UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

AMM, *Petitioner,* v. **BOBBY THOMPSON,** Warden, South Texas ICE Processing Center; **MIGUEL VERGARA,** Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; **TODD M. LYONS,** Acting Director, United States Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of Homeland Security; **PAMELA BONDI,** United States Attorney General, *in their official capacities,* *Respondents.*	Civil Case No. 5:25-cv-01210 **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ORDERING RELEASE PENDING FINAL JUDGMENT**

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ORDERING RELEASE PENDING FINAL JUDGMENT

I. INTRODUCTION

This case is about whether the federal government can abdicate its responsibility to consider whether a detained immigrant is a flight risk or a danger to the community. AMM, or Ms. M, is an elderly woman with a number of health problems. She has been in the U.S. with lawful presence and work authorization pursuant to an affirmative asylum application *she filed* with DHS. She has no criminal record. Despite that, she was arrested, placed in a cell, and Immigration and Customs Enforcement (ICE) refuses to release her. Moreover, because she entered with permission from

the government through a visa waiver program, the Board of Immigration Appeals (BIA) has decided that she cannot even seek an opportunity to contest her detention.

But the federal government has a responsibility to provide that opportunity. The statutory and regulatory framework requires it. Moreover, the U.S. Constitution abhors detention without purpose. And here, Ms. M is neither a flight risk or a danger to the community.

Ms. M's case also underscores one reason why liberty is a closely held and zealously protected right in our system. If Ms. M were released, she could seek the care she needs, when she needs it, with the doctors whom she chooses. But trapped in a detention center, she can only waste away as her conditions get worse until such conditions become emergencies. This outcome is not only contrary to law, but it is needlessly cruel. This Court should order Ms. M's release because she is not a flight risk or a danger, or in the alternative, a bond hearing before an Immigration Judge so she can contest her detention.

II. FACTUAL BACKGROUND

At 63 years old, Ms. M suffers from multiple medical conditions, including a hiatal hernia, a thyroid disorder, severe osteoporosis, a heart condition, high blood pressure, asthma, cataracts in both eyes, colon polyps, urinary incontinence, depression, and lumbar spinal stenosis requiring surgical fusion. Petition for Writ of Habeas Corpus and Complaint, Dkt. 1, ¶¶ 13, 20 ("The Petition" or "Verified Pet.").[1] She must take many medications daily to prevent these conditions from worsening, including airsupra, albendazole, diclofenac, famotidine, levothyroxine, and pantoprazole. *Id.* ¶ 21. Over the past few years, Ms. M has suffered health emergencies every few months due to her health conditions. *Id.*, Ex. 5, ¶ 5. On several occasions, she has had to visit the hospital because of emergencies like a severe asthma attack and severe pain caused by a hiatal

[1] "[F]actual allegations set forth in a verified complaint may be treated the same as when they are contained in an affidavit." *Hart v. Hairston*, 343 F.3d 762, 765 (5th Cir. 2003).

hernia. *Id.*

Ms. M was arrested by ICE agents on Monday, September 15, 2025. Verified Pet. ¶ 18. ICE moved Ms. M on September 17, 2025, to the South Texas ICE Processing Center (STIPC) in Pearsall, Texas. *Id.* ¶ 19. The same day she arrived at STIPC, Ms. M began vomiting blood. *Id.* ¶ 22. However, Ms. M was not permitted to see medical staff at STIPC until approximately eight hours after she began vomiting blood, despite her and her daughter's repeated pleas for medical assistance. *Id.* ¶¶ 22–23. ICE did not provide any of the medications Ms. M needs until September 18, 2025, multiple days after her arrest and more than a day after she started vomiting blood. *Id.* ¶¶ 24–25.

On September 18, 2025, Ms. M experienced a sharp pain in her chest as her heart rate and blood pressure rapidly increased, to the point where she felt that her heart was on the verge of stopping. *Id.* ¶ 25. The detention center staff called an ambulance to transport her to the emergency room of a local hospital, Frio Regional Hospital. *Id.* During the ambulance ride, medical technicians put several pills under Ms. M's tongue in an effort to stabilize her condition as she lay there, shackled. *Id.* ¶ 26.

