UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EVA NADIA VARGAS PALACIOS, Petitioner, v. Todd LYONS, in his capacity as Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; WARDEN, of ERO El Paso Camp East Montana Respondents.	Case No. 3:25-cv-552 **EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65, Petitioner Ms. Eva Nadia Vargas Palacios, moves this Court for a Preliminary Injunction and Temporary Restraining Order enjoining respondents from violating her rights under Fifth Amendment, the APA, and immigration laws by declaring that he is subject to mandatory detention. In support of this motion, Ms. Vargas Palacios submits the following arguments. A proposed Order is attached.

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INTRODUCTION

This action challenges the government's authority to ignore decades of jurisprudence and declare that anyone that entered the U.S. without inspection is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the last thirty years, the Immigration Courts have held that individuals, who entered without inspection, like Petitioner, qualified for bond pursuant to § 1226(a). However, on July 8, 2025, DOJ and DHS decided to issue an ICE directive and completely change their interpretation of binding precedent. And on September 5, 2025, the BIA adopted that policy into a binding precedent decision in which it held that Immigration Courts no longer have the authority to hear bond applications or grant bond requests to non-citizens who entered the United States without inspection. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

As a result of Respondents' unlawful actions, Petitioner cannot request a bond hearing because the Immigration Judge does not have jurisdiction. Petitioner is now subject to ongoing detention in violation of his Constitutional rights. Petitioner suffers irreparable harm by being detained without the opportunity to request release before a neutral arbiter, due to the deprivation of liberty without due process and the emotional harm the petitioner currently suffers while detained. Petitioner therefore brings this motion for a preliminary injunction preventing further detention without a bond hearing.

STATEMENT OF FACTS

Petitioner, Ms. Eva Nadia Vargas Palacios, is a 51-year-old citizen and national of Guatemala who last entered the United States in approximately the year 1997. She entered the

U.S. without inspection. Decades later, Ms. Vargas Palacios was detained by ICE in around September 2025 following a traffic stop in Florida.

Prior to being detained, Ms. Vargas Palacios lived in Florida with her 19-year-old U.S. citizen son. She worked hard to support her family. She also had applications pending with USCIS so that she could legalize her status, and she submits copies of those receipt notices with this instant Motion.

ARGUMENT

Petitioner is entitled to a preliminary injunction preventing continued detention. If petitioner's motion is not granted, she is certain to suffer irreparable harm both to her constitutional rights and to her emotional health, as is her child. She is also substantially likely to succeed on the merits of her claim: that the government may not detain him without a bond hearing before a neutral arbiter, as required by law. Further, no public interest is served by the government's indefinite, mandatory detention of an upstanding individual who entered the U.S. decades ago, has an U.S. citizen child, no disqualifying criminal history, and pending applications for relief. This Court should therefore grant petitioner's motion by enjoining the government from further detaining her without a bond hearing before a neutral arbiter.

I. Legal standard for a Temporary Restraining Order and Preliminary Injunction

In determining whether to grant a Temporary Restraining Order, this Court must consider four factors:

(1) the probability that the moving party will succeed on the merits;
(2) the threat of irreparable harm to the moving party;
(3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction; and
(4) whether the issuance of a TRO is in the public interest.

Canal Auth. of State of Fla. v. Callaway, 489 F.2d 567, 572 (5th Cir. 1974); *Winter v. Nat. Res.*

Def. Council, Inc., 555 U.S. 7, 20 (2008). Here, all four factors weigh in favor of granting injunctive relief.

II. Petitioner is entitled to a Temporary Restraining Order and Preliminary Injunction ordering her a bond hearing

A. Petitioner is likely to prevail on the merits of her habeas petition.

1. *Non-citizens like Petitioner are protected by the Fifth Amendment*

Writs of habeas corpus "may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). The writ of habeas corpus shall not extend to a prisoner unless…He is in custody in violation of the Constitution or laws or treaties of the United States. 8 U.S.C. § 2241(c).

The federal courts have held that noncitizens are entitled to guarantees of the Fifth Amendment. *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) ("all aliens[] are clearly protected by the Fifth and Fourteenth Amendments"). Courts treat Equal Protection and Due Process rights under the Fifth Amendment in the same manner as Equal Protection Claims under the Fourteenth Amendment. *Wienberger v. Wiesenfeld*, 420 U.S. 636 (1975).

Due process is only implicated when governmental decisions deprive an individual of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67 (1976).

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be…deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due

Process clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem").

2. Petitioner can demonstrate that Respondents are continuing to detain her by arbitrarily denying him the right to a fair bond hearing, in violation of due process.

