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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MARIA KHARITONOVA, Petitioner, v. SERGIO ALBARRAN, *et al.*, Respondents.	Case No. 26-cv-01362-JSC **RESPONDENTS RETURN TO HABEAS PETITION**

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I. INTRODUCTION

Respondents file this Return to Petitioner's habeas Petition pursuant to this Court's "Order Granting Petitioner's Ex Parte Motion For Temporary Restraining Order; And Ordering The Immediate Release Of Petitioner," which ordered that "Respondents shall answer or otherwise respond to the Petition [no] later than February 17, 2026." Dkt. No. 3 at 3-4.

Petitioner Maria Kharitonova is an alien in removal proceedings because she overstayed her B-2 visa. She was admitted to the United States in December 2012, and the visa authorizing her stay expired in June 2013. She did not depart after her visa expired. In December 2013, she applied for asylum before U.S. Citizenship and Immigration Services (USCIS). In July 2014, USCIS found she did not present a viable claim for asylum and served her with a Notice to Appear that referred her to immigration court for removal proceedings. In August 2014, the Immigration Judge found Petitioner removable. Petitioner's asylum application remains pending in immigration court due to rescheduling during the COVID-19 pandemic and because Petitioner has sought multiple continuances of her asylum hearings.

On February 13, 2026, U.S. Department of Homeland Security (DHS) detained Petitioner on a warrant of arrest pursuant to 8 U.S.C. § 1226(a). Section 1226(a) empowers DHS to arrest and detain aliens "pending a decision on whether the alien is to be removed from the United States." Similarly, 8 C.F.R § 1236.1(b)(1) permits the arrest and detention of aliens such as Petitioner "At the time of issuance of the notice to appear, or *at any time thereafter and up to the time removal proceedings are completed*" (emphasis added). Following detention, aliens like Petitioner may at any time request a review of their detention by an immigration judge under 8 C.F.R. § 1236(d)(1). Nowhere in the relevant statutes and regulations is there a requirement that DHS conduct a *pre*-deprivation hearing prior to detaining an alien pursuant to 8 U.S.C. § 1226(a).

Petitioner, however, has filed this Petition and Motion for Temporary Restraining Order seeking to bypass the statutory scheme passed by Congress. Petitioner has requested, and already received, immediate release from custody, without having to follow the above-described statute and regulations. Petitioner claims she is entitled to immediate release because she was not afforded a pre-deprivation hearing prior to her detention, which she claims is her due process right. But this claimed right has no basis in the law.

No higher court has held that aliens similarly situated to Petitioner are entitled to a pre-deprivation hearing. And the cases she cites from this District all involved a prior release from DHS custody supposedly giving rise to a constitutionally protected liberty interest. But Petitioner alleges no prior release from DHS custody. Petitioner lacks a constitutionally protected liberty interest. Her filings do not demonstrate that she has one. Thus, she is due only the process available to her under the statutes and regulations. Accordingly, Respondents request that the Court deny Petitioner all requested relief and dismiss her habeas petition.

II. FACTUAL BACKGROUND

A. Petitioner's Immigration History

Petitioner is a native of the Soviet Union and a citizen of Russia. Declaration of Deportation Officer Amritpal Samra ("Samra Decl."), ¶ 6. On or about December 5, 2012, Petitioner was admitted into the United States on a nonimmigrant B-2 visa with authorization to remain in the United States for a temporary period not to exceed June 4, 2013. *Id.* ¶ 7. Petitioner did not depart by June 4, 2013. *Id.* ¶ 7. On or about December 3, 2013, DHS received Petitioner's asylum application. *Id.* ¶ 8.

On July 16, 2014, USCIS declined to grant Petitioner's asylum application after conducting an interview with her. *Id.* ¶ 9. That same day, USCIS referred Petitioner to an immigration judge for removal proceedings. USCIS served Petitioner with a Notice to Appear charging her with removability under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B), for remaining in the United States without authorization beyond the expiration of her B-2 visa. *Id.* ¶ 9.

