UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

PEMA SHERPA,

Petitioner,

Case No. 3:25-cv-01718-TAD-KDM

v.

JUDITH ALMODOVAR, et al.,
Respondents.

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER GRANTING IMMEDIATE RELEASE FROM CUSTODY

Upon the Petition for a Writ of Habeas Corpus, the Memorandum of Law and supporting documents filed herein on the instant date, it is

ORDERED, this __ day of November, 2025, by the US District Court, Western District of Louisiana, that Respondents show cause, if any they may have, on or before the __ day of November, 2025, at ___a.m, why a preliminary injunction or Temporary Restraining Order should not be issued, directing Petitioner's immediate release from custody pending determination of the issues raised in this Petition,; and it is further

ORDERED that service of this Order to Show Cause, Declaration and Exhibits upon the Office of the United States Attorney for the Western District of Louisiana, counsel for Respondents, on or before the __ day of November 2025, shall be good and sufficient service.

Hon. Kayla D. McClusky
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

PEMA SHERPA *Petitioner*, v. LISA BOWEN, et al., *Respondents*.	Case No. 3:25-cv-01718-TAD-KDM

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE SEEKING IMMEDIATE RELEASE FROM IMMIGRATION CUSTODY

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INTRODUCTION

Petitioner Pema Sherpa hereby requests a Temporary Restraining Order as well as a preliminary injunction, enjoining Respondents from continuing to detain her while this habeas petition is being decided.

Petitioner is a citizen of Nepal, who has been living in the US for almost ten years. She arrived at the US/Mexico border on December 4, 2015, and asserted a fear of persecution by Maoist terrorists if returned to Nepal. She was released the next day on an "order of supervision" and told that she would soon be scheduled for a "credible fear" screening interview, to determine if her fear of persecution was credible. No credible fear interview was ever scheduled, and so instead Petitioner filed an application for asylum with USCIS in 2017. Respondents never scheduled an asylum interview either, and instead notified her in June 2025 that it was being dismissed because she was still waiting for a credible fear interview. Then, in October 2025, Petitioner was abruptly detained by Respondents while returning home from work, and told that she was she was subject to an expedited removal order being detained pending a credible fear interview. However, there is no order of expedited removal, and even if there was, Petitioner is entitled to advance notice of the revocation of her release as well as a meaningful opportunity to be heard prior to being detained.

This Petition was initially filed (ECF 1) on October 31, 2025, in the Southern District of New York (1:25-cv-09082). However, while Petitioner was initially detained at the ICE office at 26 Federal Plaza, New York NY 10278, she was transferred to the Richwood ICE immigration detention facility in Monroe, LA, on October 31, 2025, and the matter was transferred there.

Petitioner is seeking an order requiring her immediate release from custody because she is neither subject to an expedited removal order nor in removal proceedings and so there is no

basis for her detention. Even if there is a basis for her detention, Respondent's abrupt termination of her release from custody for over ten years, without any cause, prior notice, or opportunity for a pre- or post-deprivation hearing, violates her rights to both procedural and substantive due process. Petitioner accordingly submits this request for immediate release.

STATEMENT OF FACTS

Petitioner Pema Sherpa is a native and citizen of Nepal, who has been living in the US since on or about December 4, 2015. She was detained by immigration agents upon entry, and when questioned by them, stated that she was fearful of being returned to Nepal. She was released the following day, December 5, 2015, with an order of supervision, and told that she would be notified once a credible fear interview was scheduled. (First Amended Petition for a Writ of Habeas Corpus ("FAP"), ECF 1, ¶¶ 3, 22).