When the ambulance arrived at Frio Regional Hospital, Ms. M was again shackled as the ER staff quickly performed an EKG. *Id.* ¶ 27. She remained shackled as they hooked her up to an IV. *Id.* Because the chains held her arm taut, the medical staff had to attempt several times before they were able to successfully inject the IV needle into her vein. *Id.* Several hours passed before the ER staff believed she was stable enough to be discharged. *Id.* ¶ 28.

As soon as Ms. M was discharged from the hospital, she was immediately transported back to the detention center while shackled and placed back in her cell. *Id.* She was finally given medication by ICE, but the levothyroxine for her thyroid condition was dosed 75 milligrams higher

than her pre-detention dosage; after taking this significantly higher dosage as directed at the detention center, Ms. M began experiencing another rapid increase in her heart rate. *Id.*, Ex. 5, ¶ 9.

On September 24, 2025, Ms. M's health drastically deteriorated again, causing her to seek urgent medical care. Verified Pet. ¶ 29. First, in the early hours, a nurse gave her chlorpheniramine to attempt to stabilize Ms. M's health conditions. *Id.* Then, beginning at around 3:00 A.M., Ms. M's legs began swelling with retained liquid, to the point where she became temporarily unable to walk. *Id.* Her left hand started losing sensation, and she experienced a sharp, ongoing pain in the area around her right kidney. *Id.* She requested urgent medical care when the guard came to take down requests at 4:00 A.M., but she received no response to her request or provision of medical care for over 6 hours. *Id.* The medical staff who finally saw her only addressed Ms. M's need for medication for a urinary tract infection, not any other of her medical needs. *Id.*

Throughout her time in detention, Ms. M's serious health problems have been exacerbated by the conditions at the detention center. *Id.* ¶ 30. She does not have access to soap or hot water. *Id.* There is only one toilet for her and around 25 other people, and the toilet frequently clogs. *Id.* There is a bright light on around the clock, and she only has a hard cot to sleep on due to the facility's overcrowding, aggravating her fractured spine. *Id.*; *id.*, Ex. 5, ¶ 11. The cold temperature at which the air conditioning inside the detention center is kept, which at one point was as low as 40 degrees Fahrenheit, triggers Ms. M's asthma symptoms, and she has only been given a thin blanket. Verified Pet. ¶ 30; *id.*, Ex. 5, ¶ 11. She is especially sensitive to the cold due to her thyroid condition. *Id.*

Ms. M entered the country on a Visa Waiver Program on September 13, 2023. Verified Pet. ¶¶ 13–14. While she was present in the United States, she decided to apply for affirmative

asylum and filed an application with USCIS. *Id.* ¶ 16. Pursuant to that affirmative application, Ms. M was granted work authorization. *Id.* ¶ 17. Despite that and the lack of any removal proceedings against her, Ms. M was arrested on September 15, 2025 and placed in immigration detention. *Id.* ¶¶ 18–19. Because of the manner of her entry, she is not eligible for bond under BIA precedent. *See Matter of A-W-*, 25 I. & N. Dec. 45, 48 (BIA 2009).

III. NATURE & STAGE OF PROCEEDINGS

Ms. M filed her Petition for Writ of Habeas Corpus and Complaint, Dkt. 1 ("the Petition"), on September 26, 2025.

IV. STANDARD OF REVIEW

"The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). "[C]ommon-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances." *Id.* at 779. Thus, as codified in 28 U.S.C. § 2241, habeas corpus has "never been a static, narrow, formalistic remedy." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). Rather, its "scope has grown to achieve its grand purpose[:] the protection of individuals against erosion of their right to be free from wrongful restraint[]." *Id.*

This Court has the inherent authority to release Petitioner pending the adjudication of her habeas petition. *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974); *see also Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001). This authority ensures that the writ remains an effective remedy under extraordinary circumstances. *See Mapp*, 241 F.3d at 230. A habeas petitioner should be released pending resolution of her habeas petition where (1) the petitioner raises substantial legal claims upon which she has a high probability of success, and (2) extraordinary or exceptional circumstances exist. *See Calley*, 496 F.2d at 702, and *Mapp*, 241 F.3d at 230. Exceptional

circumstances include "serious deterioration of the petitioner's health while incarcerated" and periods of detention so short that failing to grant the motion would render the writ ineffective. *Id.*; *see also Nelson v. Davis*, 739 F. App'x 254, 254–55 (5th Cir. 2018) (restating test from *Calley*). District Courts within the Fifth Circuit have recognized and applied the legal framework of *Calley* and *Mapp* to determine release pending resolution of noncitizens' habeas petitions challenging immigration confinement. *See, e.g.*, *Singh v. Gillis*, No. 5:20-CV-96, 2020 WL 4745745, at *2 (S.D. Miss. June 4, 2020) (collecting cases).

