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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

LUIS GUILLERMO ORTEGA MACARIO, Petitioner v. SERGIO ALBARRAN, et al., Respondents	No. 3:25-CV-10885-TLT **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

I. INTRODUCTION

Since entering the United States without inspection and gaining initial release from the Department of Homeland Security's ("DHS") custody, Petitioner has been arrested twice: once for felony domestic violence and once for driving under the influence ("DUI"). As a result, Immigration and Customs Enforcement ("ICE") redeteained Petitioner on December 22, 2025. Prior to redetaining Petitioner, the ICE Deportation Officer determined, based on Petitioner's criminal history, that there had been a material change of circumstances since Petitioner's prior release such that Petitioner poses a danger to the public. Thus, Petitioner's redetention complied with the order in *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).

Petitioner remains subject to ongoing detention under 8 U.S.C. § 1225(b)(2)(A). Respondents acknowledge that this Court's prior rulings concerning challenges to the government's practice and legal arguments under 8 U.S.C. § 1225(b)(2)(A) would control the result here if the Court adheres to its legal reasoning in those prior decisions. *See, e.g., Rodriguez Diaz v. Kaiser,* No. 25-CV-05071-TLT, 2025 WL 3011852 (N.D. Cal. Sept. 16, 2025). While Respondents respectfully disagree with those decisions, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments regarding the petitioner's likelihood of success on the merits that it presented in *Rodriguez Diaz* and other similar cases in this District. *See, e.g., Ayra Leandro v. Albarran, et al.*, No. 25-cv-10042-JD, Dkt. No. 10 (November 25, 2025). While reserving all rights, including the right to appeal, Respondents submit this abbreviated response in lieu of an exhaustive responsive memorandum to preserve the legal issues and to conserve judicial and party resources.[1] Should the Court prefer to receive a more exhaustive and fulsome opposition brief, Respondents will do so upon the Court's request.

If the Court otherwise decides that Petitioner is subject to ongoing detention under 8 U.S.C.

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[1] In addition to the arguments raised in this response, Respondents also move for all Respondents other than Petitioner's immediate custodian to be dismissed from this case. *See Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (emphasizing the "clear rule requiring core habeas petitioners challenging 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").

§ 1226(a), the appropriate remedy is to order a bond hearing, rather than order immediate release, and for Petitioner to bear the burden to demonstrate flight risk or danger to the community. Lastly, the Court lacks jurisdiction to enjoin the removal of Petitioner.

II. BACKGROUND

Petitioner is a native and citizen of Guatemala. Declaration of Deportation Officer Educardo Ortiz-Martinez ("Ortiz Decl.") ¶ 6, Exh. 1, 3. On or about December 18, 2021, Petitioner entered the United States without inspection. *Id.* ¶ 7, Exh. 1. U.S. Border Patrol detained him and served him with a Notice to Appear. *Id.* DHS charged Petitioner with inadmissibility under 8 U.S.C. 1182(a)(6)(A)(i). *Id.*

On December 21, 2021, he was released from custody on his own recognizance due to a lack of space. *Id.* ¶ 8, Exhs. 2, 3. DHS served Petitioner with an Order of Release on Recognizance. *Id.*, Exh. 2. Among the conditions of Petitioner's release, Petitioner was prohibited from violating any local, state, or federal laws or ordinances. *Id.* DHS also ordered Petitioner not to commit any crimes while on this Order of Release on Recognizance. *Id.* DHS warned Petitioner that any violation of these conditions may result in him being taken into ICE custody. *Id.*

On July 14, 2022, the Immigration Judge found Petitioner removable and designated Guatemala as the country of removal. *Id.* ¶ 9. On August 23, 2022, Petitioner submitted an application for asylum and related relief to the San Francisco Immigration Court. *Id.* ¶ 10.

On or about August 31, 2022, Petitioner was arrested for violating California Penal Code § 273.5(a), corporal infliction of injury upon a spouse or cohabitant. *Id.* ¶ 11., Exh. 3, 4. The charges were later dismissed. *Id.*, Exh. 3.

On January 27, 2025, the Immigration Judge denied Petitioner's application for relief and protection and ordered him removed to Guatemala. *Id.* ¶ 12, Exh. 3. On January 30, 2025, Petitioner appealed the decision of the Immigration Judge to the Board of Immigration Appeals. *Id.* The appeal is currently pending. *Id.*

On or about September 7, 2025, San Francisco Sheriff's Department arrested Petitioner for driving under the influence (DUI). *Id.* ¶ 13, Exh. 3, 4. He was cited for two misdemeanors under California Vehicle Code § 23152 (a) and California Vehicle Code § 23152 (b). *Id.*, Exh. 4. The charges are currently pending. *Id.*, Exh. 3, 4.

On November 21, 2025, Petitioner reported to ERO in San Francisco after being ordered to do so following his DUI arrest. *Id.* ¶ 14. He was told to bring any court documents he may have from his DUI arrest. *Id.* ERO gave Petitioner until December 22, 2025, to provide a letter from the District Attorney that no charges will be filed. *Id.* ERO ordered Petitioner to report again on December 22, 2025. *Id.*

On December 22, 2025, Petitioner reported to ERO San Francisco. *Id.* ¶ 15. He did not provide the letter from the District Attorney as previously requested by ERO. *Id.* Following a review of Petitioner's individual circumstances, I determined that his criminal history, which also violated the terms of his release on an order of recognizance, amounted to a material change in circumstances such that Petitioner poses a danger to the community. *Id.* ¶ 16. Accordingly, I took Petitioner into custody on December 22, 2025. *Id.*

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

III. ARGUMENT

A. DHS properly redetained Petitioner after determining he poses a danger to the public

On December 22, 2025, ICE redetained Petitioner after making an individualized determination that Petitioner's circumstances had materially changed since his release, such that he poses a danger to the public. *See Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).[2] Prior to detaining Petitioner, the Deportation Officer had before him Petitioner's criminal history, specifically Petitioner's arrest on August 31, 2022, for violating California Penal Code

[2] Respondents acknowledge that in the instant case Petitioner is covered by the class and sub-class definitions found in *Pinchi* and that his recent arrest would need to comply with the standard for redetention contained therein.

