opp. at 5. To back their claim, they cite to a 1952 case -- under  
5 a long-defunct statutory scheme -- where the Supreme Court allowed Communist Party  
6 members to be detained due to a view that they were a threat to public security. *Id.*, quoting  
7 *Carlson v. Landon*, 342 U.S. 524, 541-544. Respondents then cite to *Reno v. Flores*, from 1993 –  
8 but only to describe the state of the law as it had stood at the time of *Carlson*. By contrast, the  
9 current statutory scheme, from when IIRAIRA took effect in 1997, provides for release as well  
10 as detention – as evidenced the plain text of the law and by contemporaneous regulations, not  
11 to mention the fact that the great majority of people in removal proceedings are at liberty. *See*,  
12 *e.g.*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). From 1997 until the present year, the  
13 government has never asserted otherwise.

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18 Petitioner is already suffering from irreparable harm, and will continue doing so unless  
19 granted preliminary injunctive relief.” Courts in this Circuit have repeatedly recognized “the  
20 irreparable harms imposed on *anyone* subject to immigration detention.” *Hernandez v.*  
21 *Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (emphasis added); *see also, e.g., J.O.L.R.*, 2025 WL  
22 2908740, at \*6; *Pinchi*, 792 F.Supp.3d at 1036; *Singh*, 2025 WL 1918679, at \*9; *Ortega v. Kaiser*,  
23 No. 25-cv-05259-JST, 2025 WL 1771438, at \*5 (N.D. Cal. June 26, 2025); *Diaz v. Kaiser*, No. 3:25-  
24 cv-05071, 2025 WL 1676854, at \*3 (N.D. Cal. June 14, 2025); *Lewis v. Garland*, No. EDCV 22-296  
25 JGB (AGRx), 2023 WL 8898601, at \*4 (C.D. Cal. July 31, 2023); *Singh v. Garland*, No. 1:23-cv-  
26 01043-EPG-HC, 2023 WL 5836048, at \*9 (E.D. Cal. Sept. 8, 2023). The irreparable harm is  
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1 compounded when the detention is likely unconstitutional, for “the deprivation of  
2 constitutional rights unquestionably constitutes irreparable injury.” *United Farm Workers v.*  
3 *Noem*, 785 F. Supp. 3d 672, 740 (E.D. Cal. Apr. 29, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d  
4 990, 1002 (9th Cir. 2012)).

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6 **D. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner’s  
7 Favor**

8 The balance of the hardships and public interest also strongly support issuance of a  
9 temporary restraining order. Respondents identify their interest in the “efficient administration  
10 of the immigration laws.” Opp. at 5, quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Yet the  
11 government has no interest in wielding that authority to unconstitutionally detain Petitioner,  
12 and others like her, without any due process. The government “cannot reasonably assert that it  
13 is harmed by any legally cognizable sense by being enjoined from constitutional violations.”  
14 *Zepeda v. INS*, 753 F. 2d 719, 727 (9th Cir. 1983); *see also Rodriguez v. Robbins*, 715 F. 3d 1127,  
15 1145 (9th Cir. 2013) (the government cannot suffer harm from an injunction that merely ends  
16 an unlawful practice” implicating “constitutional concerns”). Conversely, “the public has a  
17 strong interest in upholding procedural protections against unlawful detention.” *Vargas v.*  
18 *Jennings*, 2020 WL 5074312 at \*4. That interest is always served by ensuring that such  
19 “procedures comply with the Constitution.” *Hernandez*, 872 F.3d at 996. *See also Preminger v.*  
20 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

21 As “the balance of hardships tips sharply in [her] favor,” Petitioner need only show  
22 “serious questions going to the merits” under the Ninth Circuit’s “sliding scale test.” *All. for the*  
23 *Wild Rockies*, 632 F.3d at 1135; *see also United Farm Workers*, 785 F.Supp.3d at 732. As  
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1 described above, she has established a strong likelihood of success on the merits of her  
2 constitutional and statutory claims.

3 **IV. CONCLUSION**

4 For the foregoing reasons, this Court should grant Petitioner's motion for a temporary  
5 restraining order and order her released without bond or electronic monitoring during the  
6 pendency of these proceedings; enjoin Respondents from re-detaining her, if at all, without a  
7 hearing before a neutral arbiter where Respondents have the burden of establishing, by clear  
8 and convincing evidence, that she is a flight risk or a danger to the community; and enjoining  
9 Respondents from transferring her outside either this district or the Northern District of  
10 California, where she resided before her recent detention.  
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15 Date: December 10, 2025

Respectfully Submitted,

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