On or about August 19, 2014, Petitioner appeared in immigration court and admitted the factual allegations contained in the Notice to Appear and conceded the charge of removability. *Id.* ¶ 10. The Immigration Judge scheduled Petitioner for a merits hearing on her pending asylum application. *Id.* Due to multiple continuances sought by Petitioner and court delays caused by the COVID-19 pandemic, to date no such hearing has occurred. *Id.* On February 13, 2026, ICE detained Petitioner pursuant to a warrant for her arrest. *Id.* ¶ 11, Exh. 1. ICE determined that Petitioner would be detained without bond. *Id.*

B. Petitioner's Habeas Petition

On February 13, 2026, at 4:39 PM Petitioner filed a Petition for Writ of Habeas Corpus and at

4:56 PM a Motion for Temporary Restraining Order with this Court. Samra Decl. ¶ 11; *see also* Dkt. No. 1, 2. On February 13, 2026, at 6:18 PM and less than an hour and a half after the Motion for Temporary Restraining Order was filed, this Court granted Petitioner's Ex Parte Motion For Temporary Restraining Order, without allowing Respondents an opportunity to respond, and ordered Petitioner's immediate release. *See* Dkt. No. 3. The Court found that "Petitioner has shown at least that there are 'serious questions going to the merits' and that 'the balance of hardships tips sharply' in her favor." *Id.* at 2. The Court issued the following orders, inter alia:

> Respondents are **ORDERED TO IMMEDIATELY RELEASE PETITIONER FROM CUSTODY TODAY, FEBRUARY 13, 2026.** Respondents are ENJOINED AND RESTRAINED from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing her from the United States. Petitioner shall not be deported, removed, or otherwise transferred outside the United States until further Order of this Court.
>
> Respondents shall answer or otherwise respond to the Petition [no] later than February 17, 2026. Respondents are DIRECTED to address in their response why their actions are not enjoined and in direct violation of this Court's and other recent decisions by courts around the nation, including the preliminary injunction issued in *Garro Pinchi v. Noem*, No. 25-cv-05632 PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).

Id. at 3-4 (emphases in original). Pursuant to the Court's order, ICE released Petitioner at 10:00PM on February 13, 2026. *Id.* ¶ 12; Dkt. No. 4.

III. LEGAL STANDARDS

A. Immigration Detention Pending Removal Proceedings Under 8 U.S.C. § 1226(a).

Congress enacted a multi-layered statute that provides for the civil detention of aliens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). Where an individual falls within this scheme affects whether his detention is discretionary or mandatory, as well as the kind of review process available. *Id.* at 1057. ICE's authority to detain individuals who were previously lawfully present in the country but are now in removal proceedings (such as a nonimmigrant who overstayed his visa) is generally governed by 8 U.S.C. § 1226. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). The default rule, Section 1226(a), "authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Id.* at 847 (quoting Section 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention

of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

Every individual apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 138 S. Ct. at 847 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)). "Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

IV. ARGUMENT

A. Petitioner Was Lawfully Arrested And Detained Under 8 U.S.C. § 1226(a)

Because Petitioner initially entered the United States lawfully (before overstaying her visa and falling into unlawful status), she is subject to discretionary detention under 8 U.S.C. § 1226(a) while her removal proceedings are pending.[1] Petitioner was properly arrested pursuant to that provision, which provides that "[o]n 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 from the United States." *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)). The Supreme Court has recognized that "there is little question that the civil detention of aliens during removal proceedings can serve a legitimate government purpose, which is 'preventing deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*, 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)). Detention pursuant to § 1226(a) is part of this multi-layered civil detention structure created by Congress and sanctioned by the Supreme Court. The Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process."

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[1] By contrast, "applicants for admission"—including individuals who are present in the country without admission or parole—are subject to the mandatory detention provision of 8 U.S.C. § 1225(b). This provision does not apply to Petitioner due to her lawful admission under the B-2 visa.

Demore, 538 U.S. at 523.

