UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

AYDELYS DEL SOCORRO PONCE-PINEDA,

Plaintiff-Petitioner,

v.

PAMELA JO BONDI, United States Attorney General, KRISTI LYNN NOEM, Secretary of Homeland Security, TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement, MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, and Rose Thompson, Facility Administrator, Karnes County Immigration Processing Center,

in their official capacities,

Defendants-Respondents.

Civil Action No.: 5:25-cv-01021

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER OR, IN THE ALTERNATIVE, FOR A PRELIMINARY INJUNCTION

Plaintiff-Petitioner Aydelys del Socorro Ponce-Pineda (Plaintiff or Ms. Ponce-Pineda) files this motion requesting the Court enter a temporary restraining order (TRO) or, in the alternative, a preliminary injunction requiring her release or, in the alternative, a constitutionally adequate bond hearing pending a final decision in her removal proceedings.

Ms. Ponce-Pineda is a Nicaraguan national presently detained by Respondents in the Karnes County Immigration Processing Center in Karnes City, Texas. Defendants-Respondents Noem, Lyons and Ortega detained Ms. Ponce-Pineda on June 11, 2025 contending that her initial arrest on December 2, 2021 was authorized pursuant to 8 U.S.C. § 1225(b)(2), not § 1226(a) as the documentation demonstrates and the law at the time provided, and she is therefore subject to mandatory detention. Ms. Ponce-Pineda requested a bond hearing as allowed by § 1226(a) but Defendnant-Respondent Bondi, through her agents, denied the request for a bond hearing concluding that an immigration court lacks jurisdiction for persons detained under § 1225(b)(2). Ms. Ponce-Pineda remains detained by Defendant-Respondent Thomspon under orders of Defendants-Respondents Bondi, Noem, Lyons and Ortega.

Ms. Ponce-Pineda's detention is unlawful for at least three reasons. First, when Ms. Pone-Pineda initial arrest by the Department of Homeland Security (DHS) was premised on § 1226(a). The documentation concerning her arrest and release leaves no doubt that the DHS elected to exercise its authority under § 1226(a) to arrest and release Plaintiff-Petitioner. There is no provision in the Immigration and Nationality Act (INA) that permits Defendants-Respondents to change the historical and legal fact, particularly where such change prejudices Plaintiff-Petitioner and disrupts her reliance interests.

Second, Defendants-Respondents' new reading of § 1225(b) and § 1226(a) stems from the Board of Immigration Appeals' (BIA) May 22, 2025 decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). There, the BIA held that the arrest, detention and release by the DHS of any noncitizen who enters without inspection or admission is effectuated under § 1225(b). Defendants-Respondents take the position that such interpretation of the law applies now and in the past. But retroactivity in the law is deeply disfavored. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265

(1994). And it is especially disapproved in the administrative law. If application of a new rule is significant and changes the legal landscape by updating an agency's earlier position, then retroactive application of the new rule alters basic presumptions of this administrative system. *Monteon-Camargo v. Barr*, 918 F.3d 423, 431 (5th Cir. 2019)at 431. "A 'presumption of prospectivity attaches to Congress's own work,' and it should generally attach when an agency 'exercises delegated legislative....authority.'" *Id.* (internal citation omitted). Defendants-Respondents' application of *Matter of Q. Li* is unfair, unreasonable, and unlawful.

Lastly, the adjudicatory decision-making process of the Executive Office for Immigration Review, a subagency that is directed and supervised by Defendant-Respondent Bondi, is arbitrary and capricious. Immigration courts are supposed to function like other courts and apply well-known principles for deciding cases. However, unlike federal or state district courts, immigration courts are not required to apply the rule of orderliness when deciding which BIA panel decision applies in a given case. More than two years before it decided *Matter of Q. Li*, the BIA decided *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023) where it concluded that if the facts demonstrate that DHS exercised its authority to detain and release a noncitizen under § 1226(a), then that election controls and the noncitizen is eligible for bond under that provision. Immigration courts now are disregarding that precedent for *Matter of Q. Li* which came later and tacks radically differently. Such disregard for well-established decision-making principles is arbitrary and capricious, and violative of Ms. Ponce-Pineda's rights.