No credible fear interview was scheduled, and so on June 16, 2017, Petitioner filed an application for asylum with USCIS, alleging a fear of persecution by Maoist terrorists if returned to Nepal. Her asylum application was accepted by USCIS, she completed the required biometrics appointment, was issued employment authorization, and kept USCIS approved of her address while the application remained pending. (*id*, ¶ 23)

In June 2011, approximately eight years after they had accepted her asylum application, USCIS sent a letter to Petitioner stating that she was ineligible to apply for asylum with USCIS because she had been placed into expedited removal proceedings upon her 2015 entry, and that her application was being dismissed. The letter stated that Petitioner would be provided with a "credible fear" interview, but one has yet to be provided (*id*, ¶ 24; Exhibit A)

This decision was incorrect, and Petitioner was not subjected to expedited removal proceedings. She was never provided with a credible fear interview, as is required for people in expedited removal proceedings who assert a fear of persecution, and she was never issued with an order of expedited removal, as is also required for people in expedited removal proceedings. Instead, there is only a blank, unsigned, "Order of Removal Under Section 235(b)(1) of the Act" (see *id,* Exhibit B), but no actual Order. Thus, she is not subject to an order of removal, be it expedited or otherwise. (*id*, ¶ 25)

On or about October 29, 2025, plainclothes ICE officers came to Petitioner's home and spoke with Petitioner's niece, claiming to be conducting an investigation into smuggling, and requested the name of everyone who lived there and the times at which they would be returning home. Later that evening, ICE officers without a judicial warrant apprehended Petitioner in the yard outside her home as she was attempting to enter it, and told her that she was being detained. Petitioner's niece attempted to come out of the house while Petitioner was being detained, but the ICE officers told her she could not come outside while they were there, that she would need to hire a lawyer if she wanted to speak with them, and then physically prevented her from opening the door to come out. Respondents then took Petitioner to the ICE office at 26 Federal Plaza, New York NY 10278, for about two days, and then transferred her to the Richwood Corrections Center in Louisiana, where she remains. Respondents have not contacted Petitioner's immigration attorney regarding a credible fear interview. (*id*, ¶ 27)

On October 31, 2025, this action was commenced by filing a Petition for a Writ of Habeas Corpus in the Southern District of New York, as Petitioner was being held at the ICE office at 26 Federal Plaza, New York NY 10278, under the auspices of the New York City ICE Field Office. (ECF 1) On November 3, 2025, the Court in the Southern District of New York

issued an order staying Petitioner's removal and requiring the U.S. Attorney's Office to file an answer or other pleadings withing 60 days. (ECF 2)

Subsequently, Respondents' attorney informed the Court and counsel that Petitioner had been transferred out the district prior to the filing of the Petition, and on November 6, 2025 the matter was transferred to the Western District of Louisiana (ECF 6, 7). On November 24, 2025, Petitioner filed this First Amended Petition (ECF 13), which asserts six causes of action. Count 1 claims that the manner of Petitioner's arrest by Respondents constituted an illegal seizure within the meaning of the Fourth Amendment. Count Two claims that her detention violates her right to substantive due process under the Fifth Amendment. Counts Three and Four claim that it violates her right to procedural due process. Count Five claims that the dismissal of her asylum claim by the Asylum Office violates the Administrative Procedures Act and Count Six claims that the unlawful revocation of her release from supervision also violates the APA as well as the Accardi doctrine.

Petitioner now seeks a Temporary Restraining Order and a preliminary injunction ordering her immediate release from immigration custody while the Petition is being decided.

THE LAW GOVERNING APPLICATIONS FOR ASYLUM, EXPEDITED REMOVAL, AND THE CREDIBLE FEAR PROCESS.

Subject to a number of exceptions not relevant here, any non-citizen physically present in the US can apply for asylum, 8 U.S.C. § 1158(a)(1). Non- citizens physically present in the country can seek asylum by filing form I-589 with USCIS. After the application is filed, the applicant is scheduled for an interview before an asylum officer, and if the application is granted they are granted asylum, which affords them the right to remain living lawfully in the US, and to apply for permanent residence after a year. If the application is not granted, the applicant is referred

for a hearing before an immigration judge in removal proceedings, in which they can renew the application for asylum, and also seek any other type of immigration relief to which they may be entitled.

The above asylum application process does not apply to people who are in "expedited removal" proceedings. "Expedited removal" is, as the name suggests, an expedited process for removing people from the US, typically those apprehended at or shortly after entering the US. The statutory authority for it is at 8 U.S.C. § 1225(b)(1), and the regulations are at 8 C.F.R. § 235.3(b). Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). The Order of Removal is entered on Form I-860, must be reviewed and approved by an appropriate supervisor, "not… below the level of the second line supervisor", 8 C.F.R. § 235.3(b)(7) and served on the non-citizen, 8 C.F.R. § 235.3(b)(2)(i).

