UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MAYAMU KAMARA, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Court File No. 25-cv-03035 (JWB/LIB) **PETITIONER'S REPLY TO RESPONDENTS' RETURN IN RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Mayamu Kamara ("Ms. Kamara" or "Petitioner") hereby submits this Reply Brief in Response to Respondents' ("Respondent" or "Government") Return to Order to Show Cause (Dkt. No. 6).

Basic statutory interpretation principles, bedrock constitutional rights, and the facts of this case may only lead to one result: Ms. Kamara is currently being detained illegally. Ms. Kamara therefore respectfully requests that this Court order she be released pending her appeal to the Board of Immigration Appeals ("BIA"), or at the very least, order that she be afforded a bond hearing under 8 U.S.C. 1226(a) so she can then seek release on bond.

The Government argues that this Court lack jurisdiction here because, according to the Government, "[t]his habeas action is a blatant attempt to circumvent the use of Congressionally approved expedited removal." Resp. Return, at 21. This is false. Petitioner challenges her *detention* only here. "While the Court may not review discretionary

decisions made by immigration authorities, it may review immigration-related detentions to determine if they compart with the demands of the Constitution." *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *4 (D. Minn. Aug. 15, 2025). Petitioner bears the burden to show that she is being detained unlawfully—a burden she has clearly met here. *Id.*

Ms. Kamara is a 26-year old survivor of female genital mutilation and suffered years of serious physical, emotional, and sexual harm. She has experienced harm at a level most of us could not fathom. She is also now a victim of this government's illegal detention for over 107 days. While in custody, her mental and physical health has deteriorated to such an extent that she was placed in the hospital while in near catatonic state. All to meet a policy agenda's quota. This cannot continue.

The government's actions in this case and across the country are, at bottom, an erroneous manipulation of statutory authority at the grave detriment of Ms. Kamara and others similarly situated. But it is hard to imagine that the government sincerely believes its current tactics and statutory interpretations are lawful. Instead, current events tend to show that the government is placing policy agendas over its legal authority and humanity—directly harming Ms. Kamara and stripping her of her liberty rights. *See* Marco Poggio, *Judges Warn ICE Is Turning Courts Into Deportation Traps*, LAW360, September 5, 2025, https://www.law360.com/articles/2368405. Ms. Kamara's detention, under the backdrop of the law and facts of this case, is plainly unlawful. This Court should correct that.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Kamara is currently being detained illegally in Sherburne, County Minnesota jail and has been for over three months. The following background is offered for context into her current detention, but it is *not* offered to challenge the Immigration Judge's decision in this case.

I. Ms. Kamara's Arrival in the United States and Time Prior to Her Detention

How did we get here. Ms. Kamara's story begins in Liberia where she suffered [redacted] Petition, at ¶¶ 27-28; Kamara Decl. ¶¶ 1-2. She fled to escape the continued suffering and harm she was experiencing. *See id.* She arrived in the United States and was subsequently apprehended by the United States Border Patrol ("CPB") on February 17, 2024 near Nogales, Arizona. Van Der Vaart Decl., ¶ 4, Ex. A. On February 18, 2024, CPB issued her a Notice to Appear ("NTA") and released her on an Order of Recognizance, with a court date of March 19, 2025, at Fort Snelling, Minnesota. *Id.* at ¶ 5, Ex. A.

In the NTA, she was specifically charged as "alien present in the United States who has not been admitted or paroled." *Id.* at Ex. A. She was also issued an Order of Release of Recognizance that provides "You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on our own recognizance provided you comply with . . . " specified conditions. Sanders Szabo Decl.,

Ex. A. She then relocated to Minnesota where she resided until being re-arrested by DHS. Kamara Decl. ¶ 4.

Beginning in May 2024, she began receiving care at [redacted] in Minneapolis, Minnesota. Kamara Decl. ¶ 5; Melnick Decl. ¶ 6. Thereafter, she received regular ongoing care and services at [redacted] for her post-traumatic stress disorder. Kamara Decl. ¶¶ 7, 28. Ms. Kamara also timely filed an I-589 application for Asylum in August 2024. Petition, ¶ 27; Kamara Decl., ¶ 7. Proceeding *pro se*, Ms. Kamara attended her March 19, 2025 initial Master Calendar Hearing, but because the court was unable to obtain an interpreter in Ms. Kamara's native language and dialect of Mandingo-Koniaka, the hearing was rescheduled to May 28, 2025. Kamara Decl. ¶¶ 8-9.

II. The May 28, 2025 Hearing and Order to Dismiss and the Government's Arrest of Ms. Kamara, Preceding her Unlawful Detention

Ms. Kamara, proceeding *pro se*, attended as required her May 28, 2025 hearing accompanied by Jessica Melnik, a victim advocate with [redacted] *See* Petition, ¶ 30; Kamara Decl., ¶ 9; Melnik Decl. ¶ 8. During the hearing, the interpreter was speaking the Bambara/Malinke dialect of the Mandigo language. Dukuly Decl., ¶ 11. Ms. Kamara speaks and understands the Koniaka dialect. *Id.* ¶ 12. The hearing lasted approximately four minutes. *See generally*, Sanders Szabo Decl., Ex. C. At the beginning of the hearing and immediately after confirming Ms. Kamara's name and address, Immigration Judge ("IJ") Miller asked the Department of Homeland Security ("DHS") attorney "Alright Ms. Bogey, is there a motion here?" *before* the DHS attorney ever spoke. *Id.* at Ex. C, at 1:15-2:09. The DHS attorney then confirmed "Yes, your honor. The government moves

to dismiss without prejudice this action based upon dismissal being in the best interest of the government. *Id.* at Ex. C, 2:10-2:18. IJ Miller then provided short explanation that the DHS was moving to dismiss the proceedings, and then immediately stated he was going to grant the motion. *Id.* at Ex. C, at 2:33-3:06. At no point did IJ Miller ask if Ms. Kamara understood what was happening, and IJ Miller never provided Ms. Kamara any kind of opportunity to contest the DHS's motion to dismiss before he granted the dismissal. *See generally, id.*; *Contra* Resp. Return, at 15.