Defendants-Respondents decision to deny bond to Ms. Ponce-Pineda is unlawful and violates her rights under the Administrative Procedure Act and the Due Process Clause. Petitioner requests this Court's assistance to ensure that Defendants-Respondents comply with federal law and ensure that Ms. Ponce-Pineda is heard on her right to be released on bond.

I. FACTUAL BACKGROUND

On or about December 2, 2021, Ms. Ponce-Pineda, a citizen of Nicaragua, arrived in the United States without being admitted or paroled. Exh. A (Form I-213/EARM Encounter Report). She was accompanied by her daughter, N M-P. *Compl. and Pet. for Writ of Habeas Corpus (Compl. and Pet.)* at ¶ 11. Ms. Ponce-Pineda also has a son, OM B-P, who was born in the United States and is a U.S. citizen. *Id.*

Following Ms. Ponce-Pineda's entry to the United States, the DHS arrested and detained her near Newfield, Arizona. The immigration officer executed the arrest under 8 U.S.C. § 1226(a). *Id.* at ¶ 12.

On December 6, 2021, the DHS issued Ms. Ponce-Pineda a Notice to Appear requiring her appearance at an immigration court hearing set for June 21, 2022 in San Antonio, Texas. Exh. B; *Compl. and Pet.* at ¶ 13. According to the Notice to Appear, Ms. Ponce-Pineda was placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a. Exh. B.

That same day, on December 6, the DHS released Ms. Ponce-Pineda and her child on their own recognizance. The order of release states that ***"[i]n 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 release on your own recognizance provided you comply with the following conditions…." Exh. C (emphasis added); *Compl. and Pet.* at ¶ 14.

On November 12, 2023, Ms. Ponce-Pineda filed her application for asylum, based on her belief that she faced persecution or torture if she were to return to her home country. *Compl. and Pet.* at ¶ 15. Later, Ms. Ponce-Pineda applied for and received an employment authorization

document so she could work to support herself and her family. Her work permit is valid from 6/12/2024 to 6/11/2029. *Id.*

Shortly after receiving work permit, Ms. Ponce-Pineda began her employment with Alsco Uniforms in San Antonio, Texas. *Compl. and Pet.* at ¶ 16. Through her employment at Alsco Uniforms, she was able to provide financial support for her two children. *Id.*

As per the conditions of her release, Ms. Ponce-Pineda was required to attend check-in appointments with ICE. *Compl. and Pet.* at ¶ 17. She called ICE on June 10, 2025 to confirm her check-in date and was told to report on June 11, 2025. *Id.* When Ms. Ponce-Pineda reported to her appointment on June 11, ICE detained her. *Id.* at ¶ 18. No explanation was given beyond citing the Border Patrol encounter from December 2021. *Id.*

Through her immigration counsel, Ms. Ponce-Pineda requested a bond hearing before the immigration judge. *Compl. and Pet.* at ¶ 19. The request included a variety of documents and letters of support from her community. One letter was from her manager at Alsco Uniforms, stating that Ms. Ponce-Pineda she has been a *"model employee...dependable and reliable." Id.* The letter also stated that the company looks forward to her return if she is released. A letter from Oscar R. Guajardo, the pastor at Casa del Rey Church, where Ms. Ponce-Pineda attends services, states that "...she is a woman of honesty and good moral character...always ready to work and serve in our church projects and activities." *Id.*

On June 25, 2025, an immigration judge denied Ms. Ponce-Pineda's request for bond. Exh. D. The immigration judge concluded that he lacked jurisdiction under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) because Ms. Ponce-Pineda is an applicant for admission subject to mandatory detention.

Ms. Ponce-Pineda remains detained and separated from her children. She has a daughter who is a young adult and a 9-year-old. Both depend on her for financial support. Every day that passes, her children are without her financial and emotional support. Further, there continues to be no evidence in the record to indicate that Ms. Ponce-Pineda is a flight risk, or that allowing her to be released pending her asylum hearing would present a danger to public safety.

Ms. Ponce-Pineda maintains that the immigration judge erred in concluding that *Matter of Q. Li* bars the court from granting her bond pending her removal proceedings. Ms. Ponce-Pineda has no other remedy at law but to seek emergency relief from this Court so that she can be reunited with her children.