If the person assets a fear of persecution if removed, they are referred for an asylum pre-screening "credible fear interview", requiring them to show a "significant possibility" of eligibility for asylum at a future hearing. 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B), 8 C.F.R. § 208.30. This pre-screening, to the extent it occurs, does not remotely approach the type of process and the rights asylum seekers receive in regular proceedings before the asylum office or in removal proceedings.

If the person is found to have a credible fear of persecution, the order of expedited removal is vacated, and they are referred for removal proceedings in immigration court under 8 U.S.C. §§ 1229a, 1225(b)(1)(B)(i), 8 C.F.R. § 208.30(f). If the person is not found to have a credible fear, they can request a review by an Immigration Judge, which must be concluded no later than seven days after the asylum officer's negative determination. 8 U.S.C. § 1225(b)(1)(B)(ii)(III). A

person in the credible fear process is entitled to consult with a representative prior to the interview or any review thereof, and who can also attend the credible fear interview and present a statement. 8 U.S.C. § 1225(b)(1)(B)(iv), 8 C.F.R.§ 208.30(d)(4). If the Immigration Judge upholds the negative credible fear determination, the person is ordered removed without the possibility of any further review.

The INA mandates detention of non-citizens throughout the credible fear process, 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV). Nonetheless, regulations authorize the release of non-citizens pending a credible fear interview (8 C.F.R. § 235.3(b)(4)(ii)), and the INA authorizes release in certain circumstances after a positive credible fear interview pending completion of removal proceedings (8 U.S.C. § 1182(d)(5)(A), see *Matter of M-S-*, 27 I&N Dec. 509, 510 (A.G. 2019)). Regulations (as well as due process considerations) also govern the revocation of such a release, see 8 C.F.R. § 241.4(l).

ARGUMENT

Standard For Relief

The standards for a TRO and a preliminary injunction are the same. In this Fifth Circuit, those standards are (1) "a likelihood of success on the merits", (2) "substantial threat of irreparable injury", (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" *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015) (quoting *Trottie v. Livingston*, 766 F.3d 450, 451 (5th Cir. 2014)). The third and fourth factors merge in cases against the Government. *Nken v. Holder*, 556 U.S. at 435, 129 S.Ct. 1749.

These factors are satisfied here.

1. **The Court has jurisdiction over the claims in the Petition.**

As a threshold matter, the Court has jurisdiction over the claims raised in this Petition. 8 U.S.C. § 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). However, this statute's provisions are limited, and do not preclude judicial review of "an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders." *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000). Here, Petitioner is not challenging the legitimacy of a removal order or of removal proceedings, because there are none. Instead, Petitioner is contesting her detention, and so the Court's jurisdiction is not barred by section 1252(g).

2. **Exhaustion**

No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. See, e.g., *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion."); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) ("[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b) . . . ."). Petitioner's claims—that her detention is unconstitutional because it contravenes the protections of the Fourth and Fifth and is unrelated to any legitimate governmental purpose—are not subject to any statutory requirement of administrative exhaustion, and thus, exhaustion is not a jurisdictional prerequisite. See *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). The Supreme Court has recognized that courts should not require prudential exhaustion where there is an "unreasonable or indefinite timeframe for administrative action." *Id.* at 147. Exhaustion is thus not appropriate where the petitioner "may

suffer irreparable harm if unable to secure immediate judicial consideration of [her] claim." *Id.* Because she is in detention, only this Court can consider his claim.

3. **Petitioner is likely to succeed on the merits of her claim that her continued detention is unlawful.**

Petitioner is likely to succeed on each of her causes of action.

a. The Fourth Amendment claim for unlawful seizure.

"The Fourth Amendment's protection of curtilage has long been black letter law. When it comes to the Fourth Amendment, the home is first among equals. At the Amendment's very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. To give full practical effect to that right, the Court considers curtilage—the area immediately surrounding and associated with the home —to be part of the home itself for Fourth Amendment purposes.' *Collins v. Virginia*, 584 U.S. 586, 592–93 (2018).

