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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Melina Solano Bejarano

Petitioner,

v.

Warden of the Golden State Annex Detention
Facility;

Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security; and

Pam BONDI, in her Official Capacity,
Attorney General of the United States;

Respondents - Defendants,

CASE NO.: 1:25-CV-01905-JLT-SAB

PETITIONER'S REPLY TO
RESPONDENT'S OPPOSITION TO
EMERGENCY EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

PETITIONER'S REPLY TO GOVERNMENT'S OPPOSITION TO EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

LEGAL STANDARD

A party seeking a temporary restraining order and preliminary injunction must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20 (2008). “If a plaintiff can only show that there are serious questions going to the merits – a lesser showing than likelihood of success on the merits – then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014)(internal quotation marks and citations omitted). “When the Government is the opposing party,” the final two factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

A. Likelihood of Success on the Merits
a. Due Process

The Due Process Clause protects all persons within the United States from being “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Due Process Clause applies equally to noncitizens unlawfully present in the United States, like Ms. Solano Bejarano. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Although Ms. Solano Bejarano’s claim is constitutional, it ultimately turns on whether either section 1225(b) or section 1226(a) provides a valid basis for Ms. Solano Bejarano’s continued detention without a bond hearing. Here, since Ms. Solano Bejarano has not been properly detained under either statutory detention authority, a temporary restraining order and preliminary injunction must be issued.

i. Mandatory Detention Under 8 U.S.C. § 1225(b)(2)(A)

The Respondents invoke section 1225(b) as a basis for mandatory detention. The relevant portion of § 1225(b) regarding the definition of an applicant for admission is § 1225(b)(2)(A) which provides the following:

In the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for proceeding under section 1229a of this title.
U.S.C §1225(b)(2)(a).

There is no real dispute that Ms. Solano Bejarano is “an applicant for admission” who is not “clearly and beyond a doubt entitled to be admitted.” *Id.* However, the mandatory detention provision of 8 U.S.C. 1225(b) does not apply to Ms. Solano Bejarano because Ms. Solano Bejarano is not “an alien seeking admission”.

The fact that the petitioner is an applicant for admission does not resolve the dispute in this case as the reading of § 1225(b)(2) requires that the respondent also be an “alien seeking admission.”

Although Respondents do not address the specific language of § 1225(b)(2), respondents seem to argue that Petitioner is also an “alien seeking admission” and subject to mandatory detention under 8 U.S.C. § 1225(b)(2) since that statute requires that the applicant for admission must also be determined to be an “alien seeking admission” in order to be subject to mandatory detention. Respondents’ theory repeats arguments that have been uniformly rejected by many district courts. A noncitizen released into the interior of the country pending deportation proceedings is not “seeking admission”. See, e.g., *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025); *Salcedo Aceros v. Kaiser*, 25-cv-06924-EMC, 2025 WL 2637503, at *8–12 (N.D. Cal. Sep. 12, 2025); *Jimenez Garcia v. Kaiser et al.*, 25-cv-06916-YGR, at *8–9 (N.D. Cal. Aug. 29, 2025); *Calderon v. Kaiser*, No. 5:25-cv-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263, at *3–4 (N.D. Cal. Aug. 21, 2025). *Valencia Zapata v. Kaiser*, 2025 WL 2741654, at * 10 (N.D. Cal. Sept. 26, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

The respondent concludes that pursuant to the statutory scheme, detention pending removal proceedings is mandatory. Applied here, that logic suggests that an “applicant for admission” is merely one kind of noncitizen “seeking admission,” which would mean the use of the phrase “seeking admission” in section 1225(b)(2) carries no additional meaning.

However, in section 1225(b)(2)(A), Congress felt the need to cabin the application of

1 mandatory detention to only those “seeking admission” *after* it already limited the provision’s
2 scope to “applicants for admission.” In that context, therefore, it is far from obvious that
3 Congress intended the two terms to be completely coterminous.