II. ARGUMENT

Defendants-Respondents are detaining Ms. Ponce-Pineda based on an unfair, unreasonable and unlawful interpretation of the Immigration and Nationality Act. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Detention under § 1226(a) permits the arrest and release of noncitizens in removal proceedings. The DHS can release the noncitizens, or the noncitizens can request a bond hearing before an immigration judge. Persons arrested and detained under § 1225(b)(2) are subject to mandatory detention. Their only hope for release is based on a parole for humanitarian reasons.

For almost 30 years, Defendants-Respondents have interpreted § 1226(a) to apply to noncitizens who entered the United States without inspect or admission. But this changed after the Board of Immigration Appeals' (BIA or the Board) decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are subject to mandatory detention without a right to a bond hearing before an immigration judge. *Id.* This interpretation however is

factually and legally incorrect as it concerns Ms. Ponce Pineda. Further, the application of *Matter of Q. Li* is impermissibly retroactive and arbitrary as it violates the rule of orderliness.

Plaintiff-Petitioner remains separated from her minor and young adult daughter. She is their sole source of financial support. Every day she remains in a detention cell, she is deprived of her children. Her continued detention is causing her irreparable harm. Defendants-Respondents will suffer no harm since an order from this Court will simply instruct them to comply with federal law. Lastly, granting a TRO or preliminary injunction is in the public interest because it upholds the important principle that removal proceedings must be fundamentally fair. Accordingly, this Court should enter an order instructing Defendants-Respondents to release Ms. Ponce Pineda or, in the alternative, afford her a constitutionally adequate bond hearing where the DHS bears the burden of proof of demonstrating by clear and convincing evidence that that Ms. Ponce Pineda is a flight risk or a danger to the public.

A. The Legal Standard for a Preliminary Injunction

A plaintiff is entitled to a preliminary injunction to preserve the status quo and prevent irreparable harm until the parties' rights can be determined at trial on the merits. *City of Dallas v. Delta Air Lines, Inc.*, 847 F.3d 279, 285 (5th Cir. 20217). The "status quo" sought to be restored is "the last peaceable uncontested status existing between the parties before the disputed developed." Charles Alan Wright & Arthur R. Miller, 11A FEDERAL PRACTICE & PROCEDURE § 2948 (3d ed. 2013). Thus, the status quo in this case means preventing Respondents from executing Petitioner's removal order..

To obtain a preliminary injunction, a plaintiff must show (1) a substantial likelihood of prevailing on the merits; (2) a substantial likelihood of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the nonmovant if the

injunction is not granted; and (4) the injunction will not disserve the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374 (2008). The first two factors, substantial likelihood of prevailing on the merits and of irreparable harm, are the most critical. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In this circuit, the first factor, likelihood of success on the merits, is the most important. *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005). Further, "where there is a serious legal question involved and the balance of the equities heavily favors [an injunction]...the movant only needs to present a substantial case on the merits." *Lake Eugenie Land & Dev., Inc. v. BP Exploration & Prod. (In re Deepwater Horizon)*, 732 F.3d 326, 345 (5th Cir. 2013) (quoting *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011)).

B. Petitioner is entitled to a TRO and/or a Preliminary Injunction Because Defendants-Respondents' actions violate federal law

The main issue before this Court is a legal one: whether Respondents are authorized to detain Ms. Ponce-Pineda without the right to a bond hearing. It is clear that if this Court finds that Ms. Ponce Pineda is subject to § 1226(a) and not § 1225(b)(2), then Defendants-Respondents must afford her a bond hearing. At the same time, if the Court finds that the application of *Matter of Q. Li* to Ms. Ponce-Pineda is unfair, unreasonable arbitrary and impermissibly retroactive, then she is entitled to a bond hearing.

Based on the evidence and arguments presented in support of the motion and other evidence that will be developed at a hearing on this motion, Ms. Ponce-Pineda is likely to succeed in showing that Defendants-Respondents' actions violate federal law. The record will show that that Respondents cannot lawfully continue to detain Ms. Ponce-Pineda and that an order from this Court is needed to require Respondents' compliance with federal law.

1. Ms. Ponce-Pineda is Substantially Likely to Succeed on the Merits That She is Not Subject to Mandatory Detention Under § 1225(b)(2) and that Matter of Q. Li Should Not Apply to Her

The factual record demonstrates that the DHS detained and released Ms. Ponce Pineda under 8 8 U.S.C. § 1226(a). The DHS's I-213 indicates that she was arrested based on a warrant of arrest. Exh. A. Ms. Ponce-Pineda's Order of Release leaves no doubt that the DHS relied upon § 1226(a) to release her. Defendants-Respondents' efforts to re-write history should be rejected.

