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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 WENJUAN WANG )  
12 )  
13 PETITIONER )  
14 v. )  
15 Fred Figueroa, in his official capacity as Warden )  
16 of Eloy Detention Center; )  
17 John E. Cantú, in his official capacity as the Field )  
18 Office Director of the ICE Enforcement and )  
19 Removal Operations (ERO) Phoenix Field Office )  
20 Kristi Noem, in her official capacity as Secretary )  
21 of DHS; )  
22 )  
23 RESPONDENTS )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No: 22:25-cv-03301-MTL

PETITIONER'S REPLY IN SUPPORT OF  
HABEAS CORPUS AND EMERGENCY  
MOTION FOR TRO

**I. INTRODUCTION**

Petitioner respectfully submits this reply to Respondent's opposition. Respondents fail to provide any lawful statutory basis for continued detention. Respondents' brief rests on a factual mischaracterization and a legally unsustainable expansion of DHS's detention authority.

Petitioner is an "arriving alien" who was lawfully paroled into the United States. As the Immigration Judge correctly found, jurisdiction over her pending Form I-485 adjustment of status application lies exclusively with USCIS. Because the IJ terminated her removal proceedings, there is no valid removal case to support detention under 8 U.S.C. §1225(b)(2).

1 Respondents' attempt to stretch that provision beyond its statutory limits violates due process  
2 rights and must be enjoined by this Court.

3 **II. RESPONDENTS' FACTUAL MISTATMENTS**

4 Respondent's opposition is predicated on the erroneous assertion that Petitioner "entered  
5 unlawfully" and "presently lack any legal status." , Doc 14 at 1, Line 18-19. This is a fundamen-  
6 tal misstatement of fact that distorts the entire legal analysis.

7 **A. Lawful Parole is Not Unlawful Entry**

8 Petitioner was inspected and lawfully paroled into the United States on February 3, 2023,  
9 pursuant to 8 U.S.C. §1182(d)(5), under an approved advance parole document. The Board has  
10 made clear that parole under advance parole is not equivalent to unlawful entry. *Matter of*  
11 *Arrabally & Yerrabelly*, 25 I&N Dec. 771, 778 (BIA 2012). Accordingly, Petitioner cannot be  
12 deemed to have "entered unlawfully".

13 Her parolee status confirms she is an "arriving alien." As *Matter of Silitonga*, 25 I&N  
14 Dec. 89, 92 (BIA 2009), and *Matter of Yauri*, 25 I&N Dec. 103, 107 (BIA 2009), make clear,  
15 USCIS retains exclusive jurisdiction over adjustment applications filed by arriving aliens.

16 **B. The Procedural Posture Confirms Jurisdiction with USCIS**

17 As the record shows, Petitioner's U.S. Citizen husband filed a bona fide Form I-130  
18 petition on her behalf, and she concurrently filed a Form I-485. USCIS accepted and issued  
19 receipt notices for both petitions, thereby accepting jurisdiction. The IJ recognized the  
20 jurisdictional shift, correctly finding that "the acceptance by USCIS of the respondent's I-485  
21 and I-830 [Sic I-130] cause this court to lose jurisdiction over this matter." Once proceedings  
22 were terminated, DHS lost any statutory basis to continue detention.

23 **III. RESPONDENTS' LEGAL ERRORS**

24 Respondent's legal arguments rely on a selective and incorrect reading of the law,  
25 creating an illusion of authority where none exist.

26 **A. Mandatory Detention Under §1225(b)(2) No Longer Applies**

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1 The detention authority provided by 8 U.S.C. §1225(b)(2)(A) applies only to an “arriving  
2 alien” who is undergoing inspection and who is in removal proceedings. That authority is not  
3 limitless, instead, it is a statutorily defined and procedurally bounded authority tied to a specific  
4 administrative process. *Demore v. Kim*, 538 U.S. 510, 528 (2003) (upholding detention only “for  
5 brief period necessary” to complete removal proceedings).

6 Section 1225(b)(2) is not a free-floating grant of custody power. It confers detention  
7 authority only while removal proceedings are pending. Once an Immigration Judge terminates  
8 proceedings, as occurred here, there is no statutory predicate for continued custody under  
9 §1225(b)(2). DHS cannot detain Petitioner on the basis of proceedings that no longer exist.

10 **B. Misuse of *Jennings v. Rodriguez* and Prohibition Against Indefinite Detention**

11 Respondent’s reliance on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), is misplaced.  
12 *Jennings* merely upheld detention during the pendency of proceedings. It did not, however,  
13 authorize indefinite detention where no statutory removal proceeding exists. To the contrary,  
14 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), holds that a government’s authority to detain an  
15 alien is “limited to a period that is reasonably necessary to secure removal.” By continuing to  
16 detain Petitioner after her removal proceeding were terminated, Respondents are attempting to  
17 create an extra-statutory and indefinite detention scheme, which is precisely what the Supreme  
18 Court has warned against.

