UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

M.A.M.H.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:25-cv-00240-RO
	)	
KRISTI NOEM, et al.,	)	
	)	
Respondents.	)	
	)	

PETITIONER'S REPLY IN SUPPORT OF PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND HABEAS PETITION

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INTRODUCTION

Petitioner M-A-M-H- has been unlawfully detained and separated from her children for over a month based on Respondents' erroneous new interpretation of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b), as requiring her mandatory detention. Respondents' new interpretation is a sudden up-ending of their long-standing interpretation of the statute; a new interpretation that *nearly every federal court to consider the matter has rejected.* In addition, Respondents' continued detention of Petitioner violates her due process rights under the Fifth Amendment of the United States Constitution. But rather than respond to the case law and points raised in Ms. M.H.'s habeas petition and motion for temporary restraining order, Respondents ignore this extensive case law and simply regurgitate arguments that have been repeatedly rejected by federal courts both here in Texas and across the country ever since Respondents reversed course and started making these arguments for the first time four months ago.

Because Petitioner has demonstrated that she satisfies each factor required in her motion for temporary restraining order, Petitioner respectfully requests that this Court join the overwhelming chorus of federal courts across the country in rejecting Respondents' arguments, and find that Petitioner is being unlawfully detained under 8 U.S.C. § 1225, grant her motion, and order her immediate release. In the alternative, the Court should order Respondents to swiftly provide Petitioner with an individualized bond hearing within three days that comports with due process.

ISSUES IN DISPUTE

Petitioner meets all four elements for injunctive relief here (but only two remain at issue as Respondents have apparently conceded at least two by failing to respond): (1) a likelihood of success on the merits; (2) a substantial threat of irreparable harm; (3) that the balance of equities favors the movant/Petitioner; and (4) the injunction is in the public interest. *See Winter v. Natural*

Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); *see also Jones v. Tex. Department of Criminal Justice,* 880 F.3d 756, 759 (5th Cir. 2018). Thus, only two of these factors remain in dispute: (1) whether Petitioner is likely to succeed on the merits that she is being unlawfully detained under 8 U.S.C. § 1225, as discussed below,[1] and (2) whether the balance of the equities favor the Petitioner. *See* TRO Mtn. at 22 (Dkt. 5), Resp. at 8 (Dkt. 13). The remaining factors were conceded by Respondents and not at issue.

The first issue – likelihood of success on the merits – should not be in dispute in this case because the merits issue that Respondents continue to push here has been met with what has been called "one of the most thorough legal rebukes in recent memory"; one in which "[m]ore than 100 federal judges have now ruled at least 200 times" against Respondents' merits argument.[2] Thus, the likelihood of success on the merits here greatly favors Petitioner. The underlying merits issue in dispute is whether Respondents are unlawfully detaining Petitioner on a mandatory basis pursuant to 8 U.S.C. § 1225, or whether 8 U.S.C. § 1226(a) entitles Petitioner to a bond hearing. *See* TRO Mtn. at 12-18 (Dkt. 5), Resp. at 11-22 (Dkt. 13). Although Respondents do not address the dozens and dozens of cases cited in Petitioner's brief, Respondents' arguments have been raised and repeatedly rejected by courts throughout the country. *Id.* Similarly, the second TRO factor in dispute – balance of the equities – also clearly bends in Petitioner's favor. For example, Respondents assert that "[o]rdering release in this circumstance produces no net gain to Petitioner, while mandating continued

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[1] Although Respondents dispute Petitioner's arguments that her detention is unlawful in violation of the Immigration and Nationality Act (INA) and on constitutional due process grounds, Respondents do not dispute Petitioner's arguments that she is also likely to succeed because her detention was an arbitrary and capricious agency action not in accordance with law. *See* TRO Mtn. at 19-20 (Dkt. 5).

[2] Cheney, Kyle, *More than 100 judges have ruled against the Trump admin's mandatory detention policy*, POLITICO, available at https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detention-deportation-00632086 (Oct. 31, 2025).

detention until at least the conclusion of removal proceedings furthers the government's interests in enforcing the immigration laws." Resp. at 11 (Dkt. 13). But, to the contrary, "'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests." *Rojas*, 2025 U.S. Dist. LEXIS 217585, *7, 2025 WL 3038262 (internal quotations omitted).

