IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Alfa Nohemi Chavez Alvarez; Jaime Misael Ramirez Ambrosio; D.R.C.; J.R.C.; Petitioners, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; GREGORY BOVINO, Chief Patrol Agent for El Centro Sector of the U.S. Border Patrol, in his official capacity; RODNEY S. SCOTT, Commissioner of Customs and Border Protection, in his official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; SAM OLSON, Deputy Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; Respondents.	Case No. 25-cv-11853 **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

INTRODUCTION

On September 28, 2025, while having a family outing in Millenium Park, Respondents unlawfully detained Petitioners Alfa Nohemi Chavez Alvarez, Jaime Misael Ramirez Ambrosio, and their two minor children, D.R.C. and J.R.C. This came nearly two years after Petitioners

entered the country, were placed in standard removal proceedings under 8 U.S.C. § 1229a, and were released on their own recognizance. Despite Petitioners' compliance with all conditions of their release, Respondents are detaining them without a bond.

Respondents have not taken a position before this Court on the statutory basis of Petitioner's detention. However, no authority in the Immigration and Nationality Act (INA) authorizes the mandatory detention of a person in Petitioners' position.

The mandatory detention provisions in 8 U.S.C. § 1226(c) do not apply because Petitioners have not been convicted of any crimes and none of the security-related grounds for such detention apply. The mandatory detention provisions in 8 U.S.C. § 1225 are likewise inapplicable.

Detention under Section 1225(b)(1) would be invalid because its scope is limited to noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings. Petitioners are not currently, and never have been, subject to expedited removal. Rather, Petitioners are both in standard removal proceedings where they are charged with a ground of inadmissibility not found in Section 1225(b)(1). Those proceedings remain ongoing.

Meanwhile, Section 1225(b)(2) applies only to recent arrivals seeking to enter the country at the border or port of entry. It does not apply to individuals, like Petitioners, who were released on recognizance upon entering the United States, placed in standard removal proceedings, and detained nearly two years later while within the United States. Though the Board of Immigration Appeals (BIA) recently issued a decision addressing access to bond for people in this context, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), that decision is based on a flawed reading of the statute.

With those options aside, the only possible basis for Petitioners' detention is 8 U.S.C. § 1226(a), which allows for release on bond or conditional parole. Indeed, when the government

released Petitioners on their own recognizance, it appears to have relied on the discretionary detention authority of Section 1226(a) and found that they were neither a danger to the community nor a flight risk. Now, however, the government has erroneously subjected them to mandatory detention under its flawed reading of the statute, which has been rejected by every federal court to consider this issue. Therefore—without an individualized determination that Petitioners are now a danger to the community or a flight risk—their current detention is unlawful.

Petitioners are entitled to a writ of habeas corpus under § 2241 and release from custody. While it considers this petition, this court should require respondents to refrain from moving Petitioners outside of the jurisdiction of the Northern District of Illinois, where they are currently detained, without this Court's approval. The court should instead grant the preliminary relief of immediate release on just terms. Petitioners satisfy all factors warranting preliminary relief: they are likely to succeed on the merits, they will be irreparably harmed if not released, the government faces no risk of harm if they are released, and the public interest favors immediate release. In the alternative, should the Court deny Petitioners' request, at a minimum it should order Respondents to show cause why this habeas petition should not be granted.

FACTUAL BACKGROUND

Petitioners Alvarez and Ambrosio are citizens of Guatemala who entered the United States with their two minor children in approximately December 2023. Petitioners entered the United States without inspection and were apprehended by immigration authorities shortly after entry. After being briefly detained, Petitioners were released on orders or recognizance and placed in standard removal proceedings pursuant to 8 U.S.C. § 1229a.

DHS has charged Petitioners with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as noncitizens who entered the United States without inspection.

On September 28, 2025, Petitioners were detained by DHS while having a family outing at Millenium Park in Chicago, Illinois. On information and belief, the operation that resulted in Petitioners' arrest was conducted by Immigration and Customs Enforcement (ICE) in coordination with Customs and Border Patrol (CBP). Petitioner Chavez is currently detained at or near the O'Hare International Airport with her two minor children. Petitioner Ambrosio is currently detained at ICE's Broadview Processing Center just outside of Chicago, Illinois.

Petitioners have lived in the United States for nearly two years. Neither Petitioner is a danger to the community nor a flight risk, nor has there been any change in circumstances to justify the revocation of their release on recognizance and sudden detention. Both have pending removal proceedings with hearing dates set for October 2027.

