UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

P.B., Petitioner, v. **THOMAS BERGAMI,** Warden, Prairieland Detention Center; **JOSHUA JOHNSON,** Field Office Director, Dallas Field Office, U.S. Immigration and Customs Enforcement **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; **PAMELA BONDI,** Attorney General of the United States, in their official capacities Respondents.	**CIVIL ACTION NO. 3:25-cv-2978**

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

INTRODUCTION

Respondents' brief fails to meaningfully address the unique and unlawful circumstances of Petitioner P.B.'s detention: Because the government *already* once detained Petitioner under § 1225 and *already* determined that Petitioner was eligible for parole, it has no statutory basis to revoke Petitioner's parole and *re-detain* her without due process—much less under the inhumane conditions she has been subjected to here, which threaten her life and offend the Constitution.

Petitioner P.B. did everything expected of her as a refugee. After escaping to this country for her life, she presented herself immediately to immigration authorities and served mandatory detention under § 1225; while detained, she demonstrated a credible fear of persecution or death to an asylum officer; she was released on parole "for urgent humanitarian reasons or significant public benefit," 8 U.S.C. § 1182(d)(5)(A); and, she complied with all of the terms of her parole, including presenting at each and every scheduled ICE check-in and court hearing for her pending asylum application. Under these circumstances, neither the INA nor the Constitution permit Respondents to arbitrarily re-detain her without notice and due process. Worse yet, Petitioner is being unlawfully detained under circumstances that shock the conscience—in the month that she has been detained, she has been hospitalized not once but *twice* from Respondents' failure to provide adequate treatment for her diabetes; she has experienced dangerous levels of hypoglycemia; and, she has had to resort to drinking her own urine to avoid dehydration associated with Respondents' failure to treat her diabetes and provide her with adequate water.

The government's authority to detain noncitizens is broad but not unlimited. Habeas exists to protect individuals like P.B. from precisely the unlawful government actions being perpetrated by Respondents here. Petitioner P.B. respectfully requests that the Court grant her petition for writ of habeas corpus and motion for temporary restraining order and order her immediate release.

ARGUMENT

I. The Court Has Jurisdiction to Hear P.B.'s Claims.

First, no jurisdictional bar prevents the Court from considering P.B.'s petition. Petitions for writ of habeas corpus are plainly within the subject matter jurisdiction of the Court. 28 U.S.C. § 2241. And Respondents' arguments to the contrary—based on U.S.C. §§ 1252(g) and (b)(9) (ECF No. 11 at 30–33)—have already been soundly rejected by the courts.

Section 1252(b)(9) limits judicial review of "questions of law and fact . . . arising from any action taken proceeding brought *to remove an alien from the United States*." 8 U.S.C. § 1252(b)(9) (emphasis added). But as the Fifth Circuit explained in *Texas v. United States*, section 1225(b)(9) "does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined[.]" 126 F.4th 392, 417 (5th Cir. 2025); *see Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (rejecting applicability of § 1225(b)(9) to habeas petition challenging "detention without a bond hearing"); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *3-5 (W.D. Tex. Oct. 2, 2025) (rejecting application of §§1252(g) and (b)(9) in the context of habeas petition challenging unlawful detention).

Similarly, the Supreme Court explained in *Reno v. American-Arab Anti-Discrimination Comm.* that §1252(g) "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." 525 U.S. 471, 482 (1999) (emphasis in original). It does not "cover[] the universe of deportation claims." *Id.*; *see Jennings*, 583 U.S. at 294 (citing *Reno*, 525 U.S. at 482-83) (the Supreme Court has "read [Section 1252(g)] to refer to just those three actions themselves."); *Lopez-Arevelo*, 2025 WL 2691828, at *4. Because P.B. is not challenging her removal proceeding, but rather her

unlawful detention pending those proceedings, neither § 1252(b)(9) nor § 1252(g) bar her claims.

II. The Court Should Not Require Administrative Exhaustion.

Administrative exhaustion also should not be required here. Indeed, Respondents concede that exhaustion is "not mandated by statute." (ECF No. 11 at 17); *see Lopez-Arevelo v. Ripa*, CAUSE NO. EP-25-CV-337-KC, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025). But they ask this Court to "require Petitioner exhaust her administrative remedies" by "request[ing] a custody redetermination with the Immigration Court." (ECF No. 11 at 17.) The sole case cited by Respondents, *Lee v. Gonzalez*, 410 F.3d 778, 786 (5th Cir. 2005), is inapposite because it involves a challenge to the definition of a "crime involving moral turpitude"—a subject on which the INA specifically limits the court's jurisdiction. *Id.* at 780-781. On the other hand, in the context of habeas petitions to challenge unlawful detentions, courts have repeatedly declined to require exhaustion, finding that it "would be futile and/or should be excused because the average wait to be heard in the BIA is more than six months." *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950096, at *6 (S.D. Tex. Oct. 3, 2025) (collecting cases).