Next Respondents argue in their response that the issue of this Court's jurisdiction is in dispute. Respondents claim that two statutes, 8 U.S.C. § 1252(b) and § 1252(g) preclude this Court's jurisdiction. As discussed below, the language of these statutes, Supreme Court precedent, and scores of federal courts have again rejected the jurisdictional arguments that Respondents assert here. *See, e.g., Rojas v. Noem*, No. 3:25-civ-0443, 2025 U.S. Dist. LEXIS 217585, *4, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) (explaining that the "Court already rejected essentially the same arguments" from Respondents); *Vieira v. Anda-Ybarra*, __ F. Supp. 3d __, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025); *Santiago-Santiago v. Noem*, No. 3:25-cv-003612025, WL 2792588, at *3-5 (W.D. Tex. Oct. 1, 2025) (rejecting §§ 1252(g) and 1252(b)(9) arguments); *Lopez-Arevelo v. Ripa*, 3:25-cv-00337, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828, at *4-5 (W.D. Tex. Sep. 21, 2025) (rejecting § 1252(g) arguments). Here, too, this Court has jurisdiction over this petition and motion, because Petitioner challenges the lawfulness of her detention on both statutory and constitutional grounds, not the Respondents' commencement, adjudication, or execution of removal proceedings.[3] A district court may grant a writ of habeas corpus if a petitioner is

[3] Respondents also argue that "this Court lacks jurisdiction under habeas to order an immigration judge to hold a bond hearing." Resp. at 8 (Dkt. 13). But, as the Western District of Texas recently noted, "Respondents do not cite to any authority for this proposition, and the Court is not aware of any." *Rojas v. Noem*, 2025 U.S. Dist. LEXIS 217585, *11, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025). As a result, this throwaway contention by Respondents cannot be seriously considered as in dispute. *See id.* ("Given that that majority of courts have granted such relief, *see Lopez-Arevelo*, 2025 WL 2691828, at *13 (collecting cases), and that district courts have flexibility in fashioning habeas remedies, *see Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005), the Court finds that it has the authority to order a bond hearing as a habeas remedy.").

in federal custody in violation of the Constitution or federal law. *See, e.g., Buenrostro-Mendez v. Bondi*, No. 4:25-cv-3726, 2025 U.S. Dist. LEXIS 201967, at *2, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025).

Finally, the parties dispute whether Respondents' detention of Petitioner without an individualized assessment of flight risk and dangerousness deprives Petitioner of her constitutional right to procedural due process under the Fifth Amendment of the United States Constitution. As discussed below, this issue also should not be in dispute because the significant weight of case law makes clear, noncitizens like Petitioner who are within the United States and have established connections in this country have constitutional due process rights beyond what is provided by statute. *See e.g., Rojas*, 2025 U.S. Dist. LEXIS 217585, at *11, 2025 WL 3038262 ("While there is no evidence in the record indicating that [petitioner] would be a flight risk or a danger to the community, if any such concerns exist, they would be squarely addressed through a bond hearing."); *Santiago-Santiago v. Noem*, 2025 WL 2792588. Furthermore, Respondents have not introduced any evidence demonstrating that Petitioner poses a danger to the community, nor do they argue that she is. Moreover, the decision to release Petitioner years ago and terminate her removal proceedings previously, in and of itself, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Id.* at *10-11.

The parties agree that release from custody is one form of relief that is available to Petitioner through this habeas action. *See* Resp. at 10 (Dkt. 13), TRO Mtn. at 7 (Dkt. 5). Petitioner has an upcoming master calendar hearing before the immigration court and respectfully requests her immediate release.