Similarly, under Federal Rule of Civil Procedure 65, this Court can issue a preliminary injunction ("PI") and Temporary Restraining Order (TRO). To enter a PI or TRO, the Court must find four factors, on balance, weigh in Petitioner's favor:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Speaks v. Kruse, 445 F.3d 396, 399–400 (5th Cir. 2006) (quotations omitted). Interim relief under the *Mapp* framework is coextensive with relief under the traditional PI framework in the civil immigration context. *See Basank v. Decker*, 613 F. Supp. 3d 776, 794 (S.D.N.Y. 2020) (granting petitioner's motion for a preliminary injunction and holding that petitioner also qualifies for relief under *Mapp* framework).

Thus, in terms of remedies, this Court can issue a PI that releases the Petitioner for the remainder of the case. *Basank*, 613 F. Supp. 3d at 795. Similarly, under the *Mapp* framework, the court can order the Petitioner's release on personal recognizance pending a ruling on the merits, *see, e.g.*, *Mahdawi v. Trump*, 2:25-cv-389, __ F. Supp. 3d. __, 2025 WL 1243135, at *15 (D. Vt. Apr. 30, 2025), or alternately order a judicial bail hearing in which the Court assesses whether Petitioner needs to pay a bond and, if so, in what amount, *see Khalil v. Trump*, 2:25-CV-1963,

Dkt. 316, at 1 (D.N.J. June 20, 2025) (releasing petitioner on bail from immigration custody while federal habeas petition is pending); *Ozturk v. Trump*, No. 2:25-CV-374, __ F. Supp. 3d. __, 2025 WL 1420540, at *1, *9 (D. Vt. May 16, 2025) (releasing petitioner under *Mapp* following a bail hearing); *Khan Suri v. Trump*, No. 25-CV-480, 2025 WL 1392143, at *1 (E.D. Va. May 14, 2025) (granting release on bail). Finally, the Court has the equitable authority to collapse the preliminary injunction and merits inquiry and grant Petitioner's habeas petition immediately. *Valdez v. Joyce*, No. 25-CV-4627, Dkt. 15, at 8 (S.D.N.Y. June 18, 2025).

V. ARGUMENT

Petitioner satisfies the standard for release pending the Court's resolution of this case and the standard for a Temporary Restraining Order. She is likely to succeed on the merits of her claims. Furthermore, this case involves exceptional circumstances around both the nature and timing of Petitioner's arrest and detention and Petitioner's health sufficient for relief under *Mapp*. Petitioner also meets the other requirements for a PI & TRO.

A. Petitioner Raises Substantial Claims That Are Likely to Succeed on the Merits.

1. Petitioner is likely to succeed on the merits of her claim that her current detention without the ability to seek bond violates the Immigration and Nationality Act.

The Immigration and Nationality Act provides for the detention of immigrants pending a decision on removal in 8 U.S.C. § 1226. Under that section, the Attorney General may generally release a detainee on bond or conditional parole. *Id.* § 1226(a). However, the Board of Immigration Appeals ("BIA") has held that Immigration Judges lack jurisdiction to hold bond determination hearings for Visa Waiver Program holders because they are detained under 8 U.S.C. § 1187(c)(2)(E). *Matter of A-W-*, 25 I. & N. Dec. 45, 48 (BIA 2009). *Matter of A-W-* misapplied the law and deprives Ms. M of the opportunity to receive a bond hearing. Denial of a bond hearing under this decision is contrary to the INA.