4 Fortunately, the remainder of the statutory scheme provides probative evidence of
5 Congress’s intent which resolves the interpretive question in favor of Ms. Solano Bejarano.
6 First, in January 2025, Congress amended the provision governing discretionary detention – 8
7 U.S.C. § 1226 – to add an additional category of noncitizens subject to mandatory detention. *See*
8 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “ This category includes noncitizens
9 who are (1) inadmissible under 1182(6)(A)(present without admission or parole),
10 (6)(C)(misrepresentation), or (7)(C)(lack of proper documentation) and (2) have been charged
11 with one of certain enumerated crimes.” *Salcedo Aceros*, 2025 WL 2637503, at *10.

12 Under Respondents’ view, however, this class of individuals was already subject to
13 mandatory detention under section 1225(b)(2)(A) because they satisfy the statutory definition of
14 “applicants for admission.” Therefore, adopting Respondent’s theory would be to presume
15 Congress intended its amendment to have “[no] real and substantial effect” – a presumption the
16 Supreme court had admonished is appropriate. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

17 Moreover, section 1225(b)’s implementing regulations suggest that it was not intended
18 to sweep as broadly as Respondents claim. 8 C.F.R. § 235.3(c)(1) provides that section 1225(b)
19 shall apply to “any arriving alien” that appears inadmissible and is placed in standard removal
20 proceedings. By limiting the scope of section 1225(b) in this way, the regulation effectively
21 defines an “applicant for admission” who is “seeking admission” to be an “arriving alien” – a
22 definition that would exclude those like Ms. Solano Bejarano who are now in the interior of the
23 country. If Respondents are correct that Congress meant for section 1225(b) to apply more
24 broadly all along, it could have corrected that language but it did not.

25 Respondents’ construction of the statute would also seem to shrink the discretionary
26 detention provision, section 1226, beyond recognition. Section 1226 provides that “on a warrant
27 issued by the Attorney General, an alien may be arrested and detained pending a decision on
28 whether the alien is to be removed.” 8 U.S.C. § 1226(a). That provision also permits the Attorney
General to “release the alien...on conditional parole.” *Id.* § 1226(a)(2)(B). The implementing
regulations permit an ICE officer to release the alien in the officer’s discretion “provided that the
alien must demonstrate to the satisfaction of the officer that such release would not pose a danger

1 to property or persons, and that the alien is likely to appear for any future proceedings.” 8 U.S.C.
2 § 236.1(c)(8).

3 For many years, the understanding – shared by the Executive and the Supreme Court –
4 was that section 1226, not section 1225, governed immigration arrests conducted within the
5 interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)(“Despite being
6 applicants for admission, aliens who are present without having been admitted or paroled ... will
7 be eligible for bond and bond redetermination.”); *Jennings v. Rodriguez*, 583 U.S. 281, 289
8 (2018)(“In sum, U.S. Immigration law authorizes the Government to detain certain aliens seeking
9 admission into the country under §§ 1226(a) and (b)(2). It also authorizes the Government to
10 detain certain aliens *already in the country pending the outcome of removal proceedings* under
11 §§ 1226(a) and (c).”)(emphasis added). Respondent’s view is that virtually every noncitizen in
12 the interior of the country is both an “applicant for admission” and is “seeking admission,”
13 making all of them subject to mandatory detention under the statutes. Because a noncitizen
14 cannot simultaneously be subject to mandatory detention and discretionary detention, the result
15 is that section 1226 will apply only to an extremely small group of noncitizens: those present in
16 the United States who have been admitted but now lack legal status. *See, e.g., Jennings*, 583
17 U.S. at 289-90. The statutory scheme is devoid of any indication that Congress meant for section
18 1226 to be that narrow. In sum, section 1225(b)(2)(A) does not supply statutory authority to
19 detain Ms. Solano Bejarano.

20 After initiating removal proceedings under § 1229(a), the government chose to release
21 Ms. Solano Bejarano on conditional parole under §1226(a). In doing so, the government placed
22 Ms. Solano Bejarano into a normal removal proceeding, not an expedited one, and it also chose
23 not to detain her under § 1225(b). “Sections 1226(a) and 1225(b) cannot be applied
24 simultaneously.” *Salcedo Aceros*, 2025 WL 2637503, at *8; *see also Valencia Zapata v. Kaiser*,
25 -- F. Supp. 3d --, No. 25-cv-07492- RFL, 2025 WL 2741654, at *9 (N.D. Cal. Sept. 26, 2025);
26 *Pablo Sequen v. Albarran*, --F. Supp. 3d --, No. 25-cv-06487-PCP, 2025 WL 2935630, at *1–2
27 (N.D. Cal. Oct. 15, 2025). Like other District Courts, this court must find that the government
28 cannot simply switch tracks and purport to subject Ms. Solano Bejarano to mandatory detention
under § 1225(b) after it already released her under § 1226(a). Here, Ms. Solano Bejarano is not
in expedited removal proceedings.