ARGUMENT

I. Respondents Are Unlawfully Holding Petitioner under 8 U.S.C. § 1225, which Does Not Apply to Petitioner.

A. The statutory text of Sections 1225 and 1226 demonstrate that Petitioner is governed by Section 1226, not 1225.

Respondents assert that Petitioner is "subject to [mandatory] detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ." Resp. at 17 (Dkt. 13). Rather than respond to the *over fifty* district court decisions cited by Petitioner that considered and rejected the *very argument* that Respondents continue to assert here, Respondents barrel ahead with their own recent (and repeatedly rejected) interpretation as a basis for locking up Petitioner, separating her from her children, and subjecting her to irreparable and ongoing harm via her detention and deprivation of her constitutional rights. *See* TRO Mtn. at 15-17 (Dkt. 5), Pet. At 10-13 (Dkt. 1). Petitioner urges the Court to similarly reject Respondents' interpretation here just as numerous courts have done in recent months, including the United States District Court for the Southern District of Texas. *See, e.g., Buenrostro-Mendez*, U.S. Dist. LEXIS 201967 at *6, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Rojas*, 2025 U.S. Dist. LEXIS 217585 at *3-4, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) ("Respondents rely on many of the same arguments that this Court has already addressed and rejected."). Respondents are simply incorrect in their interpretation of § 1225 as applied here.

Indeed, "[a]s almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support finding that § 1226 applies to these circumstances." *Buenrostro-Mendez*, U.S.

Dist. LEXIS 201967 at *6, 2025 WL 288634;[4] *see also Rodriguez v. Bostock*, No. 3:25-cv-5240, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases and explaining that nearly "[e]very district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Morales-Martinez v. Raycraft*, No. 25-cv-13303, 2025 U.S. Dist. LEXIS 220596, at *17 (E.D. Mich. Nov. 7, 2025) (collecting cases). Just as they did in *Buenrostro-Mendez*, Respondents here "have failed to provide controlling authorities or persuasive reasons that would justify reaching a different result." *Buenrostro-Mendez v. Bondi*, 2025 U.S. Dist. LEXIS 201967, *7, 2025 WL 2886346.

Respondents now ignore over the over fifty decisions cited by Petitioner from district courts across the country, including this district, holding that noncitizens like Petitioner, who are apprehended while residing inside the United States, are *not* subject to mandatory detention during removal proceedings under 8 U.S.C. 1225(b)(2). Resp. at 14 (Dkt. 13). Respondents' current argument reflects a recent reversal of the government's prior interpretation of the immigration detention statutes. *See Martinez v. Hyde*, No. 1:25-cv-11613, 2025 WL 2084238, *4–5 (D. Mass. July 24, 2025). Pushing against the growing weight of authority, including from this district, Respondents point to just two unpersuasive decisions of federal courts outside of the Fifth Circuit in an attempt to support their position: *Vargas v. Lopez*, No. 8:25-civ-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) and *Chavez v. Noem*, No. 3:25-civ-23250, 2025 WL 2730228 (S.D. Cal. Sept.

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[4] *See also Ventura Martinez v. Trump*, No. 3:25-cv-01445, (W.D. La. Oct. 22, 2025); *Martinez v. Noem*, No. 3:25-cv-430, 2025 WL 2965859, at *2 (W.D. Tex. Oct. 21, 2025); *Santiago-Santiago,* 2025 WL 2792588, at *3 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo,* 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-011932025, WL 2642278 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 3:25-cv-01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

24, 2025). *See* Resp. at 11, 12 (Dkt. 13). These cases are inapposite here. In both of these cases, the courts did not grapple with the reasoning in the weight of authority arguing the contrary statutory reading, did not address the meaning or import of "seeking" admission in § 1225(b)(2)(A), and accepted the government's position that § 1225(b)(2) and § 1226 overlap, ignoring issues of superfluity that those statutory sections present.

Faced with the significant weight of authority running squarely contrary to their position, Respondents instead urge the Court to look to *Martinez v. Mukasey*, 519 F.3d 532, 541–42 (5th Cir. 2008), explaining that in that case the Fifth Circuit was "analyzing a different INA provision that is not at issue here (8 U.S.C. § 1182(h))." Resp. at 12 (Dkt 13). It is no small wonder then why Respondents chose to ignore the wealth of case law analyzing the very INA provision that *is* at issue here and instead cited to a case analyzing an INA provision that is *not* at issue here in an "adjustment of status" case.