The Fourth Amendment obviously prevents the warrantless entry into the curtilage of a home in order to effect a warrantless arrest, *Fla. v. Jardines*, 569 U.S. 1, 6 (2013). Respondents' own regulations also prohibit a warrantless entry by immigration officials into "a residence including the curtilage of such residence…" 8 C.F.R. § 287.8(f)(2).

As can be seen from the photograph of Petitioner's home, Exhibit C to the FAP, it is set far back from the sidewalk, and is accessible by a tidy paved walkway with a row of well-maintained plants and shrubs at each side, a tall flagpole with colored flags on it mid-way up, and a driveway for a car on the left-hand side. At the end of the walkway, four or five steps lead up to a small porch, onto which the front door of the dwelling opens. It is clear to an onlooker that this entire area, and in particular the walkway, with its plant beds and flag, is "surrounding and associated with" Petitioner's home. The paved walkway veers away from the public

sidewalk, the rows shrubs on either side of the walkway are tended to and maintained, the flagpole in the middle of the walkway is plainly associated with the building occupants, and the car is parked in an obviously private driveway parallel to the walkway. These all make it clear that that this is an area "associated" with the home, *id*, over which the home owners or occupants exercise dominion and control and have some expectation of privacy. Respondents had no warrant to enter into this part of Petitioner's home, and so her arrest plainly violated the Fourth Amendment.

b. Petitioner's Fifth Amendment substantive and procedural due process claims.

Petitioner alleges that Respondents arrested her at her home three weeks ago, and continue to keep her in detention, without any statutory basis or other justification, in violation of her rights to both substantive and procedural due process. Petitioner has a likelihood of success on both claims.

The Immigration and Nationality Act (INA) authorizes detention of non-citizens in three discrete circumstances: at the point of entry pending expedited removal proceedings (8 U.S.C. § 1225), upon a warrant if detained in the interior of the country after entry and pending removal proceedings in immigration court (8 U.S.C. § 1226), and after a final order of removal has been issued (8 U.S.C. § 1231). Petitioner's detention is not pursuant to either of these three statutory provisions. She is not in expedited removal proceedings, as she entered the US almost ten years ago and was released from immigration custody at that time, and so is not detained pursuant to 8 U.S.C. § 1225. She is not in removal proceedings, and so is not detained pursuant to 8 U.S.C. § 1226. She is not subject to a final order of removal, because one was never issued, and so she is not detained pursuant to 8 U.S.C. § 1231.

Accordingly, there is no statutory basis for Petitioner's detention, and so it violates her substantive due process right to be free from unlawful detention as guaranteed by the Fifth Amendment. Petitioner thus shows a strong likelihood of success on this part of her claim.

Even if Petitioner were subject to an expedited removal order, which she is not, the revocation of her release violates her rights to procedural due process.

8 U.S.C. § 1225(b)(1) governs the expedited removal process, to which Respondents claim Petitioner was initially subjected when she entered the US. If a person placed in expedited removal proceedings expresses a fear of persecution or torture if returned to their home country, they are referred for an interview with an asylum officer to determine whether or not their fear is credible, pursuant to the procedures at 8 C.F.R. § 208.30(d). Regulations do not specify a time period within which a credible fear interview must be scheduled, but at the time Petitioner entered the US, December 2015, USCIS had a goal of concluding them within ten days.[1] (Here, it has been nearly ten years, and they still have not scheduled one)

If the credible fear is not established, the person is ordered removed from the United States "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). If a credible fear is established, they are referred for "further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). The "further consideration" occurs in removal proceedings under 8 U.S.C. § 1229a, see 8 C.F.R. §§ 208.30(f), 1208.30(g)(2)(iv)(B). In other words, if a non-citizen placed in expedited removal establishes a credible fear of persecution, they will receive a full hearing on their claim for asylum before an Immigration Judge.

[1] https://www.gao.gov/assets/gao-21-144.pdf, p. 7, n. 14.