Ms. Solano Bejarano has a liberty interest that was created by the government after

immigration officials released her on own recognizance under § 1226(a) when they determined she posed little if any danger to the community. By deciding to release Ms. Solano Bejarano from custody after he was initially apprehended and placing her in § 240 proceedings, the government created “an implicit promise,” on which he has reasonably relied, that her liberty “will be revoked only if [s]he fails to live up to the parole conditions [of his release].” *Morrissey*, 408 U.S. at 482. “The liberty of a person released from government custody is valuable and must be seen as within the protection of the Due Process Clause.” *Pinchi*, 792 F. Supp. 3d at 1032 (quoting *Morrissey*, 408 U.S. at 482); see also *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025) (petitioner’s release under § 1226 created “protected liberty interest in remaining out of custody, which has only become more significant in the years since then”). Petitioner’s private interest in her continued freedom from detention is therefore weighty.

a. DHS may not subject an immigrant in § 240 removal proceedings to mandatory detention under 8 U.S.C. § 1225(b) based solely on termination of parole under 8 C.F.R. § 212.5(e)(2)(i)

There is no statutory authority permitting DHS to apply § 1225(b) detention after initiating § 240 proceedings absent a new placement in expedited removal. 8 C.F.R. § 212.5(e)(2)(i) governs parole termination only. It is not a detention statute and cannot create mandatory detention where Congress did not. See *Jennings*, 583 U.S. at 521.

Once in § 240 proceedings, § 1226(a) is the default custody statute and bond jurisdiction lies with the Immigration Judge. Mandatory detention applies only if § 1226(c) is satisfied. Congress separated these statutes intentionally: § 1225 governs inspection “pending a determination of admissibility primarily before DHS elects to place the person in § 240 proceedings. Once DHS issues and files a Notice to Appear in immigration court initiating § 240 proceedings, as is the case here, the § 1225 inspection/admission framework is no longer operative and § 1226 governs. See *Jennings v. Rodriguez*, 583 U.S. 513 (2018) stating that § 1225 and § 1226 are distinct detention regimes.

Respondents’ construction of the § 1225 mandatory detention statute would also seem to shrink the discretionary detention provision, section 1226, beyond recognition. Section 1226

provides that “on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed.” 8 U.S.C. § 1226(a). That provision also permits the Attorney General to “release the alien...on conditional parole.” *Id.* § 1226(a)(2)(B). The implementing regulations permit an ICE officer to release the alien in the officer’s discretion “provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceedings.” 8 U.S.C. § 236.1(c)(8). Under Respondents rationale, all immigrants who have not yet been admitted could be considered applicants for admission/arriving aliens because they are in the same status as when they entered the United States and thus subject to § 1226(b) mandatory detention. However, this is not the case.

For many years, the understanding – shared by the Executive and the Supreme Court – was that section 1226, not section 1225, governed immigration arrests conducted within the interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)(“Despite being applicants for admission, aliens who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination.”); *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)(“In sum, U.S. Immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1226(a) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country pending the outcome of removal proceedings* under §§ 1226(a) and (c).”)(emphasis added). Since Ms. Solano Bejarano was placed in § 240 removal proceedings before an immigration judge over four years ago, his detention while in § 240 proceedings is governed by § 1226(a) and (c) regardless of the status of her parole.

ii. Discretionary Detention under 8 U.S.C. § 1226(a)

Though most of Respondents’ submission is dedicated to arguing that Ms. Solano Bejarano was properly detained under section 1225(b) mandatory detention requirements, they cannot justify Ms. Solano Bejarano’s detention under section 1226(a) as well. Section 1226(a) provides that an “alien may be arrested and detained pending a decision on whether the alien is to be removed.” It further provides that the Attorney General “may continue to detain the arrested alien” or “may release the alien on a bond ...or conditional parole.” 8 U.S.C. § 1226(a).