Legally, Defendants-Respondents cannot apply § 1225(b)(2) to Ms. Ponce-Pineda. First, almost 30 years ago, the Department of Justice explained that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

In the decades that followed, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered for release on bond or their own recognizance. They also received bond hearings before an IJ, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

At the time of detention, DHS elects whether to exercise its arrest authority under § 1226(a) or § 1225(b). This procedural election constrains the noncitizen's subsequent relief options and creates binding legal consequences. When DHS chooses to detain and release someone under § 1226(a), the agency must follow that statute's detention and release procedures.

The procedural safeguards for persons detained under § 1225(b)(2) are much more limited. The person is subject to mandatory detention and can only be released under the DHS's parole authority in 8 U.S.C. § 1182(d)(5)(A). The limited procedural safeguards for persons detained under § 1225(b)(2) are found in 8 C.F.R. § 235.3. Violations of these safeguards invalidate expedited removal determinations and preclude application of mandatory detention provisions.

Factually and as a matter of policy and practice, the detention and release of Ms. Ponce-Pineda was pursuant to § 1226(a). She therefore is entitled to a bond hearing.

Second, the new interpretation of §§ 1226(a) and 1225(b) based on *Matter of Q. Li* is impermissibly retroactive. As argued above and in her Complaint and Petition, prior to *Matter of Q. Li*, persons who entered without inspection or admission were subject to § 1226(a). On May 22, 2025, the BIA issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission, and are therefore ineligible for a bond hearing before an immigration judge under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

On July 8, 2025, ICE, "in coordination with the Department of Justice (DOJ)," announced a corresponding policy that rejected the well-established understanding of the statutory and regulatory framework and reversed decades of practice. *See* Exh. E (Interim Guidance Regarding Detention Authority for Applicants for Admission"). The new policy claims that all persons who

entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *Id.*

The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. Further, the policy applies even to those noncitizens to whom DHS elected to arrest under § 1226(a) and released them pursuant to that provision.

But as recently as 2023, the BIA interpreted the INA to empower the DHS to choose whether to detain and release persons who entered without inspection either under § 1226(a) or § 1226(b)(2). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). There, the noncitizens entered without inspection or admission and were detained shortly after entering the United States. The DHS detained and released them under § 1226(a). The noncitizens argued that their release constituted a parole because their detention (and release) could only have been accomplished through § 1225(b). The BIA firmly rejected that reading of the statute.

"For applicants for admission charged as inadmissible, DHS has authority to determine whether to initiate expedited removal proceedings under…8 U.S.C. § 1225(b)(1)(A)(i), or removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a."). The BIA explained:

> This authority is illustrated in the Attorney General's decision in *Matter of D-J-*, 23 I&N Dec. 572, 572–76 (A.G. 2003), which involved a similar fact pattern. In that case, DHS apprehended a respondent shortly after he entered the United States without admission or parole and charged him with the same ground of inadmissibility at issue here [having entered without inspection or admission]. The Attorney General reviewed his eligibility for release from custody under section 236(a) of the INA, 8 U.S.C. § 1226(a). *Cf. Matter of M-S-*, 27 I&N Dec. 509, 510–13 (A.G. 2019) (addressing the detention and release of respondents whom DHS initially elects to place in expedited removal proceedings, but who are later transferred to section 240 removal proceedings after establishing a credible fear of persecution or torture).

Id. at 748-49.

And the BIA reiterated this reading of the INA's detention and release statutory scheme again in *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025). There, the noncitizen entered without inspection or admission and then was released. He argued that he had been paroled because DHS could only detain him under § 1225(b). The BIA rejected the argument concluding that DHS detained him under § 1226(a) and released him conditionally under § 1226(a)(2)(B). The BIA concluded that the noncitizen had "not meaningfully distinguished his release from DHS' custody from the conditional parole at issue in *Matter of Cabrera-Fernandez*, 28 I&N Dec. at 747, 750." *Matter of Roque-Izada*, 29 I&N Dec. at 109.

Ms. Ponce-Pineda was detained and released under § 1226(a). This is confirmed factually and legally by the documentation concerning her release and the state law of the law in effect at that time. *Matter of Cabrera-Fernandez* buttresses this point.