Ms. Vargas Palacios is likely to succeed in demonstrating that she is in custody in violation of the Constitution and laws of the United States. *See* 8 U.S.C. § 2241(c)(3). In addition to violating the Constitution, Respondents are also violating the Administrative Procedure Act ("APA"), 28 U.S.C. § 2241, 5 U.S.C. §§ 701 and 101 *et. seq.* and 8 U.S.C. §§ 1101 *et. seq.* by denying Ms.Vargas Palacios of her constitutional right to due process, arbitrarily and capriciously, thus exceeding their authority under the Immigration and Nationality Act ("INA").

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision which stripped Immigration Judges of their ability to hear bond applications for anyone that entered the United States without inspection. *Yajure-Hurtado*, 29 I&N Dec. 216. This agency action by the BIA has completely deprived Petitioner of requesting a bond hearing. He therefore continues to be detained in violation of the Fifth Amendment, the APA, and immigration laws of the United States.

3. Petitioner is likely to succeed on the merits of his argument that he is detained under § 1226(a) and not § 1225(b)(2) and is therefore being arbitrarily detained in violation of his rights

This case concerns the detention authority for people who entered the United States without inspection, were not apprehended upon arrival, and are not subject to some other detention authority, like the detention authority for people in expedited removal, see 8 U.S.C. §

1225(b)(1), or withholding-only proceedings, see id. § 1231(a)(6). For decades, people in this situation—people who have been residing in the United States, often for years—received bond hearings before an Immigration Judge (IJ).

Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings 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). Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.* IIRIRA maintained the same basic detention authority in the provision codified at 8 U.S.C. § 1226(a). Indeed, when passing IIRIRA, Congress explained that the new § 1226(a) merely "restates 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).

Separately, Congress enacted new detention authorities for people arriving in or who recently entered the United States, including a new expedited removal scheme for those arriving at U.S. borders. Separate "expedited removal" proceedings covered those who were detained upon arrival at U.S. ports of entry or who had recently entered. *See* 8 U.S.C. § 1225(b)(1)–(2).

In implementing this new detention authority under U.S.C. § 1225(b)(1)–(2), the former Immigration and Naturalization Service clarified that people who entered the United States without inspection and who were not in expedited removal 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). In other words, non-citizens who were detained through internal enforcement, rather than upon arrival,

would be detained subject to 8 U.S.C. § 1226(a).

The distinction between § 1226(a) and § 1225(b) detention is important. Detention through internal enforcement under § 1226(a) includes the right to a bond hearing before an IJ. See 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors showing they are not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people detained while arriving in the U.S. are detained under § 1225(b) and are subject to mandatory detention; they receive no bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). Non-citizens detained upon arrival may only be released under parole at the discretion of the arresting agency. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).

Recent amendments to § 1226 reinforce that it covers Ms.Vargas Palacios and that she is therefore eligible for a bond hearing before an Immigration Judge. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). As this Court observed in its preliminary injunction decision, "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

For the first 25 years after IIRIRA was enacted immigration courts across the country applied § 1226(a) to the detention of people who were apprehended within the United States after having entered without inspection. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (8 USC § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings."); *Matter of Q Li* 29 I&N Dec. 66, 69 (BIA 2025) (individuals detained pursuant to a warrant under § 1226(a) are eligible for bond subject to the exceptions for criminal aliens found in § 1226(c)); *Matter of Ahkmedov* 29 I&N Dec. 166, 167 (BIA 2025) (finding jurisdiction for bond over an individual who entered "unlawfully" but denying for flight risk); *Matter of C-M-M-* 29 I&N Dec. 141 (BIA 2025) (finding jurisdiction where individual entered without inspection but denying for flight risk); *Matter of R-A-V-P-* 27 I&N Dec. 803 (BIA 2020) (finding jurisdiction over individual who entered without inspection but denying for flight risk); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (distinguishing between individuals who entered without inspection and are eligible for bond under 8 USC § 1226(a) and those who entered without inspection and are subject to mandatory detention under 8 USC § 1225(b)).

However, ICE began to advance its argument that all non-citizens are subject to mandatory detention if they entered without inspection regardless of the amount of time they had resided in the United States. Respondents presented this argument first at the Tacoma Immigration Court, which resulted in bond denials for individuals who had been living in the U.S. for years. A class action suit was brought in the Western District of Washington, and in April 2025, the District Court Judge enjoined Respondents from denying bond based on 8 USC § 1225(b) and ordered bond hearings pursuant to 8 USC § 1226(a) for all named class members. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025)

But Respondents were not deterred. Despite being on notice that their arguments may

lack merit, Respondents decided to advance this argument nationwide. On July 8, 2025, ICE issued a Directive in collusion with the DOJ stating that anyone who entered the U.S. without inspection was subject to mandatory detention under 8 USC § 1225(b) and was therefore ineligible for a bond hearing under 8 USC § 1226(a). Ex. F.