§ 273.5(a) and Petitioner's September 7, 2025 arrest for DUI. *See* Ortiz Decl. ¶ 11, 13, Exhs. 3, 4. That authorities arrested Petitioner on these charges establishes that there was at least probable cause he committed each crime. The commission of these crimes violated the terms of Petitioner's release on his own recognizance, which warned of redetention as a direct and explicit consequence of committing crimes. Ortiz Decl. ¶ 8, Exhs. 2, 3.

The danger to the public from each crime is material. On the one hand, California Penal Code § 273.5(a) is a felony offense that has as an element "corporal injury resulting in a traumatic condition upon a victim." On the other hand, the Supreme Court has recognized the danger from DUI: "Drunk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year." *Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016); *see also Mitchell v. Wisconsin,* 588 U.S. 840, 861 (2019) (Sotomayor, J., dissenting) ("To be sure, drunk driving poses significant dangers."). Both on their own and together, these criminal arrests establish that Petitioner is a danger to the public. Moreover, these two arrests postdate Petitioner's prior release from DHS custody on December 21, 2021. *Id.* ¶ 8. DHS did not have this criminal history before it when it previously decided to release Petitioner. Because the Deportation Officer determined that these post-release arrests established that Petitioner was a danger to the public, he lawfully and prudently took Petitioner into custody.

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

Petitioner claims, inter alia, that his detention violates his procedural due process rights under the Fifth Amendment. ECF No. 9 at 4. Petitioner argues that he has a substantial interest in remaining out of custody, and the Due Process Clause entitles her to a bond hearing before an immigration judge prior to any arrest or detention. *Id.*

Respondents contend that, based on the plain text of 8 U.S.C. § 1225(b)(2), Petitioner is subject to mandatory detention for the duration of her removal proceedings because Petitioner is an "applicant for admission" and is "seeking admission." Petitioner meets the statutory definition of an "applicant for

admission" found in 8 U.S.C. § 1225(a)(1) and is "seeking admission" not only due to his presence in the United States without admission but also due to his pending asylum application. *See* Ortiz Decl. ¶ 10, 12. Moreover, as a noncitizen physically present in the United States without having been admitted, Petitioner is treated for constitutional purposes as if stopped at the border and thus has only the due process rights, as regards his detention, that the statute affords him. *See Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 138 (2020) (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).

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

Respondents also rely upon the analysis and holding in *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). There, the BIA examined the plain language of § 1225, the INA's statutory scheme,

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[3] Moreover, a growing number of courts in districts under other circuits have also reached the same conclusion. *See, e.g.*, *Suarez v. Noem*, 2025 WL 3312168, *1-2 (E.D. Mo. Nov. 28, 2025); *Tenemasa-Lema v. Hyde*, --- F. Supp. 3d ----, 2025 WL 3280555, *1-4 (D. Mass. 2025); *Cabanas v. 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).

Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub L. No. 104-208, and DHS's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), [immigration judges] lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." 29 I & N Dec. at 225.

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

Respondents acknowledge that questions of law in this case substantially overlap with those at issue in *Rodriguez Diaz*, *Pinchi*, and other cases in this District that have concluded that § 1225(b) is not applicable to individuals who were conditionally released in the past under § 1226(a). Accordingly, while preserving all rights, Respondents incorporate by reference the legal arguments it presented in those cases. Should the Court apply the same legal reasoning it applied in *Rodriguez Diaz* to this case, the conclusion would likely by the same here.

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

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

This approach to a TRO motion—granting release *unless* an individualized bond hearing is held

before an immigration judge within a specified amount of time—has been followed by some courts in other districts when addressing similar arguments by petitioners. *See, e.g.*, *Garcia v. Noem*, No. 25-cv-02771, 2025 WL 2986672, at *6 (C.D. Cal. Oct. 22, 2025) ("Respondents are enjoined from continuing to detain Petitioner unless they provide him with an individualized bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within ten (10) days of the date of this Order."); *Javier Ceja Gonzalez v. 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 before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of this Order"); *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 Order. Respondents shall not deny Petitioners' bond on the basis that § 1225(b)(2) requires mandatory detention."); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025) ("the appropriate remedy is to order the Immigration Court to conduct a new hearing at which it considers Gomes' eligibility for bond under Section 1226(a)"). Respondents thus request that this Court adopt this approach if the Court determines that section 1226(a) applies.

D. The Court Lacks Jurisdiction to Enjoin Respondents from Removing Petitioner from the United States.

The TRO further enjoins Respondents from removing Petitioner from the United States until these proceedings have concluded. ECF No. 9 at 7. However, under 8 U.S.C. 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This jurisdictional bar applies to section 2241 of title 28 and any other habeas provision. *Id.* Thus, as the Ninth Circuit has itself affirmed, if the Court grants a preliminary injunction, it should not include a prohibition on the removal of Petitioner. *See Rauda v. Jennings*, 55 F.4th 773, 776-79 (9th Cir. 2022) (holding that the district court lacked jurisdiction in habeas to issue TRO enjoining noncitizen's removal).

IV. Conclusion

Respondents thank the Court for its consideration of this abbreviated submission and respectfully

request that the Court not grant the petition nor enter the preliminary injunction.

DATED: January 9, 2026

Respectfully submitted,

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