Matter of Q. Li, as interpreted by the immigration judge and Respondents, is a sea change in immigration law. Retroactive application of this new interpretation of the law to Petitioner's case however is unfair and unlawful.

Retroactivity is greatly disfavored in the law. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). The Supreme Court has been emphatic that this aversion to retroactive rulemaking

> is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.

Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994) (internal quotation and citations omitted).

The Fifth Circuit too has instructed the BIA and immigration courts that it is patently unfair to subject noncitizens to new interpretations of immigration laws. This is a matter of due process and fair notice. The Court explained:

> "The leading case on administrative retroactivity' instructs that any disadvantages from the 'retroactive effects' of deciding a 'case of first impression . . . must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.' To apply that instruction, this court 'balances the ills of retroactivity against the disadvantages of prospectivity.' 'If that mischief of prospectivity is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.'

Monteon-Camargo v. Barr, 918 F.3d 423, 430 (5th Cir. 2019) (internal citations omitted).

Thus, if application of the new rule is significant and changes the legal landscape by updating an agency's earlier position, then retroactive application of the new rule alters basic presumptions of this administrative system. *Id.* at 431. "A 'presumption of prospectivity attaches to Congress's own work,' and it should generally attach when an agency 'exercises delegated legislative....authority.'" *Id.* (internal citation omitted).

The change here is significant. Ms. Ponce-Pineda's right to be free from detention is eliminated and she is now subject to mandatory detention. Thus, the retroactive application of *Matter of Q. Li* is unfair, unreasonable and unlawful.

Lastly, Ms. Ponce-Pineda is likely to succeed in her argument that the Defendant-Respondent Bondi acted arbitrarily and capriciously in allowing immigration judges to disregard the rule of orderliness to resolve conflicts between BIA precedent.

The parties expect the BIA and the immigration courts to apply faithfully Supreme Court, circuit court, and BIA precedent as well as decision-making principles that ensure consistency and

predictability in deciding cases. The rule of orderliness is one such principle that circuit courts and district courts apply. Under the rule of orderliness, "one panel of [the circuit] court may not overturn another panel's decision, absent an intervening change in law, such as by a statutory amendment, or the Supreme Court, or [the] en banc court." *Mercado v. Lynch*, 823 F.3d 276, 279 (5th Cir. 2016). This rule is also applied by the district courts. *See Silo Rest. Inc. v. Allied Prop. & Cas. Ins. Co.*, 420 F. Supp. 3d 562, 575-76 (W.D. Tex. 2019).

The EOIR has acknowledged that it does not abide by the rule of orderliness. The EOIR calls it the "prior-panel-precedent" rule. *See* EOIR Policy Memoranda (PM) 25-34 (July 3, 2025) found at https://www.justice.gov/eoir/media/1406956/dl?inline. The EOIR acknowledges that the functional equivalent of the rule of orderliness exists in its regulations and in narrow circumstances, one panel can overrule an earlier panel if a majority of the permanent Board members vote to reject the earlier decision. 8 C.F.R. § 1003.1(g)(3). Nevertheless, there is no rule or guidance for immigration courts for resolving conflicts between prior BIA precedents or which BIA precedent to follow. EOIR PM 25-34 at 2.

Instead, EOIR instructs immigration judges to essentially "try their best." *Id.* at 4. "Until the Board or the Attorney General resolves any conflicts in Board precedent… or adopts a clear rule regarding which precedent should control when there is a conflict, Immigration Judges will have to apply their best judgment and traditional legal tools or methods of analysis in order to adjudicate cases before them where Board precedent is in conflict." *Id.* The rule of orderliness thus does not control.

Prior BIA precedent requires application of *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747 (BIA 2023). If the facts demonstrate that DHS exercised its authority to detain and release a

noncitizen under § 1226(a), then that election controls and the noncitizen is eligible for bond under that provision.

Under these circumstances, it is plain that Defendant-Respondents cannot continue to detain Ms. Ponce-Pineda without affording a bond hearing.

2. Petitioner will suffer irreparable harm is Respondents are allowed to execute his removal order

Freedom from unreasonable detention is one of the most basic constitutional rights. For the reasons stated above, Defendants-Respondents are wrongfully denying Ms. Ponce-Pineda a bond hearing so that she can be reunited with her children.