IJ Miller granted the motion but reserved Ms. Kamara's right to appeal. Sanders Szabo Decl., Ex. C, at 2:30-3:22 (In granting the government's motion to dismiss Ms. Kamara's removal proceedings, Judge Miller ordered that "I am going to grant their motion, and I'll reserve your right to appeal. Your appeal is due on or before June 27 of 2025). Indeed, the Government concedes that when IJ Miller dismissed the case, he "reserve[ed] [the right to] appeal for Kamara." Resp, Return, at 4; Van Der Vaart Decl., ¶ 9, Ex. D. This stayed the effect of IJ Miller's order ending proceedings. BIA Practice Manual 6.2 IJ Miller's written *Order on Motion to Dismiss* specifically provides that the motion was opposed by Ms. Kamara and "the court has provided the non-moving party with an opportunity to respond." Van Der Vaart Decl., ¶ 9, Ex. D.

Immediately following the May 28 hearing, officers from U.S. Immigration and Customs ("ICE") arrested Ms. Kamara. *Id.* at ¶ 9, Ex. E. The Government alleges that ICE "[i]mmediately thereafter . . . arrested Kamara, served her with a Form I-860, Notice and Order of Expedited Removal, and placed Kamara in mandatory detention[.]" Resp. Return, at 1-2; Van Der Vaart Decl., ¶¶ 10-11 (stating that "[o]n May 28, 2025, ERO St. Paul

officers arrested Kamara an served her with Form I-860, Notice and Order of Expedited Removal . . . after serving Kamara with the Notice of Order of Expedited Removal, ICE ERO placed KAMARA in mandatory detention under INA § 235, 8 U.S.C. § 1225(b).")

But Ms. Kamara attests and the facts tend to show that she was never served with Form I-860. *See* Kamara Decl. ¶ 10; Melkin Decl., 10; *Contra* Resp. Return at 2, 14. The certificate of service portion of the Form 1-860 that was allegedly served on Ms. Kamara is blank and the signature line for "Signature of alien" is also blank. Van Der Vaart Decl., Ex. E. Ms. Kamara then timely appealed on June 5, 2025, effectively staying the finality of IJ Miller's dismissal. *Id.* at ¶ 12, Ex. F; Albun Decl., ¶ 3.

III. Ms. Kamara's Unlawful Detention Since May 28, 2025

After being detained, Ms. Kamara was transferred to Woodbury, Iowa county jail. Kamara Decl. ¶ 14. Ms. Kamara then became increasingly unresponsive in the following days and could not eat. Kamara Decl. ¶ 13; Sanders Szabo Decl., Ex. D, at 169. She was admitted to [redacted] in Sioux City, Iowa on June 2, 2025 and discharged on June 12, 2025. Sanders Szabo Decl, Ex., D at 486. At the hospital, she was diagnosed with, among other things, post-traumatic stress disorder, suicidal ideations, catatonic disorder due to known psychological condition, and major depressive disorder. *Id.*

A provider's notes from June 2, 2025 specifically states that her exam "was significant for patient being in a catatonic like state." *Id.* at Ex. D, at 498. She started responding minimally on June 5, but was still deemed to lack capacity to make her own

medical decisions by physicians due to profound disorganization and non-responsiveness, which later improved prior to her discharge on June 12, 2025.[1] *Id.* at Ex. D, at 51-52.

While her symptoms and mood have improved some since her hospital admission, there is no guarantee that they will remain at a stable level, especially given that she remains separated from her support system and deprived of continued established care at [redacted] *See* Kamara Decl. ¶¶ 21-22. She is currently detained at Sherburne County, Minnesota jail, and she continues to be under constant medical surveillance and suicide prevention watch, she cannot sleep and has been unable to eat and drink for days at a time. *See* Kamara Decl. ¶¶ 19-22.

Also while in jail, the U.S. Citizenship and Immigration Services ("USCIS") has scheduled and subsequently canceled several interviews believed to be credible fear interviews. Kamara Decl. ¶¶ 16-18. According to the government, the credible fear interviews (which are required under the mandatory detention statutes that the Government claims Ms. Kamara fall under) have not occurred because of Ms. Kamara's appeal to the BIA. It is believed that the USCIS will not conduct that interview because it recognizes it does not have statutory authority to do so because her administrative appeal means that she is not in expedited removal but remains in 'regular' removal proceedings.

[1] Notably, because she lacked capacity, the hospital contacted the medical director of ICE who stated that they have no role in Ms. Kamara's case once she is admitted to the hospital. Therefore, the hospital's next steps were to contact next of kin for medical decision and then the Consulate of Liberia in the absence of a court order. *Id.*

ARGUMENT

I. The Government Concedes the Court has Subject Matter Jurisdiction Over This Matter, and to the Extent That it Did not Do So, Its Arguments are Legally Erroneous.

In its Return, the Government represented to this Court that it "should . . . excercis[e] its jurisdiction over habeas corpus proceedings." Resp. Return at 15; *see also id.* at 17 ("the court should dismiss the habeas petition on the merits."). Because subject matter jurisdiction is not waivable, Ms. Kamara reads the Government to substantively concede that federal subject matter jurisdiction lies. But, the Return appears to be inconsistent on this point. *See id.* ("The Court also lacks subject matter jurisdiction . . . ."). Relying on 8 U.S.C. § 1252(g), the Government also contends that this Court is deprived of jurisdiction over this habeas corpus petition because "Petitioner's claims stem from her detention during removal proceedings. That detention arises from the decision to commence such proceedings against her." Resp. Return at 20.