The Visa Waiver Program ("VWP") "allows travel without a visa for short-term visitors from 38 countries that have entered into a 'rigorous security partnership' with the United States." *Trump v. Hawaii*, 138 S. Ct. 2392, 2411 (2018). This Program allows visiting noncitizens to enter and stay in the United States as tourists for up to ninety days without securing a nonimmigrant visa, but Program participants waive all rights to contest actions for removal other than applying for asylum. 8 U.S.C. §§ 1187(a), (b). *Matter of A-W-* found that the statutory authority to detain VSP holders is 8 U.S.C. § 1187(c)(2)(E), the general VWP provision, and not 8 U.S.C. § 1226, the provision for detaining most noncitizens. *Matter of A-W-*, 25 I. & N. Dec. at 47–48. Critically, 8 U.S.C. § 1226(a) allows the Attorney General to release noncitizens on bond if they do not fall under the circumstances outlined in 8 U.S.C. § 1226(c). *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (citing 8 U.S.C. § 1226(a)). The BIA justified their holding that VWP holders are ineligible for bond hearings by noting that the Attorney General no longer retains authority to grant bonds to noncitizens detained under § 1187. *A-W-*, 25 I. & N. Dec. at 47–48. Under that reasoning, the Immigration Judges, who derive their authority from delegation by the Attorney General, do not have authority to grant bonds to noncitizens detained under § 1187. *Id.* at 48.

Since *Matter of A-W-*, United States District Courts across the country have criticized the BIA decision and found that VWP holders *are* entitled to bond hearings by an Immigration Judge.[2]

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[2] *See Szentkiralyi v. Ahrendt*, No. CV 17-1889 (SDW), 2017 WL 3477739, at *3–4, *6 (D.N.J. Aug. 14, 2017) (rejecting *Matter of A-W-* and finding VWP habeas petitioner eligible for bond); *Emila N. v. Ahrendt*, No. CV 19-5060 (SDW), 2019 WL 1123227, at *3 (D.N.J. Mar. 12, 2019) (same); *Gjergj G. v. Edwards*, No. CV 19-5059 (SDW), 2019 WL 1254561, at *3 (D.N.J. Mar. 18, 2019) (same); *Sutaj v. Rodriguez*, No. CV 16-5092 (JMV), 2017 WL 66386, at *5 (D.N.J. Jan. 5, 2017) (same); *Neziri v. Johnson*, 187 F. Supp. 3d 211, 216, 213 (D. Mass. 2016) (ordering bond hearing for VWP habeas petitioner and noting that *Matter of A-W-* offers "no explanation" as to "where in 8 U.S.C. § 1187(c)(2)(E), the BIA finds the Secretary of Homeland Security's authority to detain aliens"); *Romance v. Warden York Cnty. Prison*, No. 3:20-CV-00760, 2020 WL 6054933, at *4 (M.D. Pa. July 28, 2020), *report and recommendation adopted*, No. 3:20-CV-760, 2020 WL 6047594 (M.D. Pa. Oct. 13, 2020) (ordering bond hearing for VWP habeas petitioner because § 1187 "does not itself provide for detention of VWP aliens"); *Malets v. Horton*, No. 420CV01041MHHSGC, 2021 WL 4197594, at *2, *2 n.6, and *6 (N.D. Ala. Sept. 15, 2021) (ordering bond hearing for VWP holder and noting that "the biggest roadblock to the government's claim that § 1187(c)(2)(E) provides detention authority is the code section's failure to mention detention at all").

There are three main issues with the holding in *Matter of A-W-* that indicate that VWP holders are, in fact, eligible for a bond hearing by an Immigration Judge. First, Congress spoke clearly that § 1226 is the statutory authority for detaining individual immigrants—so much so that even during the *Chevron* era, courts were unwilling to give deference to the BIA on *Matter of A-W-*. *See, e.g.*, *Neziri*, 187 F. Supp. 3d at 213 (finding *Matter of A-W-* not entitled to *Chevron* deference because Congress "directly spoke[] to the precise question at issue, giving the Secretary of Homeland Security the authority to detain and release aliens under 8 U.S.C. § 1226"); *Sutaj*, 2017 WL 66386, at *5 (same); *Szentkiralyi*, 2017 WL 3477739, at *4 (same). In our post-*Chevron* era, the conclusion that § 1226 governs here is even clearer.

Second, § 1187 only limits the substantive relief from removal for which VWP entrants are eligible (i.e. applicants are restricted to applying for asylum only). Allowing alleged VWP violators to request a bond determination hearing does not frustrate the intent of the VWP program to limit the types of substantive relief available, because a bond determination is a procedural, not substantive, function. *See Sutaj*, 2017 WL 66386, at *5 (stating that VWP holders are entitled to a bond hearing because a bond hearing "does not frustrate the intent of the VWP program to limit the types of substantive relief available" since a "bond determination is a procedural, not substantive, function"); *Szentkiralyi*, 2017 WL 3477739, at *4 (same).

