

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

LEIDY SANCHEZ BALLESTROS,
Petitioner,

v.

KRISTI NOEM, *et al.*,
Respondents.

Case No. 3:25-CV-00594-RGJ

**REPLY IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS AND
TEMPORARY RESTRAINING ORDER**

Petitioner, Leidy Sanchez Ballestros, has been detained by Immigration and Customs Enforcement (ICE) since July 9, 2025 without bond. As explained in her Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order (TRO), her continued detention is invalid and unlawful because no authority in the Immigration and Nationality Act (INA) authorizes the mandatory detention of a person in Petitioner's position. In its Response, Respondents argue that Petitioner has not satisfied administrative exhaustion, when it is clear any such effort would be futile and where no administrative remedy exists to address her constitutional claims. Respondents further argue that Petitioner, who has several serious medical conditions and who is detained in violation of her constitutional rights, has not established irreparable injury to justify a TRO.

For the reasons explained below, these arguments are unpersuasive, and this Court should grant Petitioner's motion for TRO, compelling Respondents to order her immediate release, or in the alternative, order a custody hearing before a neutral adjudicator to determine whether her detention is justified.

I. Administrative exhaustion is not required because it would be futile without intervention from this Court.

In its response, Respondents primarily argue that Petitioner should be required to file a bond motion before an immigration judge (IJ) to exhaust administrative remedies. Dkt. 24, p. 9-12. This argument fails for several reasons.

First, before Petitioner filed her Petition and Motion for TRO, on September 5, 2025, the Board of Immigration Appeals (BIA)—an Article I court whose judges are hired and fired by the Attorney General and whose rulings are binding on all immigration courts¹—adopted the Government’s novel interpretation of 8 U.S.C. § 1225 that is at issue in this case. On September 5, 2025, the BIA decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Hurtado*, the BIA held that immigration judges have no jurisdiction to hear bond requests from any noncitizen present within the United States who was not lawfully admitted “because the respondent was subject to mandatory detention” under of 8 U.S.C. § 1225. *Id.* at 216.

Hurtado forecloses administrative remedies in this case. *See e.g., Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (administrative exhaustion is satisfied for habeas petitioners challenging the Government’s novel interpretation of Section 235 because *Hurtado* makes any appeal to immigration courts “futile”); *see also Joseph v. Decker*, No. 18-CV-2640(RA), 2018 WL 6075067, at *6 (S.D.N.Y. Nov. 21, 2018) (excusing exhaustion where the remedies requested were “foreclosed at the BIA based on existing administrative precedent.”).

¹ The Attorney General appoints and supervises immigration judges, who are administrative judges within the Executive Office for Immigration Review. 8 U.S.C. § 1101(b)(4). The incumbent Attorney General has exercised her authority to fire nine BIA members. *See also* Britain Eakin, “*Trump Admin To Nearly Halve Immigration Appeals Board*,” LAW360 (February 20, 2025), <https://www.law360.com/articles/2300903/trump-admin-to-nearly-halve-immigration-appeals-board> (soon after taking office, Attorney General Bondi fired nine BIA members).

Respondent's attempts to suggest that *Hurtado* is distinguishable on the facts, such that an IJ "may conclude" that Petitioner is bond eligible, are unpersuasive. Dkt. 24, p. 11 (emphasis added). First, such a framing ignores the holding in *Hurtado*, which clearly states that "Immigration judges have no authority to redetermine the custody" of noncitizens who "crossed the border unlawfully without inspection." *Matter of Yajure Hurtado*, 29 I&N Dec. at 228 (emphasis added). It is undisputed that Petitioner entered the United States without inspection. Dkt. 24, p. 2 ("Petitioner [] entered the United States [] without authorization or inspection" in April 2024). Thus, in plain terms *Hurtado* clearly forecloses her ability to seek bond and renders administrative exhaustion futile.²

Second, even in the extremely unlikely event an IJ granted bond, it is all but certain that the Department of Homeland Security (DHS) would appeal the bond and request an auto-stay of the decision, putting Petitioner in the exact situation as the Petitioners in *Beltran Barrera v. Tindall et al*, No. 3:25-cv-00541-RGJ (W.D. Ky. Sept. 19, 2025) and *Singh v. Lewis*, No. 4:25-cv-00096-RGJ (W.D. Ky. Sept. 22, 2025). It would make no sense to require administrative exhaustion in this context, because any such finding will inevitably lead Petitioner right back to this Court – either with bond denied for lack of jurisdiction, or, even in the unlikely event bond was granted, a DHS auto-stay prohibiting her from posting the bond and obtaining release.

Finally, exhaustion is not required where, as here, Petitioner challenges the constitutionality of her continued detention. Dkt. 1, p. 19-20; *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994). Neither an IJ nor the BIA can rule on a Petitioner's constitutional claims. *See Matter of C--*, 20 I&N Dec. 529, 532 (BIA

² Indeed, the reason Petitioner withdrew her bond request in July 2025 was that the IJ indicated that he was inclined to deny bond based on jurisdiction, even before the BIA issued its decision in *Hurtado*.

1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that “the BIA has no jurisdiction to adjudicate constitutional issues”); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow).

Respondent’s reliance on *Torrealba v. U.S. Dep’t of Homeland Sec.*, 2025 WL 2444114 (S.D. Ohio Aug. 25, 2025) is misplaced. Dkt. 24, p. 9-10. In *Torrealba*, the Court focused on the relief requested in finding that Petitioner had not exhausted administrative remedies. Specifically, the Court noted that Petitioner requested an order directing Respondents to “place her in standard removal proceedings under § 1229(a)” and provide her a removal hearing in those proceedings. *Id.* The Court found that these issues were properly litigated through her pending appeal to the Board of Immigration Appeals (BIA). Here, by contrast, Petitioner primarily challenges Respondent’s claimed authority to detain her without bond. Dkt. 1, p. 16-20. As such, the holding in *Torrealba* is distinguishable and, for the reasons described above, Petitioner has demonstrated that administrative exhaustion is futile.