To the extent the Government did not concede there is subject matter jurisdiction, its arguments on jurisdiction stripping are incorrect and foreclosed by Supreme Court precedent. Like the Petitioner in *Romero v. Hyde*, Ms. Kamara does not "challenge the Government's decision to detain her in the first place" because "challenging denial of a bond hearing is not the same thing as challenging the initial detention decision, as the Supreme Court has made clear." *See* 2025 WL 2403827 at *5 *citing Nielsen v. Preap*, 586 U.S. 392, 402 (2019) and *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Indeed, jurisdictional limits under § 1252(g) are "narrow" and apply to only the review of cases arising from decisions to commence proceedings, adjudicate cases, or execute removal

orders. *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *5 (D. Minn. Aug. 15, 2025); *see also id.* at *6 (*Reno v. American-Arab Anti Discrimination Committee et. al.*, 520 U.S. 471 (1999) "did not interpret [the phrase 'arising from' in § 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [Reno] read the language to refer to just those three specific actions themselves.") (modifications in original)).

The Government's invocation of 1252(a)(5) and § 1252(b)(9), Resp. Return at 21, likewise fail. The Government cannot dispute that DHS's own document from her release at the border confirm Ms. Kamara was released under §1226, nor that Ms. Kamara timely appealed the IJ's dismissal order and that her 1229a proceeding are not administratively final. Thus, they cannot lawfully dispute that she is entailed to a bond hearing under 1226(a). "To answer this question, it is not necessary to address the parties' arguments regarding whether Respondents may lawfully proceed with arresting and detaining a non-citizen under § 1225 versus § 1226 in the first instance." *Jose J.O.E.*, 2025 WL 2466670 at *5.

Ms. Kamara does not in this Petition challenge *any aspect* of her providently-commenced removal proceedings under INA 1229a—that is the subject of her pending administrative appeal. *See* Van Der Vaart Decl., Ex. F. Thus, as in *Mohammed H.*, "Petitioner does not seek to end his removal proceeding or vacate the underlying executive determinations. Rather, [s]he simply seeks to end [her] allegedly unlawful confinement." 781 F. Supp. 3d 886, 891 (D. Minn. 2025). Therefore, this Court is not deprived of jurisdiction to determine the unlawfulness of Ms. Kamara's detention.

II. Ms. Kamara's Detention is Illegal and She is Entitled to a Bond Hearing Because the Government's Production for the First Time of an Unserved I-860 Does Not Justify Its Violation of 8 U.S.C. § 1226(a)

Ms. Kamara challenges only her unlawful detention, which violates the plain language of 8 U.S.C. § 1226(a) and its related regulation and Constitutional Due Process. The Government alleges that a Form I-860 was served on Ms. Kamara immediately following her arrest on May 28, 2025. Such service is required by the expedited removal regulations. *See* 8 C.F.R. 253.3(b)(2)(i) ("[T]he examining immigration official *shall* serve the alien with Form I-860 and the alien *shall* sign the reverse of the form acknowledging receipt.") (emphasis added).

Ms. Kamara maintains that she has never seen that form and was never served the form. The record further demonstrates that she was never served Form I-860. The Form I-860 produced by the Government also shows that it was never served. The certificate of service is blank and so is Ms. Kamara's signature line confirming that she had been served. Van Der Vaart Decl., Ex. E. Taken together, the record demonstrates that Ms. Kamara was never served Form I-860. She cannot be denied, based on the Government's production (for the first time) of this facially deficient document, of any statutory and/or constitutional rights that flow from DHS's initial decision to place her proceedings under § 1229a and release her—over a year and a half ago—into the U.S. on her own recognizance under § 1226(a). *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827, at *8 (D. Mass. Aug. 19, 2025).

III. Ms. Kamara's Detention is Illegal and She is Entitled to a Bond hearing Because Ms. Kamara is Not Subject to § 1225 as a Matter of Law Based on Her Timely Appeal of Judge Miller's Dismissal Order Which Automatically Stayed the Dismissal Order.

According to the Government, the applicable provision in this case is § 1225(b)(1) because, as provided by that statute, Ms. Kamara "is a person in expedited removal proceedings that has expressed credible fear . . . . [and] is subject to mandatory detention and **shall be detained** pending a final determination of credible fear of persecution and, if found not to have such fear, until removed.'" Resp. Return, at 13. Therefore, the Government contends, Ms. Kamara is properly detained under mandatory detention.

The Government's attempt to simultaneously place Ms. Kamara under discretionary detention under § 1226(a) and mandatory detention under § 1225(b)(1) is a fictional catch-22 that is easily resolved under plain statutory language. The Government contends that under IJ Miller's dismissal order, DHS obtained a dismissal of Ms. Kamara's "original" removal proceedings and then ICE "properly" and immediately initiated expedited removal proceedings under § 1225(b)(1) and detained Ms. Kamara. Resp. Return, at 12-13. Putting ICE's failure to serve Ms. Kamara an I-860 aside, ICE's detention of Ms. Kamara—while IJ Miller's dismissal order was stayed under the plain language of the law—was and continues to be unlawful. The invocation of the stay means Ms. Kamara continues to be subject to removal under § 1229a and subject to discretionary detention under § 1226(a). The Government's clinging to § 1225(b)(1) to assert that it had and continues to have authority to detain Ms. Kamara without a bond hearing, statutory authority, or due process is wrong.

A. There Can Be No Dispute that Ms. Kamara was Subject to Standard Removal Proceedings and Discretionary Detention Prior to the May 28, 2025 Hearing

From Ms. Kamara's initial encounter with CPB at the border on February 17, 2024 to her arrest on May 28, 2025, the record makes clear that Ms. Kamara was in standard removal and discretionary detention under §§ 1229a and 1226(a). Confusingly, the Government states that "the dismissal occurred . . . following [sic] period of 13 months when Kamara [sic] not detained under section 1226 or any other provision and was free on her own recognizance." Resp. Return, at 16. Therefore, it appears the Government is refusing to take a position on whether Ms. Kamara was subject to discretionary detention under § 1226(a). At the very least, it is not denying that she was.