Third, as courts have noted, *nowhere* in § 1187 does the statute set out its detention authority for VWP holders, thus, § 1226 governs. *See Neziri*, 187 F. Supp. 3d at 213 (noting that *Matter of A-W-* offers "no explanation" as to "where in 8 U.S.C. § 1187(c)(2)(E), the BIA finds the Secretary of Homeland Security's authority to detain aliens"); *Romance*, 2020 WL 6054933 at *4 (ordering bond hearing for VWP habeas petitioner because § 1187 "does not itself provide for detention of VWP aliens"); *Malets*, 2021 WL 4197594 at *6, *2 & n.6 (N.D. Ala. Sept. 15, 2021) (ordering

bond hearing for VWP holder and noting that "the biggest roadblock to the government's claim that § 1187(c)(2)(E) provides detention authority is the code section's failure to mention detention at all"). The BIA cannot find detention authority where Congress has not provided for it.

In *Gjergj G. v. Edwards* and several cases that preceded it, federal judges repeatedly rejected *Matter of A-W-* and found that 8 U.S.C. § 1226(a), including its requirement to provide a bond hearing, applied to the detention of VWP violators. 2019 WL 1254561 at *1-*3 (D. N. J. March 18, 2019). The petitioner in *Gjergj* entered the United States via the Visa Waiver Program. *Id.* at *1. The petitioner, after overstaying his visa, was detained without a bond hearing. *Id.* The petitioner challenged his detention without a bond hearing on due process grounds, and the government responded that based on *Matter of A-W-*, the petitioner was detained pursuant to 8 U.S.C. § 1187 and was not entitled to a bond hearing. *Id.* (citing 25 I&N Dec. 45 (BIA 2009)). Just like it had in a series of prior cases, the court disagreed with the government. *Id.* at *2-*3 (citing *Sutaj v. Rodriguez,* 2017 WL 63386, at *2 (D.N.J. Jan. 5, 2017); *Szentkiralyi v. Ahrendt*, 2017 WL 3477739, at *2 (D.N.J. Aug. 14, 2017); *Emila N. v. Ahrendt*, 2019 WL 1123227, at *3 (D.N.J. Mar. 12, 2019)). The court held that 8 U.S.C. § 1187(c)(2)(E) "contains no language which expressly authorizes the detention of VWP aliens sufficient to support the BIA's conclusion that the statute provides authority for the detention of VWP aliens independent of the general authority to detain aliens pending removal pursuant to 8 U.S.C. § 1226." *Id.* at *2 (quoting *Szentkiralyi*, 2017 WL 3477739 at *3) (internal quotations omitted). Accordingly, the court concluded that VWP violators are subject to detention under § 1226(a). *Id.* at *3. Because the petitioner was entitled to a bond hearing under § 1226(a), the court granted the habeas petition and directed an immigration judge to provide the petitioner with a bond hearing within ten days. *Id.*

The reasoning in *Gjergj*, and the many cases like it, applies with equal force here. Section 8

U.S.C. § 1187(c)(2)(E) does not speak to or authorize detention for those who overstay VWP. Section 1226(a) does, and allowing bond does not frustrate the VWP structure. Given that the Attorney General has delegated authority to Immigration Judges to decide custody determinations under § 1226, people who entered on a visa waiver, like Ms. M, are entitled to a bond hearing. *See* 8 C.F.R. §§ 1003.19, 1236.1; *see also* 28 U.S.C. § 510 (permitting the Attorney General to delegate her function to officers or employees within the Department of Justice).

Ms. M is detained under § 1226(a), and may be released under that section as well. Denying Ms. M a bond hearing based on *Matter of A-W-* is contrary to law, and Ms. M is likely to succeed on her claim that her current detention without the ability to seek bond violates the Immigration and Nationality Act.