Petitioner argues that her arrest was unlawful because she was arrested without a warrant. However, a warrant was in fact issued for her arrest. Petitioner has not pointed to any statutory or regulatory violation in connection with her arrest and detention under § 1226(a). Thus, Respondents complied with § 1226(a) and the applicable regulations when detaining Petitioner.

B. Petitioner's Detention Complied With Procedural Due Process

1. Petitioner Lacks A Constitutionally Protected Liberty Interest

Petitioner has not established an event in her immigration history that would give rise to a constitutionally protected liberty interest. On or about December 5, 2012, Petitioner was admitted into the United States on a nonimmigrant B-2 visa with authorization to remain in the United States for a temporary period not to exceed June 4, 2013. Samra Decl. ¶ 7. Petitioner did not depart by June 4, 2013. *Id.* ¶ 7. On or about December 3, 2013, DHS received Petitioner's asylum application. *Id.* ¶ 8.

On July 16, 2014, USCIS declined to grant Petitioner's asylum application after conducting an interview with her. *Id.* ¶ 9. That same day, USCIS referred Petitioner to an immigration judge for removal proceedings. USCIS served Petitioner with a Notice to Appear charging her with removability under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B), for remaining in the United States without authorization beyond the expiration of her B-2 visa. *Id.* ¶ 9.

On or about August 19, 2014, Petitioner appeared in immigration court and admitted the factual allegations contained in the Notice to Appear and conceded the charge of removability. *Id.* ¶ 10. The Immigration Judge scheduled Petitioner for a merits hearing on her pending asylum application. *Id.* Due to multiple continuances sought by Petitioner and court delays caused by the COVID-19 pandemic, to date no such hearing has occurred. Petitioner has not specified when or why she accrued a protected liberty interest.

The cases cited by Petitioner that found a constitutionally protected liberty interest involved prior releases from DHS custody, which Petitioner has not established. *See* Dkt. No. 2 at 7; *J.A.E.M. v. Wofford*, No. 1:25-CV-01380-KES-HBK (HC), 2025 WL 3013377 (E.D. Cal. Oct. 27, 2025) (prior release on order of recognizance); *J.C.L.A. v. Wofford*, No. 1:25-CV-01310-KES-EPG (HC), 2025 WL 2959250 (E.D. Cal. Oct. 17, 2025) (same); *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025

WL 2938808 (E.D. Cal. Oct. 16, 2025) (prior release on humanitarian parole); *J.O.L.R. v. Wofford*, No. 1:25-CV-01241-KES-SKO (HC), 2025 WL 2908740 (E.D. Cal. Oct. 14, 2025) (prior release on own recognizance); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (same); *Singh v. Andrews*, 803 F. Supp. 3d 1035 (E.D. Cal. 2025) (prior release under 8 C.F.R. § 1236.1(c)(8)). However, Petitioner does not assert that she was previously from DHS custody. She thus lacks the event identified in her cited cases that supposedly gives rise to a protected liberty interest. Because Petitioner lacks a constitutionally protected liberty interest, the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), does not apply.

Petitioner mistakenly analogizes her claimed liberty interest in remaining out of immigration custody to the recognized liberty interest of U.S. citizens facing redetention. *See* ECF No. 1 at 7 (citing to *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (re-detention after preparole conditional supervision requires pre-deprivation hearing)). The Supreme Court "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 522 (citing to *Reno v. Flores*, 507 U. S. at 305-306; *Fiallo v. Bell,* 430 U.S. 787, 792 (1977); *Mathew v. Diaz,* 426 U.S. 67, 79-80 (1976); *United States v. Verdugo–Urquidez,* 494 U.S. 259, 273 (1990)). The Ninth Circuit has also acknowledged that it has "not previously held that cases involving heightened burdens of proof for the deprivation of liberty interests of U.S. citizens apply coextensively to alien detainees who have been subject to § 1226(a) and its procedures throughout the period of their detention." *Rodriguez Diaz*, 53 F.4th at 1211; *see also Mirand v. Garland,* 34 F.4th 338, 359 & n.9 (9th Cir. 2022) (agreeing that the Supreme Court's civil commitment cases are inapposite because they "involved detention of United States citizens whereas § 1226(a) involves detention of aliens awaiting removal hearings"). Thus, the cases dealing with redetention while on criminal parole are inapposite.