Exhaustion would likewise be futile here. Respondents' brief cites *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) to argue that the BIA has no "authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* In other words, Respondents assert on the one hand that administrative remedies are unavailable to P.B. and argue, on the other hand, the Court should require P.B. to exhaust those very same unavailable remedies.

Time is ticking for P.B. Every day that she remains unlawfully detained, she faces grave risk of bodily harm from Respondents' inadequate care for her diabetes. Respondents offer no basis

for the Court to require P.B. to waste more time pursuing futile administrative remedies.

III. P.B.'s Detention Is Unlawful.

Petitioner P.B. seeks habeas relief from the Court on three grounds: (1) Respondents have failed to demonstrate proper statutory basis to detain P.B.; (2) Respondents' detention of P.B. violates her rights to due process; and, (3) the conditions of her detention are themselves unconstitutional. Each of these, standing alone, justifies an immediate order of release.

A. P.B. Cannot Be Lawfully Detained Under § 1225.

First, as pointed out in the Petition, Respondents have no authority to detain P.B. *twice* under § 1225—once upon arrival and a second time after she had been living in the country for months on parole. Courts around the country have resoundingly rejected Respondents' attempt to expand § 1225(b) to cover all non-admitted individuals for as long as they remain in the United States, regardless of when or how they are apprehended. *See Padron Covarrubias v. Vergara*, No. 5:25-cv-112, slip op. at 5–6 (S.D. Tex. Oct. 8, 2025) (noting that "almost every district court, including another court in the Southern District of Texas," has rejected the Respondents' § 1225 argument and held that § 1226 governs detention of noncitizens apprehended within the United States); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 21, 2025) ("[C]ourts across the country have held that the Government's new and expansive interpretation of § 1225(b) is either incorrect or likely incorrect.").

The response cites a single case to support Respondents' argument that this Court should classify P.B.'s detention under § 1225(b)(2)—Judge Hendrix's decision in *Garibay-Robledo v. Noem*, 1:25-cv-177, Docket No. 9 (Oct. 24, 2025). (ECF No. 11 at 42–44.) But *Robledo* involved a noncitizen's *first* detention under § 1225(b)(2) and was decided in the context of a motion to reconsider an ex parte application for TRO, after the court found that "the petitioner fails to meet

the high bar for emergency relief." *See Robledo*, 1:25-cv-177, Docket No. 1 at 4 (Sept. 11, 2025); *id.*, Docket No. 9 at 1. Moreover, the court in *Robledo* is a minority among other Texas courts that have rejected the same arguments. *See, e.g. See Padron Covarrubias v. Vergara*, No. 5:25-cv-112, slip op. at 5–6 (S.D. Tex. Oct. 8, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 21, 2025). P.B. respectfully submits that the interpretation of the majority is the one that aligns with the statutory language and Supreme Court precedent.

At the time of her second detention, P.B. was not "seeking admission" at the border. In fact, she was detained hundreds of miles away in Dallas, after many months of living there with her family, awaiting the adjudication of her asylum claim. While Respondents retained the authority to detain P.B. pending the determination of her asylum case, once P.B. was inspected, issued a Notice to Appear, and placed in full § 240 proceedings, she could only be detained a second time under 8 U.S.C. § 1226(a), subject to the requirements of that statute. This Court should follow *Covarrubias*, *Lopez-Aravelo*, and other Texas district courts and hold that P.B.'s current detention cannot be supported by §1225(b) and order her immediate release.

B. P.B.'s Detention Is Unlawful Because She Was Not Afforded Due Process.

Although P.B.'s detention is properly governed by § 1226, the result here is the same even under Respondents' construction of § 1225(b). Assuming *arguendo* that Respondents can properly detain P.B. a second time under § 1225(b), their failure to provide her with written notice of parole revocation and an opportunity to be heard nevertheless violates both 8 C.F.R. § 212.5(e)(2)(i) and the Constitution and renders her current detention unlawful.

Respondents argue that "the Due Process Clause does not entitle Petitioner to any relief" because, under the Supreme Court's decision in *Demore v. Kim*, 538 U.S. 510, 531–32 (2003), "detention during removal proceedings, even without access to a bond hearing" is permissible.