The INA requires the detention of people in expedited removal proceedings "pending a final determination of credible fear." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), and if found to have a credible fear, "shall be detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). However, regulations at 8 C.F.R. § 208.30(f) provide that such people (i.e., those who establish a credible fear), may be released from custody on parole in accordance with 8 U.S.C. § 1182(d)(5) and 8 C.F.R. § 212.5. See generally, *Matter of M-S-*, 27 I&N Dec. 509 – 511 (A.G. 2019). Regulations also govern the revocation of a release from immigration custody, see 8 C.F.R. §§ 212.5(e), 241.4(l), and require notice, and in the case of a revocation of release on supervision, the officials who can make such a revocation are limited and an interview affording an opportunity to respond to the revocation. *Id.*

Petitioner was released from custody at the border on an order of supervision by immigration officials in December 2015, and was told that a "credible fear interview" would be scheduled on her claimed fear of persecution in Nepal. No such interview was scheduled, however, and so she applied for asylum affirmatively in 2017 (FAP, ¶ 22). Her asylum application was accepted, she completed required biometrics, was issued employment authorization, and kept USCIS apprised of her address (*id*, ¶ 23). USCIS took no further action on her asylum case for another eight years, until June 2025, when they told her it was being denied because she was in expedited removal proceedings and she was told, again, that a "credible fear" interview would be scheduled. (*id*, ¶ 24; FAP Exhibit A) Again, no credible fear interview was scheduled, and Petitioner received no communication from Respondents until they showed up at her home on October 30 and detained her. (*id*, ¶ 28)

There is no statutory authority for this detention. As argued above, Petitioner does not have a final order of removal, yet she was released on an order of supervision stating that she had

been "ordered removed pursuant to proceedings commenced on or after April 1, 1997". Because she didn't have a removal order, she is not properly subject to this order of supervision, and so there is no basis for detaining her, even if she violated it, which she did not. But even if she was subject to this order of supervision, it cannot be revoked without following the procedures at 8 C.F.R. § 241.4(1) and (2). Only two officials have the authority to revoke an Order of Supervision: the Executive Associate Director of ICE or a district director of ICE if the "circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). When an Order of Supervision is revoked, the noncitizen must "be notified of the reasons for revocation of his or her release" and must be afforded a prompt "initial informal interview" to allow the noncitizen an opportunity to respond to and contest the reasons for revocation. 8 C.F.R. § 241.4(l)(1). *Villanueva V. Tate*, Case No. 25-cv-3364, 2025 WL 2774610 (S.D.TX, Sept. 26, 2025).

None of this happened in this case. Petitioner was not given any notice that her supervision was being revoked, nor, upon information and belief, was there any revocation notice issued. Petitioner was also not given any opportunity to respond to and contest the reason for the revocation, and neither was her attorney. This violated not only the regulations governing revocation of supervision, but also fundamental due process considerations.

"[A]liens who have established connections in this country have greater due process rights than an alien at the threshold of initial entry." *Sagastizado v. Noem*, No. 5:25-CV-00104, 2025 WL 2957002, at *11 (S.D. Tex. Oct. 2, 2025), citing *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020). Procedural due process "guarantees [ ] a fair decision-making process before the government takes some action directly impairing a person's life, liberty, or property." *Reyes v. Underdown*, 73 F.Supp.2d 653, 658 (W.D. La. 1999). "[T]he

"essence" of procedural due process is 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." *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *11 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) It is undisputed that Petitioner did not receive this "fair decision making process" or meaningful opportunity to he heard before she was detained.

Claims for procedural due process violations are evaluated under the three-factor test laid out in *Matthews v Eldridge,* 424 U.S. 319 (1976) "Under Mathews v. Eldridge, determining the specific dictates of due process generally requires evaluation of "(1) the private interest that will be affected by the official action, (2) a cost-benefit analysis of the risks of an erroneous deprivation versus the probable value of additional safeguards, and (3) the Government's interest, including the function involved and any fiscal and administrative burdens associated with using different procedural safeguards.", *Sagastizado v. Noem*, *supra,* 2025 WL 2957002, at *12.

"The first factor weighs in favor of Petitioner as freedom from bodily restraint is the "most elemental of liberty interests." Hamdi v. Rumsfeld, 542 U.S. 507, 259 (2004); Foucha v. Louisiana, 504 U.S. 71, 80 (1992)." *De Leon Hernandez v. Bondi*, No. 25-CV-1384, 2025 WL 3217037, at *3 (W.D. La. Nov. 18, 2025).