II. Petitioner has demonstrated that all TRO factors weigh in her favor.

A party seeking a TRO and preliminary injunction must show that: (i) they have a substantial likelihood of prevailing on the merits; (ii) they will suffer irreparable harm unless the injunction is issued; (iii) the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party; and (iv) the injunction will not adversely affect the public interest. *Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012). In her motion for TRO, Petitioner demonstrated that these factors weigh in her favor, warranting a grant of relief.

As an initial matter, outside of administrative exhaustion, Respondents do not contest that Petitioner has demonstrated a likelihood of success on the merits of her claim. And for good reason. This Court, and every other court to consider the issue on the merits, has roundly rejected the government's "novel interpretation of Section 1225." *Beltran Barrera*, No. 3:25-cv-00541-RGJ (collecting cases); *see also Singh*, No. 4:25-cv-00096-RGJ; *Patel v. Tindall*, No. 3:25-cv-373-RJG (W.D. Ky. Oct. 3, 2025). As this Court recognized, the text of Section 1225(b)(2) applies narrowly to "noncitizens arriving at a border or port" and who are "presently 'seeking admission' into the United States." *Beltran Barrera*, No. 3:25-cv-00541-RGJ. Thus, Petitioner is likely to succeed on her claim that Respondents are unlawfully subjecting her to mandatory detention because she was arrested while living within the United States, hundreds of miles from any border or port of entry.

In cases like this one, a showing of likelihood of success on the merits is "typically dispositive," *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (citing *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2009) (per curiam)) when considering a TRO, because "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Id.* (quoting *Obama for Am. V. Husted*, 697 F.3d 423, 436 (6th Cir. 2001)).

Respondent's attempts to downplay Petitioner's medical conditions ignore clear precedent that "when reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is *mandated*." *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (emphasis added). Having demonstrated a likelihood of success on her claim that her constitutional rights are being violated, Petitioner has thus satisfied the first two prongs of the TRO analysis. *See Seretse-Khama v. Ashcroft*, 215 F. Supp.2d 37, 53 (D.D.C. 2002) (ordering release on preliminary injunction based on substantial likelihood of success and finding that continued unlawful detention constitutes irreparable harm).

Further, Respondents gloss over the fact that Petitioner has been receiving treatment and monitoring of her conditions due to reoccurring symptoms since she entered the United States. This includes several visits to the emergency room due to fainting episodes, severe and persistent headaches, and vomiting blood. Dkt. 1, Exh. F; Dkt. 22-1. Her care at Grayson resulted in her being placed in an observation room where she slept on a mattress on the floor with only a sheet and wearing only a paper gown. Dkt. 22-1. Out of fear of being subjected to these conditions again, she has not requested medical care since approximately June. *Id.* The harsh conditions in ICE detention facilities, including Grayson, are well-documented and underscore both Petitioner's claims and the irreparable harm she suffers each day she is detained in violation of her constitutional rights.³

Finally, Respondents do not contest that the remaining TRO factors – balance of equities and public interest – weigh in Petitioner's favor. Here, too, with good reason. Respondents “cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Marchwinski v. Howard*, 113 F. Supp. 2d 1134, 1143 (E.D. Mich. 2000) (quoting *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983)); *see also Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982) (“[Appellee] has no right to the unconstitutional application of state law.”). Similarly, whatever public interest favors the detention of noncitizens,

³ *See e.g.*, Francia Garcia Hernandez, *Chicago Mom Arrested by ICE Faces 'Inhumane' Conditions in Kentucky Jail, Organizers Say*, Block Club Chicago, June 16, 2025, <https://blockclubchicago.org/2025/06/16/chicago-mom-arrested-by-ice-faces-inhumane-conditions-in-kentucky-jail-organizers-say/>; Citizen Portal, *Advocates Demand Justice for Maria Rodriguez at Grayson County Detention Center*, Aug. 21, 2025, <https://citizenportal.ai/articles/5665592/Grayson-County/Kentucky/Advocates-Demand-Justice-for-Maria-Rodriguez-at-Grayson-County-Detention-Center>; Citizen Portal, *Activists Demand Release of Detainees at Grayson County Jail Amid Human Trafficking Allegations*, Aug. 21, 2025, <https://citizenportal.ai/articles/5665595/Grayson-County/Kentucky/Activists-Demand-Release-of-Detainees-at-Grayson-County-Jail-Amid-Human-Trafficking-Allegations>.

that interest cannot outweigh the public interest in faithful application of the constitution and laws that Congress drafted. *Deja Vu of Nashville, Inc. v. Metro Gov't of Nashville and Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001) (“[I]t is always in the public interest to prevent violation of a party’s constitutional rights.”) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994)).

CONCLUSION

None of Respondents’ arguments prove sufficient to justify Petitioner’s ongoing, unlawful detention in immigration custody. Because Petitioner’s ongoing detention violates the Due Process Clause, the INA, and the Administrative and Procedure Act, this Court should grant her motion for TRO, order her immediate release or, in the alternative, order a prompt bond hearing.

Dated: October 6, 2025

s/ Colleen Cowgill
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CERTIFICATE OF SERVICE

I, Colleen Cowgill, hereby certify that on October 6, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

s/ Colleen Cowgill
Attorney for Petitioner