(ECF No. 11 at 24.) This argument misses the mark. In *Demore*, the Supreme Court considered whether a specific provision of the INA—Section 1226(c) requiring mandatory detention of removable aliens who have been "convicted of one of a specified set of crimes," 8 U.S.C. §1226(c)—was unconstitutional on its face. *See* 538 U.S. at 513, 517. The Court upheld Congress's authority to enact the statute requiring mandatory detention of "deportable criminal aliens" based on "justifiabl[e] concern[s]" that those "who are not detained continue to engage in crime." *Id.* at 513. But the Court certainly did not go so far as to conclude that *any* detention of *any* noncitizen without bond or other due process is constitutionally permissible.

Here, both the applicable regulations and the Constitution require Respondents to provide P.B. with procedural due process before terminating her parole. Under 8 C.F.R. § 212.5(e)(2)(i), DHS may prematurely terminate parole if "neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States . . . upon written notice to the alien." The Supreme Court has admonished that agencies must follow their own procedural rules, particularly those adopted to protect liberty interests. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Yet here, Respondents neither reached the requisite determination that the conditions of P.B.'s parole were no longer present (i.e. humanitarian reasons and/or public benefit), nor provided her with written notice. DHS's failure to follow its own regulations itself renders P.B.'s detention unlawful.

Moreover, Respondents do not dispute the well-settled principle that noncitizens detained under any provision of the INA are entitled to procedural due process under the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Procedural due process "requires that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *22 (W.D. Tex. Sept. 21, 2025)

(quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). The Fifth Circuit has applied the *Mathews* test to evaluate due process claims. *See Meza v. Livingston*, 607 F.3d 392, 399–400 (5th Cir. 2010); *Bd. of Governors of the Fed. Reserve Sys. v. DLG Fin. Corp.*, 29 F.3d 993, 1000 (5th Cir. 1994); *Walsh v. Hodge*, 975 F.3d 475, 480–81 (5th Cir. 2020). Under *Mathews*, courts evaluating whether due process requirements have been met in administrative proceedings must balance (1) the individual's private interest, (2) the risk of erroneous deprivation and the probable value of additional safeguards, and (3) the Government's interest and administrative burden. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Each of the *Mathews* factors weigh in favor of P.B. here. As to the first factor, Respondents' brief concedes that "[c]learly Petitioner has a liberty interest in freedom from lengthy imprisonment." (ECF No. 11 at 28.) This liberty interest of immigrant parolees has been repeatedly confirmed by courts in Texas and around this country. *See, e.g. Lopez-Arevelo*, 2025 WL 2691828, at *22. And, as explained above, Respondents misplace reliance on the Supreme Court's general recognition in *Demore* that Congress may enact legislation requiring detention of criminal aliens—a holding that has no bearing on the facts of this case, where Congress has *imposed* procedural protections rather than stripped them. 8 U.S.C. § 1226(a).

The second *Mathews* factor also weighs heavily in P.B.'s favor. The risk of erroneous deprivation here is severe—Respondents' unlawful detention of P.B. has already caused serious consequences to P.B.'s health, requiring her to be hospitalized twice. And additional safeguards are necessary to protect P.B. from being unlawfully detained in violation of DHS's own regulations. Section 212.5(e)(2)(i) requires written notice and a statement of reasons for revocation, both to permit the parolee to contest inaccuracies and to ensure a paper record for judicial review. Yet DHS produced no notice, no explanation, and no record of its decision to revoke P.B.'s parole—only a

conclusory after-the-fact statement that P.B.'s parole "was terminated," made weeks after she was detained. As the court explained in *Lopez-Arevelo*, due process demands an "individualized assessment of the need to re-detain"—a blanket or unexplained assertion of authority will not suffice. 2025 WL 2691828, at *23–24. Had P.B. been afforded proper notice and an opportunity to be heard, she could have demonstrated that her ongoing medical needs continue to present "urgent humanitarian reasons or significant public benefit," 8 U.S.C. § 1182(d)(5)(A), warranting continued parole and rendering her detention both dangerous and unnecessary.