LEGAL STANDARD

The court should grant both Petitioners' emergency motion for temporary relief and their underlying motion for a writ of habeas corpus. As to the request for temporary relief, a district court may grant a motion for preliminary relief while the merits are under consideration when four factors favor the grant. Those four factors are a likelihood of success on the merits, irreparable harm to the movant without relief, the risk of harm to the non-movant (the government) if this court grants relief, and the public interest. *See Winter v. Nat'l Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020). The four factors are not prerequisites that must be met but should be balanced against each other. *Nken v. Holder*, 556 U.S. 418 (2009). In the Seventh Circuit, once the moving party establishes "some likelihood of succeeding on the merits" and that irreparable harm will occur in the absence of a TRO, the court performs a sliding scale evaluation of the factors, which requires a lesser showing on the other factors if an individual demonstrates greater likelihood of success on the merits or that their irreparable harm outweighs

any anticipated harm from a TRO. *Cassell v. Snyders*, 900 F.3d 539 (7th Cir. 2021). Because each of these factors strongly favors Petitioners, this court should grant the motion.

I. Petitioners are likely to succeed on the merits of their claims.

The appropriate standard for likelihood of success on the merits is "some likelihood." *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020); *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning . . . A likelihood does not mean more likely than not."). Petitioners easily meet this showing and are likely to prevail on the merits of their claim that their detention is unlawful. Under 28 U.S.C. § 2241(c)(3), a petitioner is entitled to a writ of habeas corpus if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States."

While Respondent has not taken a position before this Court on the statutory basis of Petitioners' detention, no authority in the INA authorizes the mandatory detention of a person in Petitioners' position.

Starting with 8 U.S.C. § 1225(b)(1), Petitioners are not subject to mandatory detention on this basis. Mandatory detention under Section 1225(b)(1) is limited to noncitizens charged with enumerated grounds of inadmissibility *and* placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). The government recently expanded the scope of Section 1225(b)(1) to apply to noncitizens apprehended anywhere in the United States and who are unable to prove they have been in the country continuously for two years. 15 Fed. Reg. 8139 ("January 2025 Designation"). However, Petitioners are not currently, nor have they ever been, in expedited removal proceedings. Instead, they are currently in standard removal proceedings pursuant to 8 U.S.C. § 1229a, with

pending hearing dates in October 2027. As such, they cannot be subject to mandatory detention under Section 1225(b)(1).

Turning to 8 U.S.C. § 1225(b)(2), this provision is also inapplicable. It applies only to recent arrivals seeking to enter the country at a border or port of entry. On July 8, 2025, the government attempted to expand the reach of Section 1225(b)(2) to apply to all noncitizens deemed "applicants for admission," including individuals who entered the United States without admission and were later apprehended inside the country. U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. On September 5, 2025, the BIA issued a published decision adopting the same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That position is wrong for several reasons.

The text of Section 1225 indicates its limited scope to noncitizens who recently arrived at a border or port of entry. This includes the statute's title, "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing" (emphasis added), and the many references to recently arrived individuals such as "crewm[e]n," "stowaway[s]," and "[noncitizens] arriving." 8 U.S.C. § 1225(b)(2)(B); § 1225(b)(2)(C).

In addition, the INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 acts as the "default rule" and "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301. Notably, Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that,

contrary to Respondents' policy, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's policy were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2). A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

Congressional intent and longstanding agency practice underscore the limited scope of Section 1225(b)(2). The current system existed since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585; *see also* See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that people detained after entering without inspection are considered detained under Section 1226(a)). In IIRIRA, Congress made clear that Section 1226(a) "restates" the detention authority previously found at Section 1252(a), under which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

Because of these principles, numerous federal courts have rejected Respondents' efforts to rely on Section 1225(b)(2) to justify mandatory detention for someone like Petitioner. For example, after immigration judges in Tacoma, Washington stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of

Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*,779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025). Other courts have reached the same conclusion, rejecting Respondents' erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance.[1] The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions contrary to Respondents' position. *See, e.g., Jimenez v. FCI Berlin*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025) ("the court is not persuaded by the B.I.A.'s analysis in [*Matter of Yajure Hurtado*]"); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

Section 1226 likewise provides no authority for Petitioners' detention. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated ... criminal

[1] *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025).

offenses [or] terrorist activities." *Jennings* at 289 (citing § 1226(c)(1)). Petitioners, however, have not been convicted of any crimes and none of the security-related grounds for such detention apply.