Because Ms. Kamara was released from DHS custody on February 18, 2024 (subject to an Order of Release on Recognizance ("OREC")) one day after she was apprehended by CBP on February 17, 2024, and because she was given a NTA for March 19, 2025 that designated her as an "alien present in the United States who has not been admitted or paroled," there can be no dispute that she was subject to standard removal under § 1229a and subject to discretionary detention under § 1226(a). In other words, because she did not remain detained as the Government asserts **must** occur if she is in expedited removal under § 1225(b)(1),[2] she was clearly subject to discretionary detention under § 1226(a). In any event, recent decisions both within and outside this District provide guidance on this issue.

[2] Non-citizens may also be subject to mandatory detention under § 1226(c), which is clearly not applicable here because Ms. Kamara has not been committed, charged with, or convicted of the enumerated criminal offenses. *See* § 1226(c),

Two statutes are at issue here: § 1225(b)(1) and § 1226(a). Section 1225(b)(1), which the Government relies on for its detention of Ms. Kamara contemplates mandatory detention. § 1225(b)(1). Section 1226(a) allows for discretionary detention and the right to a bond hearing. § 1226(a).

Under § 1225(b)(1), if an immigration officer determines that a noncitizen is an "arriving alien" or "an alien . . . who is arriving in the United States" is inadmissible, "the officer shall order the [noncitizen] removed from the United States without further review or hearing unless the [noncitizen] indicates either an intention to apply for asylum . . . or fear of persecution." 1225(b)(1)(A)(i); *Alfredo Jose Jimenez v. FCI Berlin, Warden et al.*, Dkt. No. 16, Civil No. 25-cv-326, (D.N.H. Sept. 8, 2025).

In contrast, § 1226(a) applies to "noncitizens already in the country pending the outcome of removal proceedings including noncitizens who are present in the country despite being inadmissible at the time of entry." *Id.* (cleaned up) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018)). Once a noncitizen is in inside the United States, the default rule is set forth in § 1226(a), which allows the government to detain a noncitizen pending a decision on removal. *Id.* Following an arrest, a noncitizen has a right to a bond hearing at the outset of detention and further detention is discretionary.[3] *Id.* Until July 2025, this was DHS's interpretation of § 1226(a) too. *Id.* at 21-22 ("DHS's recent about-face has generated a near-uniform body of district court caselaw in recent months rejecting the government's novel interpretation of its detention authority under § 1225(b)." *Id.* at n. 8

[3] *Id.* (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018)).

(citing *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting cases)).

Several recent cases demonstrate the plain interpretation and application of § 1225(b)(1) and § 1226(a), though these examples are not exhaustive. In *Martinez v. Hyde*, petitioner was encountered by border patrol near San Diego, California on April 1, 2024. No. CV 25-11613-BEM, 2025 WL 2084238, at *1 (D. Mass. July 24, 2025). An officer issued an NTA and charged petitioner with being removable as "an alien present in the United States without being admitted or paroled . . . [and released] [p]etitioner on an Order of Recognizance in accordance with section 236 of the Immigration and Nationality Act." *Id.* (internal quotations omitted). In June, DHS moved to dismiss the proceedings, and the court denied the motion. *Id.* ICE arrested petitioner following the hearing and did not serve expedited removal paperwork to petitioner. *Id.*

There, the court rejected the Government's novel interpretation that the petitioner was subject to mandatory detention under § 1225(b) based on petitioner's initial encounter with border patrol. *Id.* As the court summarized, the Government's "position [was] that virtually every non-citizen not previously admitted in the United States is subject to mandatory detention, without the possibility of a bond hearing, regardless of how long or under what circumstances that person has maintained a presence in the United States." *Id.*

But the Government's position was (and is) an unlawful selective reading of § 1225(b), violating the rule against surplusage and negating the plain meaning of the text.

Id. at *5.[4] In other words, the words "arriving alien" or an "alien who . . . is arriving" must be given its plain meaning. See id. at *6; § 1225(b)(1).[5] This requires a noncitizen to doing something: "coming or attempting to come into the United States." *Id.* (citing 8 C.F.R. § 1.2). Similarly, petitioner was deemed "present in the United States" under the NTA, which is not the same as "arriving alien." *Id.* Accordingly, the court denied the Government's motion for reconsideration, and the court's order releasing the petitioner remained in effect. *Id.* at *9.

In *Jimenez*, the government consistently represented that it was proceeding under § 1226(a) by initially releasing petitioner[6] (and later arresting petitioner) under § 1226(a). *Id.* A fact ignored by the government. *Id.* There, the court found that petitioner was subject to § 1226(a) (despite the Government's argument otherwise), and was therefore unlawfully

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[4] In addition, Respondents argue the *lex specialis* character of the Laken Riley Act, wherein Congress very recently instructed that *only certain noncitizens* charged with inadmissibility under 8. U.S.C. 1182(a)(6) or 1182(a)(7)—*i.e.* who are at minimum "arrested for" a specified offense— does not rebut their expansive, novel interpretation of section 1225. Resp. Return, at 29. However, in *Maritnez v. Hyde*, the Court specifically rejected this rationale. No. CV 25-11613-BEM, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025). There, the court relied on the fundamental canons of statutory interpretation to find that the Laken Riley Act (found in section 1226(c)) provides a carve-out to discretionary detention under section 1226 by mandating detention for citizen who meet certain criminal and admissibility criteria. *Id.* If the Government argues a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225, then the 2025 amendment would have no effect. *Id.*

[5] In *Hyde*, the court interpreted subsection (b)(2), which uses the language "seeking admission," compared to subsection (b)(1) language "alien . . . who is arriving." *Id.* The court in *Hyde* found that the term "arriving alien" is roughly interchangeable with "seeking admission," and Petitioner takes the position that "alien . . . wo is arriving" is also interchangeable with "arriving alien." *See id.*

[6] DHS released Petitioner in 2023 pursuant to an Order of Release on Recognizance "in accordance with section 236 of the Immigration and Nationality Act." *Id.* at 3.

being detained in the absence of a bond because, inter alia, that petitioner had always been treated by the government as subject to discretionary detention under § 1226(a). *Id.* at 12 and 24.