Pursuant to this Directive, Immigration Courts across the U.S. began to change course and deny bond for lack of jurisdiction when they previously would have granted bond. On September 5, 2025, the BIA adopted the ICE directive as precedent and stripped Immigration Judges of the authority to hear bond cases for anyone that entered the U.S. without inspection. *Yajure-Hurtado*, 29 I&N Dec. 216. According to Respondents, all non-citizens who enter the United States without inspection are deemed "applicants for admission" and are therefore subject to mandatory detention under § 1225(b)(2). *Id.* ICE and the DOJ have chosen to flatly ignore § 1226(a).

However, District Courts throughout the United States have rejected the BIA's new interpretation of the statute, finding individuals, like Petitioner, who entered the U.S. without inspection are in fact eligible for bond. The fact that numerous district courts have rejected the BIA's new interpretation indicates that Ms. Vargas Palacios is likely to succeed on the merits. These district courts include:

In the First Circuit:

Sampiao v. Hyde, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in Yajure Hurtado); *Jimenez v. FCI Berlin*, Warden, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug.

14, 2025); *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025);

In the Second Circuit

Lopez Benitez v. Francis, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025);

In the Fourth Circuit

Leal-Hernandez v. Noem, 2025 WL 2430025 (D. Md. Aug. 24, 2025);

In the Fifth Circuit

Kostak v. Trump, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 3:25-cv-01193 (W.D. La. Sept. 11, 2025); *Angel Fuentes v. Lyons*, 5:25-CV-00153 (S.D. Tex. Oct. 16, 2025); *Lopez-Arevelo v. Ripa*, 3:25-cv-00337 (W.D. Tex. Sept. 22, 2025).

In the Sixth Circuit

Lopez-Campos v. Raycroft, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);

In the Eighth Circuit

Hernandez Marcelo v Trump, 3:25-cv-00094-RGE-WPK (S.D. Iowa Sept. 10, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025);

In the Ninth Circuit

Zaragoza Mosqueda et al. v. Noem, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders requiring prudential exhaustion futile); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 25025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

4. ***Petitioner requires emergency relief this Court because she has exhausted all available remedies***

Exhaustion of remedies is not required where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012). Ms. Vargas Palacios has exhausted all available remedies and additional exhaustion would be futile. ICE detained Ms. Vargas Palacios in early September in Florida and then her hundreds of miles from her home in Florida to El Paso, Texas. During the more than two months that she has been detained, ICE has not released her. Initiating court proceedings in Texas indicates ICE's intention of detaining Ms. Vargas Palacios for the duration of her court proceedings. Because of the BIA decision issued on September 5, 2025, Ms. Vargas Palacios has no further remedies available, as the Immigration Court was stripped of jurisdiction for bond. *Yajure Hurtado*, 29 I&N Dec. at 216.

5. ***Petitioner continues to be prejudiced by the government violating his due process rights***

In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted

without the violation." *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). "To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

Ms. Vargas Palacios is clearly prejudiced by her continued, unjustified detention. She has been detained for over two months— separated from her son and unable to support him financially. Mr. Vargas Palacios has no idea how long he will be detained unless this Court acts to preserve his right to be free from custody as authorized by the Immigration and Nationality Act.

B. Petitioner will continue to face irreparable harm if emergency relief is not granted.

It is well established that deprivation of constitutional rights constitutes "irreparable injury" and justifies issuance of a temporary restraining order. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976); *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

Further, Ms. Vargas Palacios is irreparably harmed because indefinite detention bears no "reasonable relation" to its purpose. *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing "[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual" (cleaned up) (internal quotation marks omitted) (citation omitted)).

In the present case, Ms. Vargas Palacios' Fifth Amendment rights are being violated

because ICE agents, at the direction of Respondents, continue to detain her without a meaningful opportunity to request a bond hearing. Ms. Vargas Palacios faces irreparable harm as a result, including deprivation of her liberty and separation from her child. Following the rulings in *Elrod,* these Fifth Amendment violations involving deprivations of due process constitute irreparable injury to Ms. Vargas Palacios and justify issuance of a temporary restraining order. Ms. Vargas Palacios' liberty has been and continues to be restricted in violation of his constitutional rights.

The aforementioned issues establish irreparable harm and justify the prompt issuance of a TRO in this matter.