Moreover, in their attempt to contort the "unambiguous language" of § 1225(b), Respondents wholly ignore key terms that provide proper meaning to the statute – "inspection," "aliens arriving," and "seeking admission." In urging the Court to look to *Martinez* for guidance in construing the statutes at hand, Respondents fail to note that the *Martinez* court found its analysis to be "bolstered by the 'longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.'" *Martinez,* 519 F.3d at 544 (quoting *Cardoza-Fonseca*, 480 U.S. at 449 (citations omitted)). The Fifth Circuit went on to take note that such approach "is based on the drastic nature of removal." *Id.* "'We will not assume that Congress meant to trench on [the alien's] freedom beyond that which is required by the narrowest of several possible meanings of the words used.'" *Id.* (quoting *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948)). Because *Martinez* trains its focus on an unrelated portion of the INA, the Court should decline to

stretch its reading of § 1225 and § 1226 beyond the plain and unambiguous language of the statute that § 1225(b)(2) applies to noncitizens who are presently "seeking admission."

A number of courts have agreed that § 1225(b)(2) only reaches individuals who are in the process of entering or who have just entered the United States. *See, e.g., Martinez*, 2025 WL 2084238 at *6 (citing the use of present and present progressive tense to support conclusion that § 1225(b)(2) does not apply to individuals apprehended in the interior); *accord Lopez Benitez v. Francis*, No. 1:25-cv-05937, 2025 WL 2371588, at *6–7 (S.D.N.Y. 2025). *See also United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in § 1225(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process"). And because Petitioner is not, nor was she at the time she was arrested, "seeking admission," *id.*, § 1225(b)(2)(A)'s mandatory detention provision does not apply. Respondents are wrong to interpret the statute as placing Petitioner within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225. Resp. at 12 (Dkt. 13). *See also Romero v. Hyde*, ___ F. Supp. 3d ___, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) ("[T]he phrase 'seeking admission,' otherwise undefined in the statute, necessarily requires some 'some sort of present-tense action.'"); *Campos-Leon v Forestal*, No. 1:25-cv-01774, 2025 U.S. Dist. LEXIS 185527, at *8, 2025 WL 2694763 (S. D. Ind. Sept. 22, 2025) ("[A]ssuming for the sake of argument that Mr. Campos Leon is 'an applicant for admission,' the respondents ha[ve] not explained how he is 'seeking admission.'"); *Doe v. Moniz*, No. 1:25-cv-12094, 2025 WL 2576819, at *1 (D. Mass. 2025).

Respondents here have not disputed that Petitioner entered the U.S. in 2013, or that Respondent DHS released Petitioner in 2013 on her own recognizance, or that Respondent EOIR

dismissed Petitioner's removal proceedings in 2022 upon DHS's motion. Resp. at 8-9 (Dkt. 13). Respondents have now charged Petitioner with (1) "being present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the attorney general," and (2) as "an immigrant who, at the time of application for admission, [was] not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document . . . and a valid passport or other suitable travel document [. . .]". Resp. Exh. 1 at 1-4 (Dkt. 14). The record reflects Respondents did not designate Petitioner as an "arriving alien" on the Notice to Appear (NTA). *Id.* at 1. The NTA indicates a Customs and Border Patrol (CBP) Acting/Patrol Agent in Charge electronically signed the NTA at 4:47 p.m. on October 8, 2025. *Id.* at NTA (4 of 4). Then, just two minutes later at 4:49 p.m., the NTA's certificate of service was electronically signed by a different CBP officer, stating that Petitioner "refused to sign." Neither Petitioner, nor her counsel, saw the NTA until Respondents submitted it as an exhibit to their Response. Petitioner has not admitted these charges before an Immigration Judge. *Id.* at 1-2. It is therefore *not* undisputed that Petitioner is an arriving alien and applicant for admission. The Court should find that it is clear that a person already present in the interior of the United States, is not an individual "arriving" or seeking admission to the United States.

B. The Court should not afford deference to the Board of Immigration Appeals (BIA) recent decision in *Matter of Yajure-Hurtado*.