In *Maldonado v. Olson*, the government argued that petitioner was subject to mandatory detention under § 1225 because, as Judge Nelson succinctly summarized its position, "detention is categorical in the case of nearly every alien entering this country, whether they are newly arrived at the border or have been living in this country for several years." No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *10 (D. Minn. Aug. 15, 2025). Judge Nelson rejected the Government's position and found the petitioner was subject to discretionary detention under § 1226(a) because she was already present in the United States and not just arriving at the border. *Id.* Judge Nelson found it significant that the NTA issued to petitioner in 2016 showed that the box for "You are an alien present in the United States who has not been admitted or paroled" was marked checked, but the box for "You are arriving alien" was not checked. *Id.* at *11. She also found that a historical analysis of the Government's past practice and the law does not currently reflect that persons appearing at the border may be treated the same as those already present in the United States. *Id.* at *12 (stating that if Respondents believe that good public policy supports treating non-citizens appearing at the border the same as those already present in the United States the same, "such arguments may be made to Congress if Respondent would like to amend or repeal §§ 1225 or 1226").

Here, like *Jimenez*, the uncontestable facts show that the Government consistently treated Ms. Kamara as under the purview of discretionary detention under § 1226(a) prior

to May 28, 2025. A fact the Government ignores. Like *Hyde*, Border Patrol made the decision on February 18, 2024 when it issued the NTA that Ms. Kamara was *not* an arriving alien but an "alien present in the United States who has not been admitted or paroled." Van Der Vaart Decl., Ex. A.

It may be the case that DHS could have initiated expedited removal proceedings when it encountered Ms. Kamara in the Arizona desert in February 2024. If it could have, it elected not to. *See Matter of Cabrera-Fernandez,* 28 I&N Dec. 747,748 (BIA 2023) ("DHS has authority to determine whether to initiate expedited removal proceedings under section 235(b)(1)(A)(i) of the INA, 8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a."). Such occasions of prosecutorial discretion are common in immigration law. *Cf. See Villa-Anguiano v. Holder,* 727 F.3d 873, 878; ("ICE regularly exercises 'prosecutorial discretion' ... including 'deciding to issue, reissue, serve file, or cancel a Notice to Appear") (9th Cir. 2013). And, a prosecutor's decisions have consequences. *Compare Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 521 n.1 (BIA 2011) (noting that respondents in regular removal proceedings have "more rights available to them" than in expedited removal proceedings); *compare* 8 U.S.C. § 1229a(b)(4), 8 C.F.R. §§ 1240.3, 1240.10(a), 1003.1(b)(3) (rights in removal proceedings), *with* 8 C.F.R. §§ 1003.42(c), 1208.30(g)(2)(iv)(A) (limited rights in credible fear process).

But DHS did not place Ms. Kamara in expedited removal, it instead released her and initiated still-ongoing removal proceedings under § 1229a. True enough, DHS may, pursuant to 8. C.F.R. § 1239.2(c) *move* to dismiss § 1229a proceedings that it providently

commenced, but when doing so, it must meet the regulatory burden of persuasion. And the decision as to whether to dismiss proceedings is thus not assigned to DHS but to the immigration judge (which includes BIA review). *Matter of H.N. Fereira*, 28 I&N Dec. 765,768 (BIA 2023) ("While DHS's decision "to commence removal proceedings is not reviewable by Immigration Judges...," an Immigration Judge "must...independently adjudicate" any motion to dismiss those proceedings once commenced."); *Matter of Andrade Jaso & Carbajal Ayala*, 27 I&N Dec. 557, 558 (BIA 2019) ("The language of 8 C.F.R. §§ 239.2 and 1239.2 thus marks a clear boundary between the time prior to commencement of proceedings, where an ICE officer has decisive power to cancel proceedings, and the time following commencement, where the officer merely has the privilege to move for dismissal of proceedings.") (cleaned up) (citations omitted).

What is pertinent to this Court, reviewing only the unlawfulness of her detention, is that for over 15 months Ms. Kamara remained free. Therefore, for 15 months the Government treated her as subject to standard removal and discretionary detention under § 1226(a). The Government cannot double-back now and attempt to re-write its own treatment of her for 15 months. Therefore, there can be no dispute, and it appears the Government does not dispute (at least not directly), that Ms. Kamara was subject to discretionary detention prior to May 28, 2025 under § 1226(a).

B. Ms. Kamara is Currently Illegally Detained Because Ms. Kamara Timely Appealed IJ Miller's Dismissal Order, and She Continues to Fall Under the Purview of § 1226(a) Pursuant to the Automatic Stay of the Dismissal Order.

Because Ms. Kamara was subject to standard removal and discretionary detention under § 1226(a) prior to IJ Miller's dismissal, and because Ms. Kamara timely appealed that dismissal, she continues to fall under the purview of § 1226(a) as a matter of law. Under BIA Practice Manual 6.2 and 8 C.F.R. § 1003.6(a), Ms. Kamara's timely appeal of IJ Miller's dismissal order automatically stayed the dismissal and divested IJ Miller from jurisdiction over this case. The Executive Office for Immigration Review ("EOIR") therefore will not treat the dismissal order as "administratively final." Practice Manual 6.2 provides that

> (a) During the Appeal Period
> After an Immigration Judge issues a final decision on the merits of a case (not including bond or custody, credible fear claimed status review, or reasonable fear determinations), the order is automatically stayed for the 30-day period for filling an appeal with the Board. However, the order is not stayed if the losing party waived the right to appeal. 8 C.F.R. § 1003.6(a).
> (b) During the Adjudication of an Appeal
> If a party appeals an Immigration Judge's decision on the merits of the case (not including bond and custody determinations) to the Board during the appeal period, the order of removal is automatically stayed during the Board's adjudication of the appeal. 8 C.F.R. § 1003.6(a). The stay remains in effect until the Board renders a final decision in the case.[7]

Further, BIA Practice Manual 4.2(a)(2) states that "[a]fter the Immigration Judge renders a decision, a party may either file an appeal with the Board or file a motion with the

[7] *See, also,* 8 C.F.R. § 1003.6(a) (providing that except for certain exceptions not applicable here, "the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal

Immigration Judge. Once a party files an appeal with the Board, jurisdiction is vested with the Board, and the Immigration Judge is divested of jurisdiction over the case."