Section 1226(a)’s implementing regulations require release of a detained noncitizen unless the noncitizen poses a danger to the community or is a flight risk. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir. 2022). When the noncitizen is initially detained, 8

1 C.F.R. § 236.1(c)(8) provides for release if the noncitizen “demonstrate(s) to the satisfaction of
2 the [ICE] officer that such release would not pose a danger to property or persons, and that the
3 alien is likely to appear for any future proceeding.” See *id.* If the ICE officer determines that
4 the noncitizen should not be released, the regulations permit the noncitizen to request a bond
5 hearing before an immigration judge at any time before a removal order becomes final. See 8
6 C.F.R. §§ 236.1(d)(1), 1003.19; *Rodriguez Diaz*, 53 F.4th at 1197. In this hearing, too, the inquiry
7 is whether the noncitizen is “a threat to national security, a danger to the community at large,
8 likely to abscond, or otherwise a poor bail risk.” In *re Guerra*, 245 I&N Dec. 37, 40 (BIA 2006).
9 Though the immigration judge may “consider various factors in making this determination,
10 including the individual’s ties to the United States as well as his employment history, criminal
11 record, history of immigration violations, and manner of entry into this country,” those factors
12 are considered to assess dangerousness and flight risk. *Rodriguez Diaz*, 53 F.4th at 1197.

13 Thus, detention is permitted under section 1226(a) only if Ms. Solano Bejarano is
14 determined to be dangerous or a flight risk by an immigration judge.

15 As explained, the determination that Ms. Solano Bejarano’s detention is not authorized
16 under section 1225(b) or section 1226(a) resolves her Due Process claim in her favor. There is
17 no need to delineate when her liberty interest arose or what the scope of that liberty interest now
18 is because the government may never detain individual that enjoys the protection of the Due
19 Process Clause without a legal basis to do so. Regardless, the remaining factors weigh heavily
20 in Ms. Solano Bejarano’s favor.

21 **B. Petitioner Is Likely to Suffer Irreparable Harm Absent Injunctive**
22 **Relief**

23 There can be no question that Ms. Solano Bejarano is likely to suffer irreparable harm in
24 the absence of a preliminary injunction. “Deprivation of physical liberty by detention constitutes
25 irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018); see also *Hernandez*
26 *v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“It is well established that the deprivation of
27 constitutional rights ‘unquestionably constitutes irreparable injury.’”). “When an alleged
28 deprivation of a constitutional right is involved, most courts hold that no further showing of
irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005).
Ms. Solano Bejarano was arrested without any pre-detention hearing or other legal basis to do
so. She thus has shown a clear likelihood of irreparable harm.

1 Illegal detention is an unquestionably serious impingement on an individual's
2 constitutional rights. Since Respondents lack a basis to detain Ms. Solano Bejarano, she suffers
3 from irreparable harm.

4 **C. The remaining preliminary injunction factors – the balance of**
5 **equities, and the public interest – weigh in favor of Ms. Solano**
6 **Bejarano.**

7 The final two factors – which merge here because the government is the opposing party
8 – weigh in Ms. Solano Bejarano's favor. While the government has a compelling interest in
9 enforcing the immigration laws, granting relief to Ms. Solano Bejarano will not seriously impinge
10 its ability to do so. The government has already placed Ms. Solano Bejarano in full removal
11 proceedings under section 1229a, thus granting Ms. Solano Bejarano's immediate release will
12 not delay its ability to prosecute her removal. Moreover, her immediate release does not preclude
13 the government from detaining Ms. Solano Bejarano if it can convince a neutral arbiter that she
14 is subject to detention under section 1226(a) – that is, that she is a danger or a flight risk.
15 Therefore, at worst, immediate release imposes a minor delay on the government's execution of
16 the immigration laws.