2. Section 1226(a) Provides Procedural Protections That Satisfy Due Process.

Petitioner ignores that section 1226(a) already provides her with sufficient procedural due process. Petitioner fails to consider the due process that she is afforded under section 1226(a). Petitioner's habeas Petition and Motion for Temporary Restraining order do not address court decisions

upholding the constitutionality of section 1226(a). "Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions." *Rodriguez Diaz*, 53 F.4th at 1202. This statute provides "numerous levels of review, each offering [the detainee] the opportunity to be heard by a neutral decisionmaker," which ensure that "the risk of erroneous deprivation" is "relatively small." *Rodriguez Diaz*, 53 F.4th at 1209-10. In *Rodriguez Diaz*, the Ninth Circuit concluded that these "procedures satisfy due process, both facially and as applied to Rodriguez Diaz." *Rodriguez Diaz*, 53 F.4th at 1213.

Every individual apprehended under Section 1226(a) is individually considered for release on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether the detainee has "demonstrate[d]" that "release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the noncitizen may ask an immigration judge for a redetermination of the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing held before an immigration judge for an individual detained under Section 1226(a) is also called a "redetermination hearing." At this hearing, *the detainee* bears the burden of establishing "that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). If the detainee meets his burden, the immigration judge will order release. *Rodriguez* Diaz, 53 F.4th at 1197. "The detainee may be represented by counsel and can submit evidence in support of his claims." *Id.* Bond hearings are separate and apart from, and form no part of, an individual's removal hearings. 8 C.F.R. § 1003.19(d).

The alien may appeal the immigration judge's custody redetermination to the BIA. 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Further, an alien who remains detained pursuant to Section 1226(a) after the initial bond hearing may request that the immigration judge conduct another custody redetermination whenever "circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). If dissatisfied with the outcome of any subsequent hearing, an alien may appeal that decision to the Board as well. *See Matter of Uluocha*, 20 I. & N. Dec. 133, 134 (BIA 1989).

Here, ICE determined that Petitioner would remain in detention. Samra Decl. ¶ 11; 8 C.F.R.

§ 236.1(c)(8). The next step is a custody redetermination before an immigration judge. 8 C.F.R. § 236.1(d)(1). That procedure remains available to her. Petitioner cannot be heard to assert a constitutional infirmity when the law already provides for the very mechanism that she asks the Court to require. Nor can she ask the Court to rewrite the statute as Congress passed it.

Petitioner requests that the government bear the burden of demonstrating flight risk or danger at any detention hearing "by clear and convincing evidence." Dkt. No. 1 at 10. However, this requested relief runs contrary to the established law, described above, that places the burden on Petitioner. *Matter of Guerra*, 24 I. & N. Dec. at 38. To the extent Petitioner relies on *Singh v. Holder,* 638 F.3d 1196, 1203-04 (9th Cir. 2011), the circumstances are inapposite.[2] That case involved aliens facing prolonged detention while their petitions for review of their removal orders were pending. *Id.* at 1200. Petitioner, however, had spent mere hours in detention when she filed her Petition. Her proceedings also have yet to reach to the petition for review stage. Moreover, the Ninth Circuit has cast doubt on whether *Singh* remains good law. *See Rodriguez-Diaz*, 53 F.4th at 1202 n.4.