Therefore, Ms. Kamara remained within the purview § 1226(a) because Immigration Judge Miller's dismissal order was "automatically stayed for the 30-day period for filling an appeal," and remains so in light of her acknowledged, timely appeal. The government's refusal to conduct a credible fear interview only bolsters this conclusion. If the USCIS had jurisdiction to conduct a credible fear hearing, it would have likely done so. Therefore, absent congressional authority, Ms. Kamara remains subject to discretionary detention under 1226(a) based on the automatic stay of IJ Miller's dismissal order.

IV. Respondents have Deprived Petitioner of her Life and Liberty Interest by Denial of Health Care and Attempted to Insulate Themselves From Judicial Review

Respondents argue first that Ms. Kamara's constitutional due process rights can be no broader than "rights provided under statute," and second, that her rights are limited to those available to persons determined by DHS to be subject to the expedited removal process, rather than those rights available to persons determined by DHS to be subject to the standard removal process. Resp. Return at 36.

The first argument fails because Ms. Kamara has independent constitutional due process rights to life and liberty for access to life-sustaining medical care which Respondents are denying by her detention.

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unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending[.]")

With regard to context for Respondents' second argument, an important statutory/regulatory due process right available to persons subject to the standard removal process is the right to a bond hearing before an Immigration Judge to determine a custody modification for release if they are not a flight risk or a public danger. On the other hand, a person subject to expedited removal is subject to mandatory detention by DHS/ICE until their removal status is finally determined even if they are not a flight risk or public danger.

Respondents' second argument fails for two reasons: First, because DHS/ICE determined in its February 18, 2024, Order of Release on Recognizance to grant Ms. Kamara a liberty interest (subject to reporting conditions to DHS) until the final determination of her standard removal proceedings, and that liberty right cannot be removed without constitutional due process.

> You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:…

Sanders Szabo Decl., Ex. A. Second, the argument fails because DHS/ICE have never alleged, let alone shown, that Ms. Kamara has violated any condition of her Release on Recognizance, and she plainly does not present a flight risk or public danger.

Taking up the question of due process in an analogous circumstance, the Eastern District of California observed that according to the relevant regulation a noncitizen asylum seeker's release on own recognizance following a border encounter constituted a finding by DHS that "he did not pose a danger the community was not a flight risk." *See Singh v. Andrews*, 2025 WL 1918679 at *1–2 (Slip. Op. (E.D. Ca. July 11, 2025). Like Ms. Kamara,

the petitioner in that case was an asylum applicant, who lived without criminal incident in the U.S. for over a year and was arrested at an immigration courthouse following Master Calendar Hearing wherein ICE surprised him with a motion to dismiss that was eventually granted by an immigration judge. Also like Ms. Kamara, the petitioner appealed for that dismissal order. *See id.* at 4. Applying the *Matthews* factors, the Court concluded his detention without a bond hearing on the *Guerra* criteria violated due process. *See id.* at 8.

The foundation of the Government's argument that Ms. Kamara has no constitutional or statutory due process claim (Resp. Return, at 32-36) is an inapposite case; *Department of Homeland Security v. Thuraissigiam,* 591 U.S. 103 (2020). That case involved a noncitizen who was actually immediately detained and placed in expedited removal under § 1225 after he made it only 25 yards into United States territory, and who had been in the United States for a very limited period of time when his Habeas Petition was filed. *Id.* at 114. In this case, however, Ms. Kamara was released on recognizance "[i[n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Corde of Federal Regulations," placed in standard removal proceedings, and went on to establish her life in Minnesota for over a year without violating any conditions of her release. Further, ICE has not alleged any public danger or flight risk arising from her release. Thus, *Thuraissigiam* is not dispositive, or even instructive, regarding statutory and constitutional due process liberty interests. The facts and applicable statutes and regulations for Ms. Kamara case are very different than those of the Petitioner in *Thuraissigiam*

Likewise, the due process claims at issue in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) are entirely inapposite because it concerns the application of entirely separate mandatory detention statute, § 1226(c), not implicated in this action.

V. In Arguing Ms. Kamara is Lawfully Detained Under § 1225 (Which She Is Not), the Government Mischaracterized Her Administrative Appeal.

As repeatedly stressed, Ms. Kamara challenges in this Petition only her unlawful detention. That is why Ms. Kamara, *in her petition* did "not claim any substantive error with the dismissal" of her removal proceedings. The illegality and impropriety of that is the subject of her administrative appeal to the BIA. Van Der Vaart Decl., Ex. F.

However, the Government in its Return invited this Court to consider whether, as it contends, the IJ's order was "correct" as justification for her ongoing detention without access to bond. *See* Resp. Return at 15, *see also id.* at 16 ("the dismissal order comports with the facts, the INA, and due process."). In so doing, the Government baldly asserts "it is clear from the appeal itself that it was taken not on its intrinsic merit." *Id.* at 16.

The facts establish otherwise. Ms. Kamara thus submits the entire record of those administrative proceedings, which total 36 pages and a recording of a single on-the-record hearing totaling 4 minutes and 10 seconds. Sanders Szabo Decl, Exs. B-C. This record shows that immigration judge did not—contrary to the Government's representation here, but as the Act and regulations require—provide Ms. Komara with a "reasonable opportunity" to respond to ICE's unnoticed motion to dismiss. *Id.* Sanders Szabo Decl, Exs. B-C. Instead, the recording shows, among other errors, the IJ's decision to dismiss proceedings was reflexive, contravening case law and governing regulations that alike

require independent consideration.[8] For example, per those regulations, "motions to dismiss follow the same general motions practice before EOIR as any other type of motion, which includes responses to motions . . . . In sum, the rule neither precludes noncitizens from making arguments regarding a DHS motion to dismiss, **nor indicates that a DHS motion to dismiss should be granted as a matter of course"** as occurred on May 28. *See* 89 FR 46742 (emphasis added).

