

Connie Chan
Connie Chan & Associates, P.C.
405 Sansome Street, 2nd Floor
San Francisco, CA 94111
Tel: 415-956-4809
Fax: 415-956-3759
Email: cc@connieychan.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Monica Liliana ROBLES RODRIGUEZ,

Petitioner,

v.

Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement; Brian
ACUNA, Acting Field Office Director of
Enforcement and Removal Operations, New
Orleans; Sergio ALBARRAN, Field Office
Director of Enforcement and Removal
Operations, San Francisco Field Office, U.S.
Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
Attorney General of the United States;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW; Christopher CHESTNUT, Warden,
California City Detention Facility,

Respondents.

Case No. 1:25-CV-02001-KES-BAM

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

PETITIONER'S DHS NUMBER:



On January 5, 2026, Respondents filed an opposition to Petitioner's motion for a temporary restraining order and preliminary injunction, as well as an Answer to the Petition for Writ of Habeas Corpus. Because only three days have elapsed since Respondents filed their Answer, Petitioner requires additional time to prepare and file her Traverse.

In their opposition, Respondents moved to dismiss all Respondents other than the Warden of the California City Detention Facility. Petitioner opposes the dismissal of all Respondents except the Warden because Respondents raise this request for the first time in their opposition. "[A] request for affirmative relief is not proper when raised for the first time in an opposition." Therefore, Respondents' request should be denied. *See Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *4 (N.D. Cal. Aug. 6, 2025).

Respondents contend that Petitioner is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) because she allegedly has a pending removal order after an immigration judge affirmed the Department of Homeland Security's negative fear determination.

Pursuant to 8 C.F.R. § 235.3(b)(2)(i), an expedited removal order issued on Form I-860 requires strict compliance with regulatory safeguards. Specifically, the examining immigration officer must advise the noncitizen of the charges contained in Form I-860, permit the noncitizen an opportunity to respond to those charges, obtain supervisory concurrence, and personally serve the noncitizen with Form I-860, ensuring the noncitizen acknowledges receipt by signature. These procedural safeguards are critical to ensuring due process, notwithstanding the summary nature of expedited removal proceedings.

Petitioner contends that she is not subject to expedited removal or mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) because her Form I-860 demonstrates that ICE failed to

properly execute the form. Specifically, ICE did not sign the form, did not obtain supervisory concurrence, and did not sign to confirm that ICE personally served Petitioner with the expedited removal order. *See* Petitioner's Exhibits pages 1–2. As a result of Respondents' noncompliance with their own regulations, there is no legally operative expedited removal order. To date, Respondents have failed to present a legally executed and compliant expedited removal order.

In support of their argument that Petitioner is an applicant for admission under § 1225(a)(1) and subject to mandatory detention under § 1225(b)(1), Respondents assert that Petitioner's asylum application was dismissed in June 2025 and that she must undergo the credible fear process. However, Respondents have again failed to produce a legally compliant expedited removal order to date.

Respondents' dismissal of Petitioner's I-589 asylum application is a clear violation of her right to apply for asylum and have that application considered. Under 8 U.S.C. § 1158(a)(1), “any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival) [...] may apply for asylum,” unless subject to specific statutory bars enumerated in § 1158(a)(2). Petitioner is not subject to any such bars. She entered the United States through the southern border, was briefly detained, and then issued an interim parole and released. She timely filed his asylum application within the one-year statutory deadline, and there is no evidence that she was ever issued a NTA or validly served with an expedited removal order.

USCIS then unlawfully and prematurely dismissed Petitioner's affirmative asylum application. It did so by baselessly asserting that she was issued Form I-860, Notice and Order of Expedited Removal, thus allegedly depriving USCIS of jurisdiction over his asylum application. In reality, Petitioner was neither issued, nor served, with such an order. It was not

until USCIS dismissed his asylum application, which had been pending for nearly two years, that the Government asserted, for the first time, that such an order even existed. The Government has not produced any Form I-860, and even if this purported Form I-860 exists, the government has not followed the procedure required by law before a Form I-860 can be issued, including notice, creating a record, and service. *See* 8 U.S.C. § 1225(b)(1); C.F.R. § 235.3(b)(1)(ii), (2)(i). Taken together, it has not complied with statutory and regulatory requirements governing expedited removal. *Id.*