Respondents next turn to the BIA published decision in *Matter of Yajure-Hurtado*, 29 I&N 216 (BIA 2025), issued on September 5, 2025, to support their position. However, this Court need not defer to the BIA's interpretation and should reject its reasoning. *See, e.g., Buenrostro-Mendez v. Bondi*, 2025 U.S. Dist. LEXIS 201967, *7 n.3, 2025 WL 2886346 ("As other courts have recognized, however, this court is not bound by *Matter of Yajure Hurtado*'s interpretation of the

relevant statutes under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). . . . The court does not find *Yajure Hurtado* persuasive."). The Board in *Yajure-Hurtado* leaves aside and unmentioned the geographic absurdity of seeking admission after years of presence in the interior, and instead finds "plain statutory language" controls. 29 I&N Dec. at 221. The BIA goes on to hold that "[t]he statutory text of the INA is not "doubtful and ambiguous" but is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status. *See* INA § 235(b)(1), (2), 8 U.S.C. § 1225(b)(1), (2)." *Id.*

Under the Supreme Court's recent decision in *Loper Bright Enterprises*, a federal habeas court should independently interpret the meaning and scope of § 1225(b) using the traditional tools of statutory construction. Because the BIA's decision in *Matter of Yajure-Hurtado* is a deviation from the agency's long-standing interpretation of § 1225 and § 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, a habeas court should give it no weight under *Loper Bright*. Indeed, a number of courts have instead found that under *Loper Bright*, the prior longstanding practice of the government—under which noncitizens who resided in the United States and previously entered without inspection were deemed subject to § 1226—is a useful interpretive aid. *See, e.g., Maldonado v. Olson*, No. 0:25-cv-3142, 2025 WL 2374411 at *11 (D. Minn. Aug. 15, 2025).

C. Congress did not intend to mandate detention for all applicants for admission.

The statutory history also supports a limited reading of § 1225(b)'s reach and reflects immigration law's longstanding distinction in the detention framework for noncitizens arrested after entering the country and those arrested when attempting to enter the country. Prior to passage

of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during "deportation" proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). Those "deportation" proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.* IIRIRA maintained the same basic detention authority and access to release on bond in the provisions now codified at 8 U.S.C. § 1226(a). As Congress explained, the new § 1226(a) merely "restate[d] the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Separately, through IIRIRA, Congress enacted new detention and removal authorities for people who are apprehended upon arriving in the United States. See 8 U.S.C. § 1225 (1)–(2). These individuals can be placed in special expedited removal proceedings (where DHS officers issue administrative removal orders without any hearings), or regular removal proceedings (before IJs). Either way, such people are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), § (iii)(IV), § (b)(2)(A). In implementing IIRIRA's detention authority, the former Immigration and Naturalization Service clarified that—just as before IIRIRA—people who entered the United States without admission or parole and were not apprehended while "arriving" in the country would continue to be detained under the same detention authority they always had been: § 1226(a) (previously § 1252(a)). *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge . . . . This procedure maintains the status quo.").

"Congress' use of a verb tense is significant in construing statutes." *United States v. Wilson*, 503 U.S. 329, 333 (1992). In evaluating another provision, § 1225(b)(2)(C), the Board of Immigration Appeals recognized that the use of the word "arriving" in § 1225(b)(2)(C) denotes an important limitation. Specifically, the Board has noted the use of the present progressive "arriving" in § 1225(b)(2)(C) instead of the past tense, "arrived," shows "some temporal or geographic limit" on the arrival process. *Matter of M-D-C-V*, 28 I&N Dec. 18, 23 (BIA 2020). The present progressive tense is used when an activity is still in progress. *See Al Otro Lado v. Wolf*, 952 F.3d 999, 1011 (9th Cir. 2020) ("The district court recognized that '[t]he use of the present progressive, like use of the present participle, denotes an ongoing process.'" (quoting *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019))).

Throughout the INA, the term "arriving" is frequently used to describe a boat docking at shore, an aircraft landing at an airport, or an individual crossing into the United States at a port of entry or the border. *See e.g.*, 8 U.S.C. § 1231(d)(2) (describing a vessel arriving with a noncitizen stowaway), § 1281 (providing rules for arriving vessels or aircraft), § 1287 (same); § 1103(a)(10) (noting the powers of the Attorney General in the event of an "actual or imminent mass influx of [noncitizens] arriving off the coast of the United States, or near a land border"), § 1222(a) (providing rules for medical examinations for "[noncitizens] . . . arriving at ports"), § 1224 (authorizing the Attorney General to regulate "ports of entry for [noncitizens] arriving by aircraft"), § 1225a(a)(3)(B) (mandating the Attorney General to collect data on "[noncitizens] arriving from [specified] foreign airport[s]"), § 1230(a) (ordering the Attorney General to record each surrender of every immigrant visa "at the port of entry by the arriving alien"), § 1231(c)(1) (outlining procedures for the removal by vessels or aircraft of "[noncitizens] arriving at a port of entry"). In other words, "arriving" is used to denote that the process of entering into the United