To resist the Government's unfounded characterization about her appeal and assist this Court's understanding of the type of substantive appellate arguments Ms. Kamara will raise therein, she submits Exhibit A to the declaration of attorney Zachary Albun, the attorney who drafted her notice of appeal. It includes a redacted copy of the BIA appeal brief he helped prepare for another Koniaka-speaker whose § 1229a proceedings were perfunctorily dismissed by IJ Miller on May 28, and who was likewise thereafter re-arrested by ICE at the immigration courthouse. The brief identifies multiple errors requiring remand and it explains how the respondent in that case, like Ms. Kamara, was actually prejudiced by the immigration judge's plainly observed failure to independently

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[8] The governing regulation at 1239.2(c), published May 29, 2024, synthesized and built upon a series of precedential agency and circuit court cases that confirmed the Act assigns the Immigration Judge docket management authority after DHS initiates removal proceedings—and that explicitly rejected agency decisions to the contrary. See "Efficient Case and Docket Management in Immigration Proceedings," 89 FR 46742, 46742; *see also Matter of Coronado Acevedo*, 28 I&N Dec. 648, 651–52 (A.G. 2022) (IJ, rather than DHS, has authority to determine if termination is warranted); *Chavez Gonzales v. Garland* , 16 F.4th 131 (4th Cir. 2021) (same); *Meza Morales v. Barr*, 973 F.3d. 656, 667 (7th Cir. 2020) (Barrett, J.) (rejecting *Matter of Castro-Tum*, which curtailed IJ's authority to grant administrative closure over DHS opposition,); Arcos Sanchez v. Atty' Gen. U.S., 997 F.3d 113, 121 – 22 (3d Cir. 2021) (same); *Romero v. Barr*, 937 F.3d 282, 292 (4th Cir. 2019) (same).

consider ICE's motion or give any meaningful opportunity to respond. Albun Decl, Ex. A at 14–17. So, there is good reason to think Ms. Kamara will prevail in her administrative appeal within the ongoing § 1229a proceeding, assuming the BIA will adjudicate that appeal in good faith.

VI. Exhaustion is Futile and Not Warranted Here.

Respondents argue that Kamara has failed to exhaust her administrative remedies. See Resp. Return at 17-19. Respondents acknowledge there is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention in federal court. *Id.* at 18. "The exhaustion requirement for § 2241 petitions is judicially created, not statutorily mandated, so when considering it, 'sound judicial discretion governs.'" *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *5 (D. Minn. Aug. 27, 2025) (quoting *Gant v. King*, No. 23-cv-1766 (NEB/ECW), 2023 WL 6930764, at *2 (D. Minn. July 7, 2023)). When exercising that discretion, federal courts must "balance the interest of the individual in retaining prompt access to a federal judicial forum against countervailing institutional interests favoring exhaustion." *Id.* (quoting *McCarthy*, 503 U.S. at 146. "Courts have concluded that the exhaustion requirement may be excused due to time constraints or where proceeding through the administrative remedy process would undoubtedly be an exercise in futility that could serve no useful purpose." *Id.* (quoting Johnson, 2023 WL 2563148, at *4).

Respondents advance two arguments to support the exercise of prudential exhaustion, but neither is convincing. First, Respondents argue that exhaustion should be required as a prudential matter because "the Court would likely benefit from the BIA

decision on the appeal." Resp. Return at 18. Where, as here, Kamara is asking the District Court to decide a purely legal question on an undisputed fact record—namely, whether § 1226(a) or § 1225(b)(2)(A) applies to Kamara—the "administrative appellate record is not necessary to resolve [the] purely legal question[]." *See Jose J.O.E.*, 2025 WL 2466670, at *6 (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1251 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025); *Salad v. Alaska Dep't of Corr.*, 769 F. Supp. 3d 913, 921 (D. Alaska 2025); *cf. Vang v. Eischen*, No. 23-cv-721 (JRT/DLM), 2023 WL 5417764, at * 3 (D. Minn. Aug. 1, 2023) ("There is no useful purpose to proceeding through the administrative remedy process where the petitioner presents a pure question of law."). Like Judge Tostrud stated, "this is not the type of case '[w]here the parties are expected to develop the issues in an adversarial administrative proceeding,' and thus where 'the rationale for requiring [court-imposed] exhaustion is at its greatest.'" *Id.* (quoting *Agha v. Holder*, 743 F.3d 609, 616 (8th Cir. 2014)).

Respondents argue that "judicial intervention may stop the flow from immigration courts to the BIA and redirect it—prematurely, as here—to the federal courts."[9] Resp. Return at 19. Applying the prudential exhaustion requirement is not warranted here.

[9] Courts, including most recently Judge Tostrud, have rejected this argument, finding that resolution of issues such as the Court faces here "may answer a recurring legal question" that may perhaps "reduce the number of future habeas petitions." *Jose J.O.E.*, 2025 WL 2466670, at *6; *Rodriguez*, 779 F. Supp. 3d at 1252; *see Salad*, 769 F. Supp. 3d at 922. As Judge Tostrud noted, "These claims-processing concerns are important, but they are outweighed here by time constraints and the potential injury to [the petitioner] if his claim is not adjudicated promptly." *Jose J.O.E.*, 2025 WL 2466670, at *6.