2. *Petitioner is likely to succeed on her claim that her detention violates her Substantive Fifth Amendment Due Process Rights.*

"Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action[,]" and it is unquestionably a fundamental right. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The Supreme Court has recognized two justifications for immigration confinement: preventing flight and preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

Preventing a flight risk is not an issue in this case. Ms. M has been forthcoming with the government about her intention to seek asylum. Verified Pet. ¶ 16. Indeed, she has had a pending *affirmative* asylum application on file since 2023. *Id.* She is a law-abiding person who has worked in the legal field and who holds multiple higher education degrees. *Id.* ¶¶ 16, 32. As such, she understands very well that she must comply with the rules, attend every appointment and hearing, and keep the government informed of her whereabouts and how to reach her.

Furthermore, Ms. M has strong community ties in Texas, where she holds a commission

as a state Notary Public. *Id.* ¶ 17. Her adult daughter, with whom she enjoys a close relationship, resides in Texas. *Id.*, Ex. 5 ¶ 2. She also has trusted medical providers that are located in Texas. *See, e.g.*, *id.*, Exs. 8, 11. If released, Ms. M has a network of support and care in this state that will ensure she is able to meet every obligation of her immigration process.

Additionally, Ms. M is simply not a danger to the community. She has no criminal record and has not acted in any manner to indicate she is dangerous. Verified Pet. ¶ 32. Moreover, as part of the process of getting her work authorization, Ms. M had to go through a process of being vetted to confirm eligibility, which included providing information to the government that would allow it to determine if she was a danger to the community. *See, e.g.*, *id.*, Ex. 15. The fact that she received her work authorization further underscores that she is not a danger to the community, and therefore, cannot be held based on that rationale. Verified Pet. ¶ 17; *id.*, Ex. 2.

Because Ms. M poses no flight risk and no danger to the community, her detention is without lawful purpose, and she is likely to succeed on her claim that her detention violates substantive due process.

3. *Petitioner is likely to succeed on the merits of her claim that her detention without a bond hearing violates her procedural due process rights.*

Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Each factor weighs heavily in favor of Ms. M receiving a bond hearing.

First, Ms. M has a strong interest in freedom from arbitrary civil imprisonment. "[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also Zadvydas*, 533 U.S. at 690 (freedom "from government. . . detention . . . lies at the heart of the liberty [the Due Process] Clause protects."). "[C]ommitment for any purpose" thus "requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983).

Second, the risk of erroneous deprivation under existing procedures is extreme. Current procedures require Ms. M's detention without any oversight over Respondents. *See Matter of A-W-*, 25 I. & N. Dec. 45 (BIA 2009). Without such oversight, Respondents are free to continue her detention, regardless if Ms. M is a flight risk or not, creating a high risk of erroneous deprivation. *See Maldonado v. Macias*, 150 F. Supp. 3d 788, 812 (W.D. Tex. 2015) (ordering bond hearing "to provide a minimal procedural safeguard" against due process violation from prolonged detention).

Finally, Respondents' interest in continuing to detain Ms. M without a bond hearing is minimal at best. Providing her with a hearing to evaluate whether the government's detention is based on a legitimate reason would not impair any interests that the Respondents may have. *See, e.g., Lopez v. Sessions*, 2018 WL 2932726 (S.D.N.Y. June 12, 2018). Indeed, Respondents can continue to enforce immigration law against Ms. M, even if Ms. M has a hearing on bond in front of an immigration judge. In fact, Respondents may actually benefit as the cost of the hearing would "likely be outweighed by costs saved by reducing unnecessary detention." *Black v. Decker*, 103 F.4th 133, 154–55 (2d Cir. 2024). Accordingly, Respondents do not have a strong interest in detaining Ms. M without a bond hearing.

B. The Equities Favor Preliminary Injunctive Relief and the Petition Presents Extraordinary Circumstances Supporting Immediate Release Or Immediate Release on Bail.

The remaining factors favor granting a preliminary injunction, *see Book People, Inc. v.*

Wong, 91 F.4th 318, 340–41 (5th Cir. 2024), and this case presents exceptional circumstances warranting immediate release, *see Mapp*, 241 F.3d at 226.