With the mandatory detention provisions set aside, Petitioners' detention is possible only under Section 1226(a), which provides for discretionary detention of individuals detained inside the country and who may be released on bond or on their own recognizance. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(d). The government has already used this release authority when, after considering Petitioners' facts and circumstances, it determined they were not flight risks or dangers to the community and released them both on their own recognizance. Now, despite no changes to the facts and circumstances considered for their release, the government has revoked their release and placed them in detention without bond. By subjecting Petitioners to mandatory detention without bond, Respondents commit several errors.

First, to the extent that Respondents purport to detain Petitioner pursuant 8 U.S.C. § 1225(b), such application would violate the INA. As discussed, 8 U.S.C. § 1225(b)(1) is limited to noncitizens in expedited removal proceedings. Meanwhile, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at the border or ports of entry who recently entered the United States. As such, neither portion of Section 1225(b) applies. To the extent that Respondents wish to detain someone in this posture, they must do so under 8 U.S.C. § 1226(a), unless they are subject to mandatory detention under 8 U.S.C. §§ 1226(c) or 1231. But their actions here violate these provisions, too, because Respondents have taken the position that all noncitizens, like Petitioners, who entered the United States without inspection are subject to mandatory detention without bond.

Further, the due process clause prohibits the government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Once a noncitizen

enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). By subjecting Petitioners to mandatory detention, Respondents deny them their due process rights. By detaining Petitioners without a bond redetermination hearing to determine whether they are a flight risk or danger to others, they have arbitrarily deprived them of their fundamental interest in liberty and being free from official restraint. Government decisions that are arbitrary are not compatible with due process. *See County of Sacramento v. Lewis,* 523 U.S. 833, 845 (1988). The government has previously and affirmatively released Petitioners into the United States and allowed them to remain at liberty while their standard removal proceedings are ongoing. As a matter of due process, the government may not arbitrarily reverse that previous decision.

II. Petitioners will suffer irreparable harm absent injunctive relief.

Consistent with several Circuits to consider the issue, the Seventh Circuit has recognized that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm." *Preston v. Thompson,* 589 F.2d 300, 303 n. 3 (7th Cir. 1978); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011)*; see also Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001) ("[W]hen 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."); *Elrod v. Burns,* 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). A temporary restraining order is the only way to prevent deprivations of Petitioners' constitutional rights.

Further, numerous courts have recognized that continued unconstitutional detention constitutes irreparable harm. *See, e.g., Newman v. Metrish,* 300 Fed. App'x 342, 344 (6th Cir. 2008) (finding that "[the petitioner] suffered a continuing injury while incarcerated"); *Dovala v. Baldauf,*

No. 1:16-cv-2511, WL 1699917 (N.D. Ohio 2021) ("[Petitioner's] continued detention constitutes irreparable harm"); *Matacua v. Frank,* 308 F.Supp.3d 1019, 1025 (D. Minn. 2018) (finding that a "loss of liberty" is "perhaps the best example of irreparable harm.").

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("[t]he deprivation [ ] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. The use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone"); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained").

Here, Petitioners face irreparable harm each day they remain detained in violation of their constitutional rights. Further, Petitioner Chavez is detained with the family's two minor children, D.R.C. and J.R.C., ages 8 and 3 respectively. The continuation of these grave harms can only be prevented if the Court grants this preliminary injunction; this factor therefore weighs heavily in Petitioners' favor.

III. The remaining factors favor granting a temporary restraining order.

The third and fourth factors are in Petitioners' favor. Where, as here, the government is a

party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken*, 556 U.S. at 435. When assessing whether a TRO or preliminary injunction is warranted, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 129 S. Ct. at 376.

The Seventh Circuit recognizes that "the public has a strong interest in the vindication of an individual's constitutional rights." *O'Brien v. Town of Caledonia,* 748 F.2d 403, 408 (7th Cir. 1984). Further, the Court has recognized that the government cannot reasonably assert that it will be harmed when the record demonstrates a "strong likelihood" of constitutional violations. *Id.* at 409; *see also Zepeda v. INS,* 753 F.2d 719, 727 (9th Cir. 1983) (finding that federal respondents "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations."); *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."). Thus, any burden imposed by requiring the Respondents to release Petitioners from custody is both *de minimis* and clearly outweighed by the substantial harm they will suffer as long as they continue to be detained.

Absent a temporary restraining order, the government would effectively be granted permission to continue detaining Petitioners in violation of federal and constitutional law.

CONCLUSION

Based on the foregoing, Petitioners request that this Court grant the motion for a temporary restraining order. In the alternative, they ask this Court to order Respondents to show cause within three days establishing why their habeas petition should not be granted.

Dated: September 29, 2025 Respectfully submitted,

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