19 **C. Misapplication of 8 C.F.R. §1003.6**

20 Respondents contend that their appeal to the Board of Immigration Appeals (BIA)  
21 suspends the IJ’s termination order, and thus they can continue to detain Petitioner. This is a  
22 deliberate misapplication of the regulation. The regulation, 8 C.F.R. §1003.6(a), states that an  
23 “order of deportation, exclusion, or removal shall not be executed” while an appeal is pending.  
24 The IJ in this case issued no such order. The IJ’s order was a termination of proceedings, which  
25 did not require execution. There is nothing for §1003.6(a) to suspend. The termination of the  
26 Notice to Appear (NTA) is a procedural finding that ends the legal case, thereby removing the  
27 DHS’ legal basis for detention.  
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1 As of the filing of this Reply, Respondents have not filed or served any appeal with the  
2 BIA, and the appeal deadline expires September 22, 2025. DHS cannot rely on an unperfected  
3 appeal to extend detention authority that the statute does not provide.

4 **D. Jurisdiction Properly Lies with USCIS**

5 The IJ’s decision to terminate proceedings was not an act of discretion. It was a correct  
6 application of controlling BIA precedent. Under 8 C.F.R. § 245.2(a)(1)(ii), USCIS retains exclu-  
7 sive jurisdiction over the adjustment applications of “arriving aliens.” The BIA has consistently  
8 held that it is appropriate for an IJ to terminate removal proceedings when an “arriving alien”  
9 has a pending Form I-485 that is jurisdictionally ripe with USCIS. *See Matter of Yauri*, 25 I&N  
10 Dec. 103, 107 (BIA 2009); *Matter of Silitonga*, 25 I&N Dec. 89, 92 (BIA 2009). DHS’s insist-  
11 ence on detention while simultaneously appealing a termination order is an attempt to circum-  
12 vent this established jurisdictional framework and cling to a detention authority that has been le-  
13 gally extinguished.

14 **IV. PETITIONER DEMONSTRATES IRREPARABLE HARM**

15 Respondents minimize Petitioner’s harm. The records show ongoing, irreparable inju-  
16 ries.

17 **A. Medical Harm**

18 Petitioner suffers from hypothyroidism, anemia, hyperlipidemia, and xerosis cutis, none  
19 of which she suffered prior to her detention. While ICE has prescribed basic pills, this cursory  
20 treatment is medically inadequate and her conditions are worsening. Inadequate or delayed  
21 medical care in unlawful detention constitutes irreparable harm. *Basank v. Decker*, 449 F. Supp.  
22 3d 205, 214 (S.D.N.Y. 2020).

23 **B. Family Separation**

24 Unlawful detention has separated Petitioner from her U.S. Citizen husband, inflicting  
25 emotional and practical hardship. The Ninth Circuit has long recognized that the separation of a  
26 family unit inflicts irreparable harm. *Hernandez vs. Sessions*, 872 F.3d 976, 995 (9<sup>th</sup> Cir. 2017).  
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**C. Constitutional Harm**

Continued detention without statutory authority is itself irreparable constitutional harm. *Hernandez*, 872 F.3d at 994–95.

**V. BALANCE OF EQUITIES AND PUBLIC INTEREST**

The balance of equities weighs overwhelmingly in Petitioner’s favor. Respondents assert only generalized enforcement interest. However, there is no public interest in the unlawful detention of an individual. *Nken v. Holder*, 556 U.S. 418, 436 (2009). The public interest is served when the DHS adheres to the rule of law and respects the liberty interests of individuals within its borders. Grant relief would enforce the jurisdictional lines between government agencies and prevent constitutional violation of indefinite detention.

Further, DHS’s failure to timely perfect an appeal to BIA underscores that its detention for Petitioner lacks any lawful basis.

**VI. CONCLUSION**

Respondents’ continued detention of Petitioner is not authorized by statute, is causing and will continue to cause irreparable harm, and serves no legitimate government interest. This Court should therefore grant the requested relief.

WHEREOF, Petitioner respectfully requests that the Court:


1. GRANT the Emergency Motion for a Temporary Restraining Order to prevent further detention and to enjoin any attempt to remove Petitioner while her habeas petition is adjudicated.
2. ISSUE a writ of habeas corpus, finding that Petitioner’s detention is unlawful and ordering her immediate release.
3. AFFIRM that jurisdiction over her adjustment of status application rests exclusively with USCIS.

Respectfully submitted.

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Dated: September 22, 2025

Paramount Law Group



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Adele Yan, Esq.  
Attorney for Petitioner