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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 MARTINA MARTIN GARCIA,)

13 Petitioner)

14 v.)

15 SERGIO ALBARRAN, et al.,)

16 Respondents)
17)

No. 4:25-cv-10617-JST

**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., Bautista Pico v. Noem*, No. 25-CV-08002-JST,
12 2025 WL 3295382 (N.D. Cal. Nov. 26, 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 *Bautista Pico* and other similar cases
16 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 If the Court decides 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. Lastly, the Court lacks jurisdiction to
21 enjoin the removal of Petitioner.

22 **II. BACKGROUND**

23 Petitioner is a citizen of Guatemala. ECF No. 1 ¶ 1. She entered the United States without
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 inspection on or about April 2024. *Id.* ¶ 27. The Department of Homeland Security apprehended
2 Petitioner upon entry, detained her, and then released her. *Id.* On November 19, 2024, Petitioner applied
3 for asylum, inter alia. ECF No. 3, “Supplement” at 9. On June 25, 2025, the Immigration Judge denied
4 Petitioner’s application for asylum and ordered her removed. ECF No. 1 ¶ 4. The appeal is currently
5 pending before the Board of Immigration Appeals. *Id.*

6 On December 11, 2025, ICE officers detained Petitioner. ECF No. 1 ¶ 1. That same day,
7 Petitioner filed a Petition for Writ of Habeas Corpus and an Ex Parte Motion for Temporary Restraining
8 Order (“TRO”) against Respondents. ECF Nos. 1, 3. On December 12, 2025, this Court issued an order
9 granting the TRO. ECF No. 4. The Court ordered, inter alia, that Respondents show cause “why the
10 petition should not be granted and/or a preliminary injunction should not issue regarding re-detention of
11 Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker and from
12 removing Petitioner from the United States.” ECF No. 4 at 6.

13 **III. ARGUMENT**

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

15 Petitioner claims, inter alia, that her detention violates her procedural due process rights under
16 the Fifth Amendment. ECF No. 4 at 3. Petitioner argues that she has a substantial interest in remaining
17 out of custody, and the Due Process Clause entitles her to a bond hearing before an immigration judge
18 (“IJ”) prior to any arrest or detention. *Id.*

19 Respondents contend that, based on the plain text of 8 U.S.C. § 1225(b)(2), Petitioner is subject
20 to mandatory detention for the duration of her removal proceedings because Petitioner is an “applicant
21 for admission” and is “seeking admission.” Petitioner meets the statutory definition of an “applicant for
22 admission” found in 8 U.S.C. § 1225(a)(1) and is “seeking admission” due to her presence in the United
23 States without admission and due to her pending asylum application. *See* ECF No. 3, “Supplement” at
24 9. Moreover, as a noncitizen physically present in the United States without having been admitted,
25 Petitioner is treated for constitutional purposes as if stopped at the border and is thus only due the
26 process, as regards her detention, that the statute affords her. *See Dep’t of Homeland Sec. v.*
27 *Thuraissigiam*, 591 U.S. 103, 139-140 (2020).

28 Respondents acknowledge this Court’s statement that its order granting the TRO “accords with

1 many other recent grants of temporary relief in similar circumstances.” ECF No. 4 at 5. However,
2 Respondents wish to highlight that several courts in other districts in the Ninth Circuit have recently
3 denied TRO motions or preliminary injunctive relief for individuals, like Petitioner, detained under 8
4 U.S.C. § 1225(b)(2) following conditional parole. These courts have upheld, at least preliminarily,
5 mandatory detention under § 1225(b)(2).² See *Altamirano Ramos v. Lyons*, No. 25-cv-09785, 2025 WL
6 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the court had previously rejected the
7 government’s interpretation of § 1225(b)(2), but “after additional research and analysis, the court has
8 concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a), and that Petitioner is
9 not eligible for a bond hearing under 8 U.S.C. § 1226(a)”); *Sixtos Chavez v. Noem*, No. 25-cv-02325,
10 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir. Nov. 7, 2025);
11 *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*,
12 No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025).

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

20 Respondents thus request that the Court follow the BIA and the district courts, both in the Ninth
21 Circuit and around the country, that have found that the mandatory detention provision contained in
22 § 1225(b)(2) applies to individuals like Petitioner.

23 Respondents acknowledge that questions of law in this case substantially overlap with those at
24

25 ² Moreover, a growing number of courts in districts under other circuits have also reached the
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 issue in *Bautista Pico* and other cases in this District that have concluded that § 1225(b) is not applicable
2 to individuals who were conditionally released in the past under § 1226(a). Accordingly, while preserving
3 all rights, Respondents incorporate by reference the legal arguments it presented in those cases. Should
4 the Court apply the same reasoning it did in *Bautista Pico* to this one, the legal reasoning in that case
5 would likely warrant the same conclusion here. Thus, Respondents submit that further briefing and oral
6 argument in this case on the legal issues already addressed in those cases would not be a good use of
7 judicial or party resources. If, however, the Court prefers to receive a formal and exhaustive opposition
8 brief in this matter, Respondents will provide such a brief upon the Court's request.

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

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

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

1 before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order”);
2 *Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025) (“Respondents
3 must provide Petitioners with individualized bond hearings under § 1226(a) within fourteen days of this
4 Order. Respondents shall not deny Petitioners’ bond on the basis that § 1225(b)(2) requires mandatory
5 detention.”); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025) (“the
6 appropriate remedy is to order the Immigration Court to conduct a new hearing at which it considers
7 Gomes’ eligibility for bond under Section 1226(a)”). Respondents thus request that this Court adopt this
8 approach if the Court determines that section 1226(a) applies.

9 **C. The Court Lacks Jurisdiction to Enjoin Respondents from Removing Petitioner**
10 **from the United States.**

11 The TRO enjoins Respondents from “removing Petitioner from the United States” until these
12 proceedings have concluded. ECF No. 3 at 6. Under 8 U.S.C. 1252(g), “no court shall have jurisdiction
13 to hear any cause or claim by or on behalf of any alien arising from the decision or action by the
14 Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any
15 alien under this chapter.” This jurisdictional bar applies to section 2241 of title 28 and any other habeas
16 provision. *Id.* Thus, if the Court grants a preliminary injunction, it should not include a prohibition on
17 the removal of Petitioner. *See Rauda v. Jennings*, 55 F.4th 773, 776-79 (9th Cir. 2022) (holding that the
18 district court lacked jurisdiction in habeas to issue TRO enjoining noncitizen's removal).

19 **IV. Conclusion**

20 Respondents thank the Court for its consideration of this abbreviated submission and respectfully
21 request that the Court not grant the petition nor enter the preliminary injunction.

22 DATED: December 18, 2025

Respectfully submitted,

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25 /s/ William Skewes-Cox

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