Petitioner also appears to argue that Respondents must establish that Petitioner's detention be based on "*a material change in circumstances* demonstrating that she is a flight risk or a danger to the community." Dkt. No. 2-2 at 5. But "a material change in circumstances" since when? It is not clear. Petitioner acknowledges that there has been no prior bond hearing in her proceedings. *See* Dkt. No. 2-2 at 4. Petitioner makes an oblique reference to "when Respondents met repeatedly with Petitioner, they allowed her to remain free to pursue her case from the non-detained docket, a decision that represented their finding that she was neither dangerous nor a flight risk." Dkt. No. 2 at 10. She does not specify when or with these meetings occurred. Petitioner has made immigration court appearances but conducting immigration court proceedings with an alien in no way implies a finding of no danger or flight risk. Petitioner cites to *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), in

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[2] Petitioner's other two authorities are also inapposite. *Martinez v. Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024), did not in fact "hold" that the government properly bore the burden by clear and convincing evidence in court-ordered bond hearing. Rather, *Martinez v. Clark* dealt with whether the government had met that burden; the burden itself was not at issue in the case. The second case cited by Petitioner, *Doe v. Becerra*, 787 F. Supp. 3d 1083 (E.D. Cal. 2025), involved an alien previously released on bond, unlike Petitioner. The court in *Doe v. Becerra* held that the government bore the burden by clear and convincing evidence to justify that alien's *re*detention.

support of this claim, with a parenthetical stating that "Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." But Petitioner has had no release. And, Petitioner left out the immediately preceding sentence from *Saravia*: "The federal government sometimes releases noncitizens on bond or parole while their removal proceedings are pending." So, it is clear that *Saravia*'s comment about release reflecting a determination of no danger or flight risk refers to release on bond or parole. But Petitioner affirmatively states that she had no prior release on bond, Dkt. No. 2-2 at 4, and she alleges no prior release on parole either.

3. Petitioner Has Failed To Exhaust Her Administrative Remedies.

Petitioner claims that she has been "deprived of notice, a fair hearing, and the opportunity to challenge her detention before an impartial decision maker." Dkt. No. 1 at 8. But, as described above, she never even tried to challenge her detention prior to filing this petition as permitted under section 1226(a). The statute and regulations give her the opportunity to challenge her detention before an impartial decision maker in the form of a bond redetermination hearing before an immigration judge. However, Petitioner filed her habeas petition mere hours after being detained and before the process available to her could play out. This Court should require Petitioner to avail herself of the substantial procedural protections of Section 1226(a) before seeking habeas relief in a federal district court. Petitioner has never requested a bond redetermination hearing from an immigration judge. 8 C.F.R. § 236.1(d)(1). And even if she were to disagree with an immigration judge's future bond decision, she would be able administratively appeal the decision to the BIA. Therefore, Petitioner has several layers of process available prior to seeking this Court's intervention.

Although exhaustion of administrative remedies is not a jurisdictional prerequisite for habeas petitions, courts generally "require, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The exhaustion requirement is subject to waiver because it is not a "'jurisdictional' prerequisite.'" *Id.*

Courts may require prudential exhaustion where: "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the

requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

The Court should not allow Petitioner to move forward with this litigation without first exhausting his administrative remedies. *See Coke v. Scott*, No. 25-cv-00694, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), R & R adopted, 2025 WL 2107736 (W.D. Wash. July 28, 2025). As in *Coke*, all of the elements that favor the exhaustion requirement are present here.

First, Petitioner seeks release from detention, which "requires consideration of numerous facts which should be developed for presentation and then weighed by an IJ in the first instance." *Coke*, 2025 WL 2108711, at *5. Second, "a waiver of prudential exhaustion would tend to encourage detainees to deliberately bypass the administrative scheme which contemplates a bond determination made by an IJ rather than the Court." *Coke*, 2025 WL 2108711, at *5. And third, exhaustion would not be futile because "an IJ has not yet been given a chance to address whether Petitioner should be released pending a final determination of removal. The agency should thus be afforded the opportunity to address bail in the first instance." *Id.*

Accordingly, the Petition should be dismissed to the extent Petitioner seeks a bond hearing before a neutral adjudicator because Petitioner has failed to exhaust her administrative remedies. A post-detention bond hearing has always been available to her.