17 Respondents have offered no evidence that Ms. Solano Bejarano's detention would serve
18 any purpose. The evidence before the Court does not suggest that Ms. Solano Bejarano presents
19 any danger to the community or any flight risk. After all, she has no criminal history and was
20 detained after dutifully attending her ICE appointment. Although the Deportation officer Noah
21 Kichak accuses her of violating her ATD conditions, she was never informed of these violations
22 in the years that these violations occurred.

23 Ms. Solano Bejarano continued residing out of custody for three years after the alleged
24 violations while her ISAP officer led her to believe that she was complying with all conditions
25 of her release. Please note that some of the allegations made by Officer Kichak are over three
26 years old. Ms. Solano Bejarano continued to reside in liberty for three years without getting any
27 indication that she violated her conditions of release. Ms. Solano Bejarano continued appearing
28 at all court hearings and ICE appointments believing that she was in compliance with her
conditions of release until the day she was detained. "Under these circumstances, there is
significant risk that [the] curtailment of liberty" that Ms. Solano Bejarano's would suffer by her
re-detention by ICE "w[ould] not [be] justified by any valid interest." *Pinchi*, 792 F. Supp. 3d at

1 1035.

2 Respondents have not shown any persuasive countervailing interest in choosing not to
3 provide a pre-detention hearing at this stage. If Respondents wish to detain Ms. Solano Bejarano
4 notwithstanding her release over four years ago, they can provide a hearing before a neutral
5 decisionmaker. It is undisputed that “[i]n immigration court, custody hearings are routine and
6 impose a ‘minimal’ cost.” *Salcedo Aceros*, 2025 WL 2637503 at *12 (citing *Singh*, 2025 WL
7 1918679, at *8). Ms. Solano Bejarano is already subject to full removal proceedings, and
8 Respondents conceded at the preliminary injunction hearing that those proceedings remain
9 active. A pre-deprivation bond hearing will not interfere with those proceedings. Moreover,
10 detention for its own sake is not a legitimate governmental/public interest. *Pinchi*, 792 F. Supp.
11 3d at 1036 (“Detention for its own sake, to meet an administrative quota, or because the
12 government has not yet established constitutionally required pre-detention procedures is not a
legitimate government interest.”).

13 The risk of erroneous deprivation also weighs in Ms. Solano Bejarano’s favor. “Once a
14 liberty interest is established, the question is whether process—a hearing—would lessen the risk
15 of an erroneous detention.” *Salcedo Aceros*, 2025 WL 2637503 at *12. Where the petitioner “has
16 not received any bond or custody . . . hearing,” “the risk of an erroneous deprivation [of liberty]
17 is high.” *Singh v. Andrews*, -- F. Supp. 3d --, No. 1:25-cv00801-KES, 2025 WL 1918679, at *7
18 (E.D. Cal. July 11, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES, 2025 WL 1424382,
19 at *5 (E.D. Cal. May 16, 2025)). Civil immigration detention is permissible only to protect
against danger to the community or to prevent a flight risk. See *Zadvydas*, 533 U.S. at 690.

20 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,
21 no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const.
22 amend. V. “Freedom from imprisonment—from government custody, detention, or other forms
23 of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
24 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)) favor. “Once a liberty
25 interest is established, the question is whether process—a hearing—would lessen the risk of an
26 erroneous detention.” *Salcedo Aceros*, 2025 WL 2637503 at *12. Where the petitioner “has not
27 received any bond or custody . . . hearing,” “the risk of an erroneous deprivation [of liberty] is
28 high.” *Singh v. Andrews*, -- F. Supp. 3d --, No. 1:25-cv00801-KES, 2025 WL 1918679, at *7
(E.D. Cal. July 11, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES, 2025 WL 1424382,

1 at *5 (E.D. Cal. May 16, 2025)). Civil immigration detention is permissible only to protect
2 against danger to the community or to prevent a flight risk. See *Zadvydas*, 533 U.S. at 690.

3 Counsel waives oral argument and is amenable to converting this TRO into a motion for
4 preliminary injunction.

5
6 Date: December 29, 2025

Respectfully Submitted,

8 /s/ Robert Beles

9 Robert Beles

10 Attorney For Petitioner

11 Melina Solano Bejarano
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 29, 2025, in Oakland, CA.

/s/ Robert Beles
Robert Beles
Attorney for Petitioner
Melina Solano Bejarano