Exhaustion is futile. The BIA very recently issued a new decision that—incorrectly and for the first time—held "aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Matter of YAJURE HURTADO,* 29 I&N Dec. 216 Interim Decision #4125 (BIA 2025*)*. Ultimately, the BIA upheld the Immigration Judge's holding that he lacked authority to hear the respondent's request for a bond hearing as the respondent was an applicant for admission and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and 8 C.F.R. § 235.3(b)(1)(ii). It would be futile for Ms. Kamara to ask the EOIR for a custody redetermination hearing (or otherwise litigate her detention administratively), as she would be simply found to be subject to mandatory detention no matter what under *Yajure Hurtado*. And furthermore, there is no reason to think the type of useful appellate record the Government's return envisions would develop to benefit this Court: the IJ will reject jurisdiction citing *Yajure Hurtado*, and the Board would affirm it. So, it is time for this Court to step in to correct Respondents' improper statutory construction and unconstitutional action. Importantly, with respect to statutory questions federal courts must no longer "treat the government's views as controlling or even 'especially informative.'"" *Quito-Guachicuhlca v. Gauchichucla v. Garland*, 122 F.4th 732, 735 (8th Cir. 2024) *citing Loper Bright Ent's v. Raimondo*, 144 S. Ct. 2244, 2267 (2024), further undercutting the Government's rationale for prudential exhaustion.

Second, time is of the essence. Ms. Kamara filed her appeal on June 4, 2025, but to date, no briefing schedule has been set for her BIA appeal. Albun Decl., ¶ 8. Without a

briefing schedule set, Kamara's detention has no finite end date. *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025) (finding exhaustion would be futile and unable to provide the petitioner with the relief he requested in a timely manner when the BIA appeal process was still pending and noting "[t]he petitioner there has presumably been in custody for at least 6 weeks, but likely more. When the liberty of a person is at stake, every day that passes is a critical one, and the Court cannot fault Lopez-Campos for taking appropriate measures to pursue his claims through the habeas process, with the expectation that his claims would be met with a sense of urgency, and he would receive a decision in a more expedient manner."). As Respondents stated, "Kamara will remain detained pending the outcome of her BIA appeal, her credible fear/asylum claims, and ultimately the removal proceedings." Resp. Return at 2. Documents filed pursuant to a Freedom of Information Act request to the Executive Office of Immigration Review in another federal district court, of which this Court may take judicial notice, reflect that on average in 2024, it took the BIA 204 days to adjudicate an appeal of an immigration judge bond decision. *See Rodriguez*, 779 F. Supp. 3d at 1248; *see also Gomes*, 2025 WL 1869299, at *5.

Ms. Kamara has been detained since May 28, 2025—over four months. Throughout her four-month detention, Ms. Kamara's mental and physical health has greatly deteriorated, including reaching a near catatonic state on June 2, 2025, engaging in self-harm due to her troubled mental state, being unable to eat or drink for weeks, and being hospitalized and/or on suicide watch. As Ms. Kamara's detention continues indefinitely, her health will continue to decline at a drastic rate. It seems highly unlikely that Ms.

Kamara's BIA appeal will be addressed before her health has deteriorated to a detrimental point.

Courts may waive exhaustion requirements when an administrative remedy is subject to "an unreasonable or indefinite timeline." *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025). Plus, the "delays inherent" in the BIA's administrative process "would result in the very harm that the bond hearing was designed to prevent," that is, prolonged detention without due process. *Id.* (quoting *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation omitted)); *see also Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (finding the "prolonged loss of liberty" from "several additional months" in possibly unlawful detention would "constitute irreparable harm"). And there is no question that Ms. Kamara has and will suffer irreparable harm if she is not released, or at a minimum, denied the opportunity for a bond hearing in accordance with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). *See Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (Doty, J.) (recognizing that "loss of liberty" is "perhaps the best example of irreparable harm"). In these circumstances, and where the underlying factual record is straightforward and undisputed, waiver of exhaustion is warranted. See Gomes, 2025 WL 1869299, at *5. Thus, because exhaustion would be futile and unable to provide Ms. Kamara with the relief she requests in a timely manner, the Court should waive administrative exhaustion and address the merits of the habeas petition.

VII. THIS COURT SHOULD EITHER RETAIN JURISDICTION OR ORDER THAT MS. KAMARA MUST REMAIN RELEASED DURING THE BIA APPEAL.

As Judge Bryan outlines in a recent decision, DHS's current tactics include invoking an automatic stay provision under 8 C.F.R. § 1003.19(f) when it appeals an IJ's decision that a noncitizen is eligible for bond. [10] In effect, this means that a noncitizen remains detained while a favorable bond decision is being appealed.[11] Given Judge Bryan has found that in a situation like Ms. Kamara's, this is unconstitutional, Ms. Kamara respectfully requests that this Court retain jurisdiction while her appeal is pending before the BIA and/or order that she must remain released (as long as she follows her conditions of release) while the appeal is pending.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant her Petition for Writ of Habeas Corpus. Furthermore, in light of ICE's observed unconstitutional, blanket invocation of the automatic stay provision, this Court should (1) order she be released pending her BIA appeal, (2) short of that, conduct its own bond hearing to determine whether Ms. Kamara is a public danger and/or a flight risk, and assigning the burden of proof as the Court finds appropriate under 8 U.S.C. § 1226(a); (3) short of that, order EOIR to conduct a bond hearing to determine if Ms. Kamara is "danger to others [or] a threat to national security," and, if she is not, to set an immigration bond in

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[10] *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *3 (D. Minn. May 21, 2025).

[11] *Id.*

an amount reasonably calculated to ameliorate any fight risk established in the court during that hearing.

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Respectfully submitted,

/s/ Byron E. Starns

Byron E. Starns (#104486)
Timothy D. Sanders Szabo (#0400231)
Kelly M. Maxwell (#0400668)
Samantha J. Hanson-Lenn (#0402035)
STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 335-1516
byron.starns@stinson.com
timothy.sandersszabo@stinson.com
kelly.maxwell@stinson.com
samantha.hansonlenn@stinson.com

ATTORNEYS FOR PETITIONER