States is underway. Thus, throughout the INA, the term "arriving" is often linked to a specific geographic point such as a port of entry, an airport, or the border. *See, e.g.,* 8 U.S.C. §§ 1103(a)(10), 1222(a), 1230(a), 1231(c)(1). Indeed, this usage matches the traditional understanding of "arriving alien" as referring to "aliens who appear at a port of entry." *M-D-C-V*, 28 I&N Dec. at 24. Although § 1225(b)(2)(C) applies to those arriving "whether or not at a designated port of arrival," the usage of "arriving" throughout the INA demonstrates Congress's intent for the term to describe those geographically close or otherwise proximately connected to the border or a port of entry— a location where one enters into the United States.

II. This Court has jurisdiction because Petitioner is challenging her unlawful detention, not Respondents' decision to commence, adjudicate, or execute removal proceedings.

Respondents argue that two statutes preclude this Court's jurisdiction: 8 U.S.C. § 1252(g), and §1252(b)(9). Resp. at 22-23 (Dkt. 13). But they do not point to any authority to overcome what courts around the country are finding, that in habeas proceedings where petitioners are seeking review of the abrupt agency change based on the agency's misreading of the detention statutes' texts, that "§ 1252(g) applies only "to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders." *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. Oct. 1, 2025). Many other courts have specifically found that § 1252(b)(9) does not present a jurisdictional bar to habeas challenges to immigration detention. *See, e.g., Ozturk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025); *Escalante v. Noem*, No. 9:25-cv-182, 2025 WL 2206113, at *2–3 (E.D. Tex. Aug. 2, 2025); *Ayobi v. Cas*tro, No. 5:19-cv-1311, 2020 WL 13411861, at *3 (W.D. Tex. Feb. 25, 2020).

Respondents also argue that 8 U.S.C. § 1252(g) deprives the court of jurisdiction.

Numerous courts, including the Supreme Court, have cautioned that the limits of § 1252(g) are narrow and apply only to the "review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020); *see also Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482 (1999) (construing Section 1252(g)'s jurisdictional bar as limited to "three discrete actions" and explaining that it is "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings"). The Supreme Court has not interpreted this language to "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citing *AADC*, 525 U.S. at 482-83).

The Fifth Circuit has also recognized that § 1252(g) does not bar judicial review of a decision to detain a noncitizen, "because such an order, 'while intimately related to efforts to deport, is not itself a decision to 'execute removal orders' and thus does not implicate section 1252(g).'" *Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000) (quoting *Zadvydas v. Underdown*, 185 F.3d 279, 285 (5th Cir. 1999). And in the specific context of challenging the government's detention without the opportunity for a bond hearing, a court in this Southern District of Texas recently found that a noncitizen's challenge to his detention as unconstitutional is not barred by § 1252(g). *Covarrubias v. Vergara*, No. 5:25-civ-112, 2025 U.S. Dist. LEXIS 206527, *12, 2025 WL 2950096 (S.D. Tex. Oct. 3, 2025). Here, Petitioner challenges the lawfulness of her detention, not the commencement, adjudication, or execution of removal proceedings. The Court therefore has jurisdiction in this matter.

III. Petitioner's detention without an individualized assessment of flight risk and dangerousness deprives her of her constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.

Even assuming *arguendo* that Respondents' interpretation of the INA was correct, which it is not, Petitioner's "constitutional interest in her liberty exists above and apart from the INA." *Rojas*, 2025 U.S. Dist. LEXIS 217585, *10, 2025 WL 3038262. Respondents claim that "Petitioner is not entitled to more process than what Congress provided her by statute, regardless of whether the applicable statute is § 1225(b) or § 1226(a)." Resp. at 24 (Dkt. 13). But Respondents' argument "relies on an expansive reading of *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) and other recent Supreme Court precedent." *Rojas*, 2025 U.S. Dist. LEXIS 217585 at *6, 2025 WL 3038262. In pointing to *Thuraissigiam*, for example, Respondents conflate noncitizens who attempted to enter the country and apprehended very near the border, whose due process rights are those afforded by statute, with noncitizens, like Petitioner, who have established connections in this country and therefore have due process rights in deportation proceedings. 591 U.S. at 107.