A weighing of the risk of an erroneous deprivation against the value of additional safeguards leans heavily in Petitioner's favor, as the government has enacted regulations which call for precisely the type of safeguards that Petitioner claims she should receive in order to ensure that there is not an erroneous deprivation of her rights: notice and a meaningful opportunity to be heard, see 8 C.F.R. §§ 212.5(e), 241.4(l). On the third factor, while the

Government may well have an interest in the prompt execution of removal orders, "the procedures requested by Petitioner create minimal delay in that process.", *Sagastizado v. Noem, supra*, 2025 WL 2957002, at * 12, particularly given that Petitioner has been free from custody for almost ten years, during which time she has consistently tried to pursue her asylum claim, only to be consistently ignored and then rebuffed by Respondents. There is no need for her to now be detained.

Petitioner has resided in the United States for nearly ten years following her release from ICE custody, and under ICE supervision for those years, with the agency fully aware of her location at all times. Petitioner has taken no action that would justify the sudden and arbitrary revocation of her release from custody, and Respondents have violated any applicable regulations governing the revocation of her release. She is therefore likely to succeed on her claim for a violation of her procedural due process rights.

c. Petitioner's "Accardi" doctrine and APA claims.

Counts Five and Six of the FAP allege that by not following any of the required procedures in terminating Petitioner's release from custody, Respondents have violated the APA and the Accardi doctrine, which requires agencies to follow their own rules which affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *Accardi v Shaughnessy*, 347 U.S. 260 (1954). It is plain, as explained above, that Respondents have not complied with any of their own rules or regulations governing revocation of release from immigration custody. Petitioner therefore shows a likelihood of success on the merits of these claims.

To remedy an Accardi violation, a court may direct the agency to properly apply its policy, *Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("[T]his Court is simply ordering that Defendants do what they already admit is required."), or may apply the policy itself and order relief consistent with the policy. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

4. Petitioner will suffer irreparable injury if she is not released.

Petitioner's ongoing unlawful detention without any opportunity to seek release constitutes irreparable injury. The Fifth Circuit has defined irreparable injury as "harm for which there is no adequate remedy at law." *Daniels Health Scis., L.L.C. v. Vascular Health Scis.*, L.L.C. 710 F.3d 579, 585 (5th Cir. 2013). Respondent's unconstitutional and unlawful detention of Petitioner is a serious deprivation of her liberty interests, even if on a temporary basis, and amounts to irreparable harm. This Circuit has held that the deprivation of one's constitutional freedoms "for even minimal periods of time, unquestionably constitutes irreparable injury" *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Further, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022), *Sagastizado v. Noem, supra*, 2025 WL 2957002, at *15.

5. The balance of equities and the public interest tip in Petitioner's favor.

These two factors "merge when the Government is the opposing party.", *Nken v. Holder*, 556 U.S. 418, 435 (2009). Although there is "a public interest in prompt execution of removal

orders….. [t]here is generally no public interest in the perpetuation of unlawful agency action." *Sagastizado v. Noem, supra*, 2025 WL 2957002, at *15 citing *Nken, supra*, 556 U.S. at 436.

Here, Petitioner is being unlawfully detained even though she is not subject to a removal order, she has been free from immigration custody for the last ten years, she has tried to resolve her immigration status during that time but has been stymied by Respondents, and she received no meaningful notice or opportunity to be heard prior to her detention. She is not a flight risk and has no criminal history. The public interest lies in having her released from unlawful detention.

CONCLUSION

Petitioner meets the standard for a TRO and/or preliminary injunction granting her immediate release from custody pending a final determination of the issues in this case. She shows an overwhelming likelihood of success on the merits of her claim that she is unlawfully detained without a removal order. She shows irreparable harm arising from her unlawful detention, and that the public interest is best served by protection, rather than violating, her constitutional rights.

The Court should therefore grant the relief requested and order her immediate release or in the alternative a bond hearing before an Immigration Judge within seven days, at which Respondents bear the burden of proving by clear and convincing evidence that her continued detention is justified based on her dangerousness to the community or risk of flight.

Dated: New York NY
November 23, 2025

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