As to the third *Mathews* factor, Respondents contend that "the government's interest in maintaining the existing procedures [regarding detention of noncitizens] is legitimate and significant." (ECF No. 11 at 29.) But again, the question before the Court is not whether the government has an interest in detaining noncitizens at all—the question here is the government's interest in detaining noncriminal parolees without a bond hearing or other due process. As to that question, the government has little legitimate interest, and affording parolees due process would impose little administrative burden. Indeed, for decades, the government's own practice—blessed by the courts and immigration judges alike—was to provide individualized bond hearings for noncitizens detained under § 1226(a). *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *25. Only recently has the Government abandoned that long-standing approach in favor of a categorical "no bond" framework under § 1225(b) that has been soundly rejected by the courts.

Because Respondents have unlawfully detained P.B. in violation of her constitutional right to due process, the Court should order her immediate release and/or order a bond hearing at which P.B. can be given a chance to show that she is not a flight risk or dangerous.

C. The Conditions of P.B.'s Detention Violate Her Due Process Rights.

Finally, the grievous conditions of P.B.'s confinement themselves constitute a violation of

her constitutional rights and render her continued detention unlawful. Respondents continue to provide inadequate medical care to treat P.B.'s diabetes while in detention. Since filing her Motion for Temporary Restraining Order (ECF No. 2) on November 1, 2025, P.B. has continued to experience severe symptoms from Respondents' failure to provide her with adequate insulin on time. On November 3, 2025, P.B. was rushed to the hospital for a second time while in detention, after she experienced difficulty breathing, swelling in her feet, and extreme stomach pain. *See* Ex. A. She has also experienced dangerously low levels of hypoglycemia, with blood sugar levels as low as 49.[1] Although P.B. need not "show that death or serious illness has yet occurred to obtain relief," *see Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004), her repeated hospitalizations and health episodes underscore the unconstitutionality of her detention.

This case presents a classic use of habeas corpus: to challenge detention that has *become* unconstitutional due to life-threatening conditions of confinement. The Supreme Court has repeatedly recognized that the writ extends to persons "in custody *in violation of the Constitution*" and expressly contemplated that "additional and unconstitutional restraints" that *make* custody illegal may give rise to habeas relief. *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) (emphasis added); *see Bell v. Wolfish*, 441 U.S. 520, 526 n.6 (1979) (declining to foreclose habeas review of conditions claims); *Boumediene v. Bush*, 553 U.S. 723, 792 (2008); *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862–63 (2017); *Poree v. Collins*, 866 F.3d 235, 243–44 (5th Cir. 2017) (observing the line between custody and conditions claims is "a blurry one").

Respondents' reliance on *Deters v. Collins*, 985 F.2d 789 (5th Cir. 1993) to argue that habeas is unavailable to challenge conditions of confinement is misplaced. P.B.'s due process claim

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[1] The Cleveland Clinic defines hypoglycemia for people with diabetes as a blood sugar level below 70 and explains that severe hypoglycemia can cause seizures, coma, and death. https://my.clevelandclinic.org/health/diseases/11647-hypoglycemia-low-blood-sugar

here is not "unrelated to the cause of detention" (ECF No. 11 at 30)—the conditions of her detention are the *basis* of the constitutional violation. The Fifth Circuit has recognized that detention that endangers a detainee's life through deliberate indifference to serious medical needs violates the Fifth Amendment's due process guarantee. *See Shepherd v. Dallas Cty.*, 591 F.3d. 445, 454 (5th Cir. 2009). In other words, the conditions of P.B.'s detention render the detention unconstitutional and give rise to her habeas claim. Nor do § 1983 or *Bivens* provide alternative remedies: § 1983 applies only to state actors, and the Supreme Court has sharply limited *Bivens* to a few established contexts. *See Ziglar*, 137 S. Ct. at 1857. Accordingly, habeas corpus remains the only meaningful avenue to challenge custody that, because of the Government's deliberate indifference to P.B.'s medical needs, has become unconstitutional.

IV. P.B. Satisfies the Factors for a TRO

P.B. has demonstrated a likelihood of success on the merits, as set forth in her Petition and explained further above. And Respondents do not dispute that, in addition to the short and long-term health consequences that P.B. has experienced in detention, the deprivation of her constitutional rights is itself irreparable harm. *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012). Accordingly, P.B. has established the necessary elements for a temporary restraining order prohibiting Respondents from continuing to unlawfully detain her.

CONCLUSION

For the foregoing reasons, P.B. therefore respectfully requests that this Court grant her petition for writ of habeas corpus and her motion for a temporary restraining order, declare her detention unlawful, order her immediate release, and award P.B. any such further relief as the Court deems proper. In the alternative, P.B. requests that the Court order Respondents to schedule a bond hearing before an immigration judge.

Dated this 17th day of November, 2025.

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