Respondents argue that the "[m]andatory detention of an applicant for admission during 'full' removal proceedings does not violate due process, because the constitutional protections are built into those proceedings, regardless of whether the alien is detained. 8 U.S.C. § 1229a." Resp. at 24 (Dkt. 13). For example, Respondents argue that Petitioner "has an opportunity to be heard by an immigration judge and represented by counsel of his [sic] choosing at no expense to the government." *Id.* But the process Petitioner has received in relation to her removal proceedings is entirely distinct from the process she has received in relation to her detention. *Rojas*, 2025 U.S. Dist. LEXIS 217585, *6-7, 2025 WL 3038262. The Court must determine whether the process she has received in relation to detention (none) is sufficient under the Fifth Amendment. *Id.* It is not.

See id. (finding "that [the petitioner's] detention without an individualized assessment of flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution" and thus "he is entitled to a bond hearing.").

As in *Rojas*, Petitioner has been deprived of her constitutional right to procedural due process because she has a private interest of liberty that is affected by the official action to detain her; the risk of an erroneous deprivation of her liberty interest is significant; and the Government's interest is not burdened by providing her a bond hearing because her detention employs governmental resources and because their ability to proceed with removal proceedings will not be burdened if Petitioner is provided a bond hearing or released from custody. *See Rojas,* 2025 U.S. Dist. LEXIS 217585 at *6-7, 2025 WL 3038262 (applying the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976)); *see also Rojas v. Venegas*, 2025 U.S. Dist. LEXIS 65294, *1, 2025 WL 996421 (S.D. Tex. Apr. 2, 2025) (Olvera, J.) ("The Court further holds that Respondents produced no evidence that Petitioner is a danger to the public.") (TPS case). Because she was released from immigration custody and spent over 11 years at liberty in the United States, Petitioner "possesses a strong interest in her continued freedom from detention." *Rojas*, 2025 U.S. Dist. LEXIS 217585, *8, 2025 WL 3038262.

Finally, the significant weight of case law, much of it recent, on this very issue, supports the conclusion that noncitizens (like Petitioner) who have lived in the United States and are apprehended within the interior, are entitled to due process under the Fifth Amendment of the Constitution. *See, e.g., Santiago-Santiago v. Noem*, 2025 WL 2792588, at *7-10 (W.D. Tex. 2025) (noting that the Supreme Court, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), found that the legal question of whether mandatory detention without bond was proper was too remote from

removal actions to fall within the scope of § 1252(b)(9)); *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)) (explaining that the distinction is one of place—not status: "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality."); *Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880, at *2 (D. Colo. Sept. 16, 2025) (explaining that where a petitioner's claims are legal in nature and challenge specific conduct unrelated to removal proceedings the court will reject Respondents' § 1252(b)(9) jurisdictional argument).

CONCLUSION

Respondents are unlawfully detaining Petitioner, based entirely on a reading of the Immigration and Nationality Act that has been repeatedly and almost unanimously rejected by courts across the country, including in this District. Petitioner continues to face irreparable harm every day she is unlawfully detained by Respondents. Respondents have not established that this Court is precluded from reviewing Petitioners' claims, or that their new interpretation of § 1225 and § 1226, as applied to Petitioner, is supported by binding or persuasive case law, or by statutory construction.

The writ is reduced to a sham if the trial courts do not act within a reasonable time. *See Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978); *Fay v. Noia*, 372 U.S. 391, 400 (1963) ("The writ must be construed to afford "a swift and imperative remedy in all cases of illegal restraint or confinement."). Petitioner respectfully requests that the Court grant her TRO motion; grant her petition for writ of habeas corpus; and order her immediate release or, in the alternative, order Respondents to provide Petitioner with a

bond hearing that comports with due process within three days.

Date: November 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2025, I electronically filed the foregoing Reply using the CM/ECF system, which will electronically deliver the filing to the parties of record in this matter.

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