She will suffer irreparable harm if she continues to be detained. Every day she remains behind bars, she is not able to be with her children and provide for them. "In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages." *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2000). No amount of money physically restores the time Ms. Ponce-Pineda has been separated from her children. If denied preliminary relief, Petitioner will suffer irreparable harm, namely her continued detention, the ability to live with her family, and the opportunity to work in this country.

3. The Balance of Equities Tips Heavily in Favor of Petitioner and an Injunction is in the Public Interest

The threatened injury to Petitioner far outweighs any harm that will result to Defendants-Respondents if the Court issues a TRO or an injunction. Further, the issuance of an injunction does not disserve the public interest but rather promotes it because it affirms the constitutional requirement of fundamental fairness in removal proceedings.

The resulting harms to the Defendants are nonexistent or at most minimal. They are simply held to the rule of law.

In addition, granting the injunction does not disserve the public interest but rather promotes it. It is in the public interest for government officials to comply with federal law. *MCR Oil Tools, L.L.C v. United States DOT*, 2024 U.S. App. LEXIS 14297 at *19 (5th Cir. June 12, 2024) ("There is a 'substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.'") (quoting *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022)). And in this case, the law is clear that Defendants-Respondents cannot apply Matter of Q. Li retroactively to Ms. Ponce-Pineda or the historical facts. Granting the injunction promotes the rule of law.

Petitioner therefore satisfies all of the prongs of the *Winter* test.

III. CONCLUSION

For the foregoing reasons, this Court should issue a restraining order or preliminary injunction and instruct Respondents to release Ms. Ponce-Pineda or give a bond hearing where the DHS bears the burden of proof to demonstrate by clear and convincing evidence that she is a flight risk or a danger to the public.

Dated: August 19, 2025

Respectfully submitted,

/s/ Javier N. Maldonado
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ATTORNEYS FOR PLAINTIFF-PETITIONER

CERTIFICATE OF CONFERENCE

On August 18 and 19, 2025, Petitioner's attorney, Javier N. Maldonado, conferred with Assistant U.S. Attorney Lacy McAndrew regarding the filing of this motion. Undersigned counsel provided Ms. McAndrew with the complaint and petition and the draft motion for preliminary injunctive relief. However, Ms. McAndrew did not have sufficient time to review the complaint and petition for writ of habeas corpus and the motion for TRO and preliminary injunction and could not give Respondents' position on the instant motion. The undersigned counsel attempted to resolve this matter without the filing of the instant motion. Undersigned counsel emailed copies of the petition and the instant motion to Ms. McAndrew.

CERTIFICATE OF SERVICE

On August 19, 2025, undersigned counsel emailed this motion to Assistant U.S. Attorney Lacy McAndrew at to the following address: Lacy.McAndrew@usdoj.gov. Undersigned counsel will serve the U.S. Attorney for the Western District, the Attorney General and the other Respondents as per Federal Rule 4(i) once the summonses are received.

Respectfully submitted,

/s/ Javier N. Maldonado
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ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

AYDELYS DEL SOCORRO PONCE-PINEDA, *Plaintiff-Petitioner,* v. PAMELA JO BONDI, United States Attorney General, KRISTI LYNN NOEM, Secretary of Homeland Security, TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement, MIGUEL VERGARA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, and Rose Thompson, Facility Administrator, Karnes County Immigration Processing Center, *in their official capacities,* *Defendants-Respondents.*	Civil Action No.: 5:25-cv-01021

ORDER

Pending before the Court is Plaintiff's Motion for a Temporary Restraining Order or, in the Alternative, for a Preliminary Injunction. After having reviewed the motion and the evidence in support of the motion, the parties' arguments and the applicable law, the Court is of the opinion that the motion should be GRANTED.

The Court concludes that Plaintiff has satisfied the factors necessary for issuance of a preliminary injunction. She is likely to succeed on the merits of her claim and she is likely to

suffer irreparable harm. Further, the balance of equities tilts in her favor and an injunction promotes the public interest by requiring federal officers to comply federal law.

It is ORDERED that Defendants shall either release the Plaintiff or provide her with a bond hearing before an immigration judge within 10 days of this Order.

Signed this ___ day of August, 2025.

UNITED STATES DISTRICT JUDGE