First, Petitioner faces irreparable harm. "In the immigration context, unlawful detention is a sufficient irreparable injury." *Arias Gudino v. Lowe*, No. 1:25-CV-00571, 2025 WL 1162488, at *13 (M.D. Pa. Apr. 21, 2025). This is because of the "evidence of subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Further, Courts have found irreparable harm where continued detention would lead to specific negative health outcomes. *See, e.g.*, *Jones v. Tex. Dep't of Crim. Just.*, 880 F.3d 756, 760 (5th Cir. 2018) (risk of stroke or heart attack); *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 340 (S.D. Tex. 2020) (risk of contracting COVID-19). "A harm need not be inevitable or have already happened in order for it to be irreparable; rather, imminent harm is also cognizable harm to merit an injunction." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Further, for the *Mapp* and *Calley* framework "Examples of 'extraordinary circumstances' include the serious deterioration of the petitioner's health while incarcerated. . . ." *Kennedy v. Adler*, 35 F. App'x 386 (5th Cir. 2002) (per curiam) (citing Calley, 496 F.2d at 702)

As outlined in the fact section above, Petitioner faces many health problems, some of which have already become more severe as detention has continued. *See* Verified Pet. ¶¶ 20–30. Moreover, the harms warrant a TRO, and not just a preliminary injunction. Ms. M experienced a serious heart episode after less than *four days* in detention. *Id.* ¶¶ 25–28. Her health remains at risk for additional time spent in detention.

The harm that immigration detention can have on fragile detainees is also demonstrated by

the numerous deaths in ICE detention just this year alone. Since January, there have been 15 deaths in ICE detention. Ximenia Bustillo, *Georgia senators demand answers on more than a dozen deaths in immigration detention*, NPR (Sept. 23, 2025, 9:00 PM ET), https://www.npr.org/2025/09/23/nx-s1-5549411/ossoff-warnock-noem-immigration-detention-death. "[T]hat is the highest rate in the first six months of any year publicly available." *Id.* As ICE seeks to increase the number of detainees, the conditions will worsen from overcrowding and resources for these detainees will naturally dwindle, causing a spike in injuries and deaths. Thus, ICE's current track record further underscores the risks Ms. M faces by continuing to be placed in a detention cell.

Second, the equities weigh in favor of granting Petitioner a PI. The hardships and public interest "factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). However, the Government "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Indeed, the public interest weighs in favor of mandating compliance with the law, protecting constitutional rights, and limiting government overreach. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) ("public interest is enhanced" when procedure comports with basic constitutional due process protections).

The government will likely argue that it has an interest in enforcing immigration laws. While true, that hardly weighs in favor of the government's position here. "Granting preliminary injunctive relief will simply require Respondents to comply with their legal obligations and afford Petitioners procedural protections in connection with Respondents' exercise of discretion." *Abdi v. Duke*, 280 F. Supp. 3d 373, 410 (W.D.N.Y. 2017), *order vacated in part, Abdi v. McAleenan*,

405 F. Supp. 3d 467 (W.D.N.Y. 2019). Nor is the government losing its ability to enforce immigration laws at all. Petitioner can receive *all* of the relief she asks for in this motion and still be subject to immigration proceedings and the federal government's enforcement of immigration law. Indeed, Petitioner wishes to participate in the immigration process so that she can pursue asylum. *See* Verified Pet. ¶¶ 16.

In addition, "unnecessary detention imposes substantial societal costs." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021). The needless detention of individuals not only causes those individuals to suffer, but also "removes from the community breadwinners, caregivers, parents, siblings and employees." *Id.* (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020)). "Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Id.* And while those costs are hard to quantify, twenty states reported in *Hernandez-Lara* that "States' revenues drop because of reduced economic contributions and tax payments by detained immigrants, and their expenses rise because of increased social welfare payments in response to the harms caused by unnecessary detention." *Id.* (quotation omitted). Accordingly, the equities weigh in favor of granting the TRO and PI.

VI. CONCLUSION

For the foregoing reasons, the Court should grant this Motion and order Petitioner to be immediately released pursuant to a Temporary Restraining Order and preliminary injunction while awaiting the resolution of this case on the merits. In the alternative, the Court should hold a prompt bond hearing for the Petitioner or order that one be held immediately before an immigration judge.

Dated: September 26, 2025

Respectfully submitted,

/s/ Daniel Hatoum

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CERTIFICATE OF SERVICE

I certify that on September 26, 2025, I filed this document through CM/ECF and directed that it be mailed via certified mail to the Respondents. This document will also be immediately emailed to the Civil Division of the U.S. Attorney's Office for the Western District of Texas. I also notified that office of our intent to file this TRO before filing.

/s/Daniel Hatoum
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Attorney for Petitioner