C. Petitioner's Detention Does Not Violate Substantive Due Process

Petitioner's Motion for Temporary Restraining Order appears to claim that Petitioner's detention violates her right to substantive due process because, according to Petitioner, she is being held absent a finding of flight risk or danger to the community. *See* Dkt. No. 2 at 6, 9-10, 11-12. Petitioner errs. Section 1226(a) permits Petitioner to challenge her detention on the grounds that she is not a flight risk or a danger to the community. However, as explained above, Petitioner failed to exhaust the administrative remedies available to her to challenge her detention on those grounds.

Petitioner's erroneous substantive due process argument flows from her mistaken understanding of the relevant detention authority. Petitioner's Motion for Temporary Restraining Order argues that

"Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)." Respondents agree.[3]

Because Petitioner was admitted into the United States – as Petitioner acknowledges, Dkt. No. 1 at 4 ("Maria Kharitonova is a citizen of Russia, lawfully admitted to the United States") – she is not an "applicant for admission" under 8 U.S.C. § 1225(a)(1) and thus not subject to the provisions of § 1225.[4] When the specific detention authority of § 1225 does not govern, aliens in removal proceedings are subject to the general detention scheme found in § 1226. In short, § 1225 does not apply to Petitioner and Respondents have not claimed that it does.

D. This Court Lacks Jurisdiction To Grant The Relief Requested By Petitioner.

1. This Court Does Not Have Jurisdiction To Enjoin Petitioner's Removal Or Transfer.

Finally, Petitioner asks the Court to enjoin Respondents from "transferring and removing" him while these proceedings are pending. Section 1252(g) bars any cause of action arising from the "decision or action" to "execute removal orders." In enacting Section 1252(g), Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. *Id.* Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review of claims arising from a decision or action to "execute" a final order of removal. *See AADC*, 525 U.S. at 482; *see also Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order," even "indirectly," is "jurisdictionally barred").

Nor may the Court enjoin the transfer of Petitioner. Decisions regarding the place of

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[3] The immigration system of the United States is complex and governed by several statutes. Had Respondents been given an opportunity to respond to Petitioner's Motion for Temporary Restraining Order, Respondents would have explained the applicable detention authority and the legal justification for Petitioner's detention as permitted by statute.

[4] Petitioner cites nearly a dozen cases rejecting the government's position on the applicability of § 1225(b)(2)(A). Across these cases, the government has consistently recognized that admitted aliens such as Petitioner are not subject § 1225(b)(2)(A). Respondents are befuddled why Petitioner, who recognizes that she was lawfully admitted, would assert in her Motion for Temporary Restraining Order that, because § 1225(b)(2)(A) does not apply to her, she is likely to succeed on the merits of her Petition.

confinement of aliens subject to removal orders or awaiting a decision on removal are committed to the discretion of the Secretary pursuant to 8 U.S.C. § 1231(g)(1). *Comm. of Cent .Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1986) (recognizing the "Attorney General's broad discretion in exercising his authority to choose the place of detention for deportable aliens."). As such, the decision to transfer an alien from one detention center to another is not judicially reviewable. *Spencer Enters., Inc. v. United States*, 345 F.3d 683, 691 (9th Cir. 2003); *Avilez v. Barr*, No. 19-cv-08296-CRB, 2020 WL 570987, at *2 (N.D. Cal. Feb. 5, 2020). "Congress vested [DHS] with authority to enforce the nation's immigration laws . . . ICE necessarily has the authority to determine the location of detention of an alien in deportation proceedings . . . and therefore, to transfer aliens from one detention center to another." *Calla-Collado v. Att'y Gen.*, 663 F.3d 680, 685 (3d Cir. 2011); *Gandarillas-Zambrana v. BIA*, 44 F.3d 1251, 1256 (4th Cir. 1995) (internal citations omitted).