District courts have treated similar circumstances—unlawful dismissal of a pending asylum application based on a purported expedited removal order and placement into expedited removal—as a clear violation and basis to provide injunctive relief. *E.g. EC- R- v. Noem*, No. 3:25-cv-1230-SI, 2025 WL 2300543 (D. Or. July 16, 2025) (granting a TRO for an individual similarly situated to Petitioner whose asylum application was dismissed by USCIS and notified she was subject to expedited removal); *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215 (N.D. Cal. Sep. 5, 2025) (same).

Furthermore, Petitioner is not subject to expedited removal because she was paroled into the United States. Although her parole has since expired, “[h]owever, termination of parole does not generally require treating noncitizens as if they had never been paroled in the first place.” *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215, at *4 (N.D. Cal. September 5, 2025). “[U]nder the plain meaning of section 1225(b)(1), [petitioner] no longer qualifies for expedited removal because [she] was ‘paroled’ into the United States and has been living and working in the United States for three years.” *Id.*

Respondents contend that Petitioner is not entitled to due process protections because she is an applicant for admission under 8 U.S.C. § 1225(b). This argument is flawed because Petitioner

is entitled to due process protection. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Petitioner was granted parole under 8 U.S.C. § 1182(d)(5)(A) where she was released on parole “for urgent humanitarian reasons or significant public benefits.” 8 U.S.C. § 1182(d)(5)(A). Release under this section requires that the ICE officer make a determination as to whether poses neither “a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b). “Once released, a parolee acquires an interest in his or her continued liberty.” *Chavarria v. Chestnut*, No. 25-cv-01755-DAD-AC, 2025 WL 3533606, at *3 (E.D. Cal. Dec. 9, 2025).

A number of district courts in the Ninth Circuit have found that noncitizens paroled into the United States under § 1182(d)(5) have a liberty interest in their continued release and are entitled to certain due process protections. *Gergawi v. LaRose*, No. 25-cv03352-JES-MMP, 2025 WL 3719321, at *3-4 (S.D. Cal. Dec. 23, 2025); *Benitez v. Hermosillo*, No. 25-cv-02535-BAT, 2025 WL 3763932, at *4 (W.D. Wash. Dec. 30, 2025); *Babblejit Kaur v. Bondi*, No. 25-cv-03263-KK-MAR, Order, Doc. No. 12 at 5 (C.D. Cal. Dec. 18, 2025).

To determine the process due in this context, courts use the flexible balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Jorge M. F.*, 534 F. Supp. 3d at 1055.

Under the *Mathews* test, the Court balances three factors: “first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements

would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

First, Petitioner’s private interest in her liberty is substantial. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.”). Petitioner has complied with all of the terms of her release. Therefore, Petitioner has a liberty interest in her continued release that may not be removed without due process.

Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally detain Petitioner without a hearing before a neutral adjudicator that would determine whether detention serves a permissible purpose, i.e., preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690. These developments show that detention is likely not warranted.

Third, the government’s interest in detaining Petitioner without a hearing is low. The government cannot plausibly assert it has any basis for detaining Petitioner now, when she has lived in the community caring for her family without incident for approximately three years.

Additionally, Petitioner respectfully brings to the Court’s attention that the Western District of Louisiana denied Petitioner’s motions for a temporary restraining order and a preliminary injunction not on the merits, but because the motions were duplicative of the habeas petition.

Finally, upon her release, Petitioner intends to file an application for adjustment of status based on the I-130 immigrant petition filed by her United States citizen spouse. Petitioner has been unable to pursue this application while in detention because it requires a medical examination by a civil surgeon, and her detention has made it difficult to locate a civil surgeon willing to conduct the examination at the detention facility.

For the foregoing reasons, Petitioner respectfully request that the Court grant the motion for a temporary restraining order.

DATED this 8th day of January, 2026.

Respectfully submitted,

By: /s/Connie Chan
Connie Chan
Attorney for Petitioner