E. Petitioner's Detention Does Not Violate the Orders in *Garro Pinchi v. Noem.*

Petitioner is not part of the *Pinchi* class. This Court ordered that "Respondents are DIRECTED to address in their response why their actions are not enjoined and in direct violation of this Court's and other recent decisions by courts around the nation, including the preliminary injunction issued in *Garro Pinchi v. Noem*, No. 25-cv-05632 PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025)." Dkt. No. 3 at 4. Respondents have reviewed the decision cited by the Court and conclude that the *Pinchi* orders certifying the class and subclass and staying DHS's re-detention policy do not apply to the instant Petitioner.[5] The *Pinchi* class covers, in relevant part, "All noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered or will enter the United States without inspection; (2) have been or will be charged with inadmissibility under 8 U.S.C. § 1182 and have been or will be released from DHS custody." *Id.* at 12. Petitioner, however, did not enter the United States without inspection; rather, as acknowledged by both parties, she was admitted. Additionally, Petitioner was not charged with inadmissibility under 8 U.S.C. § 1182; instead, Petitioner was charged with removability under 8 U.S.C. § 1227(a)(1)(B). Lastly, Petitioner has not established a prior release from DHS custody. Petitioner also does not fall under the subclass definition because she has not established a prior release from DHS

[5] Though the Court refers to the "preliminary injunction" issued in *Pinchi*, Respondents found no such preliminary injunction issued on the date cited.

custody on bond, conditional parole, or her own recognizance. *Id.* Respondents thus respectfully assert that their actions in detaining Petitioner are not enjoined nor in direct violation of *Pinchi*.

Finally, the Court ordered Respondents to "address in their response why their actions are not enjoined" by "courts around the nation." *See* Dkt. No. 3 at 4. The order does not specify the other courts or the districts at issue. Respondents are unaware of binding precedent decided in this District that contradicts their interpretation of section 1226(a) or arrests conducted under section 1226(a). More recently, and although in the context of § 1225, which though inapplicable here is at issue in *Pinchi*, the United States Court of Appeals for the Fifth Circuit concluded that the government's interpretation of 8 U.S.C. § 1225 is "correct." *See Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). Respondents acknowledge that this is a quickly evolving area of the law and respectfully suggest that this supports not deciding ultimate relief on an accelerated timeline without hearing from both parties. *See Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992) ("[J]udgment on the merits in the guise of preliminary relief is a highly inappropriate result.").[6]

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's requested relief and dismiss the habeas petition.

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[6] *See, e.g., Rodas v. Samiea*, No. 5:26-CV-65-AB (SK), 2026 WL 184226, at *1 (C.D. Cal. Jan. 19, 2026) (denying petitioner's request for release from immigration detention on motion for TRO because it is "duplicative of his request for that same relief on the merits"); *Aslan v. Wamsley*, No. 2:25-CV-02698-JNW, 2026 WL 84000, at *2 (W.D. Wash. Jan. 12, 2026) (denying immigration habeas TRO seeking release because "[t]he appropriate vehicle for resolving Aslan's due process claim is his habeas petition."); *Dzhanpolatov v. USCIS*, No. 25-CV-03314-RS, 2025 WL 1652427, at *2 (N.D. Cal. May 26, 2025) (denying a motion for TRO because "while characterized as preliminary relief, Dzhanpolatov effectively seeks judgment on the merits."); *Chavez v. Murray*, No. 1:25-CV-00198-HBK (HC), 2025 WL 1017678, at *2 (E.D. Cal. Apr. 4, 2025) (denying a motion for TRO because it "seeks only to alter the status quo by issuing an expedited order that would grant him the ultimate relief he seeks in his petition."); *Keo v. Warden of Mesa Verde ICE Processing Ctr.*, No. 1:24-CV-00919-HBK (HC), 2024 WL 3970514, at *2 (E.D. Cal. Aug. 28, 2024); *Mendez v. U.S. Immigr. & Customs Enf't*, No. 23-CV-00829-TLT, 2023 WL 2604585, at *3 (N.D. Cal. Mar. 15, 2023).

DATED: February 17, 2026

Respectfully submitted,

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