C. Respondents will face no injury or harm if emergency relief is granted.

The federal courts have routinely ruled that threatened or actual violations to a person's constitutional rights outweigh any harm to the government's interest in pursuing a government action. *See Morrison v. Heckler*, 602 F. Supp. 1482 (D. Minn. 1984); *see also Pacific Frontier v. Pleasant Grove City,* 414 F.3d 1221 (10th Cir. 2005).

Ms Ms. Vargas Palacios' harms, discussed above, are weighty; these harms are the direct result of Respondents' conduct in denying Ms. Vargas Palacios due process as required under the Constitution and the INA. In fact, Ms. Vargas Palacios' continued detention is actually a burden for Respondents in that his arbitrary detention is costly to the U.S. government.

Possible injuries to the government, should the restraining order be granted, are nonexistent. Ms. Vargas Palacios is only moving for this Court to order the Immigration Court to provide her with a bond hearing. Ms. Vargas Palacios is not seeking actual release from this Court. Ms. Vargas Palacios only seeks a return of the proper interpretation of the statute which EOIR had applied for the last three decades without issue.

For the aforementioned reasons, the irreparable harm to Ms. Vargas Palacios that will

occur should Respondents fail to provide him with a bond hearing clearly outweighs any burden to Respondents in indefinitely keeping him detained.

D. The issuance of a TRO is in the public interest.

The public—and therefore the government—has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Torres v. U.S. Dep't of Homeland Sec.*, 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) ("[T]he public has an interest in the orderly administration of justice[.]"). "It is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994)). Additionally, there is critical public interest in ensuring executive agencies act lawfully. Respondents "cannot reasonably assert that [the government] is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).

The protection of individuals' constitutional rights against governmental interference is one of the overarching concerns of our system of American jurisprudence. The constitutional guarantee to due process is a fundamental limit on the government's power to skew, alter, or improperly affect legal proceedings related to an individual's property or liberty interest(s). To ensure the protection of Ms. Vargas Palacios constitutional rights, a TRO and preliminary injunction should be issued by this Court to enjoin Respondents from continuing to detain Ms. Vargas Palacios.

The United States criminal justice system and Constitution represent the essential blending of individual rights and the efficient administration of justice and government. One of the principal reasons for the success of the United States has been trusted in our country's legal

system. If Respondents are entitled to violate the Constitution without censure, public trust in the judiciary will be harmed.

E. Petitioner has complied with the requirements of Rule 65.

Finally, as set forth *supra*, Ms. Vargas Palacios asks this Court to find that she has complied with the requirements of Rule 65, Fed.R.Civ.P., for the purpose of granting a temporary restraining order. Respondents have been provided a copy of the instant motion and supporting documents and are on notice. Rule 65(c) states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of this case, however, Ms. Vargas Palacios respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to refrain from arresting, detaining, or transferring Ms. Vargas Palacios, and/or to refrain from giving Respondents' unlawful actions legal effect, should not result in any conceivable financial damages to Respondents. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

REMEDIES

Petitioner moves for this Court to order Respondents to provide her with a constitutionally adequate bond hearing. He also moves for this Court to enjoin Respondents from invoking the auto-stay provisions during any pending bond appeal, should the Immigration Judge issue a bond to her. The auto-stay provisions have been found by other courts to be *ultra vires* because they authorize DHS to arbitrarily deny her of her right to liberty.

8 C.F.R. § 1003.19(i)(2) gives DHS unilateral authority to block an Immigration Judge's custody order. Under that "automatic stay" regulation, if DHS disagrees with an Immigration Judge's custody determination, DHS can file a boilerplate notice of intent to appeal that automatically stays the Immigration Judge's order. In other words, the prosecuting officials who failed to keep the non-citizen detained in the first place can unilaterally block the Immigration Judge's order and force continued detention.

While the regulations provide that DHS's automatic stay will lapse in 90 days absent a BIA decision on the appeal, there are multiple avenues for extension. 8 C.F.R. § 100.36(c)(4). For example, if the BIA does not issue a decision in the 90-day window, DHS can then seek an additional discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5). The automatic stay remains in effect for another 30 days while the BIA decides whether to grant a discretionary stay. *Id.*

Even if the BIA rules in favor of the non-citizen on appeal and authorizes his release on bond, that release is automatically stayed for five more business days to give DHS a chance to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). Then, if DHS refers the case to the Attorney General, the automatic stay is extended for another 15 days. *Id.* The Attorney General may then stay release for the pendency of the case. *Id.* There is no prescribed time limit for final resolution of the custody determination, meaning an individual may remain in detention indefinitely. In sum, should DHS invoke the auto-stay provisions, Petitioner will have no way of knowing how long this automatic stay will last and has no opportunity to challenge the stay. In practice, the automatic stay regulation renders any Immigration Judge's custody decisions ineffectual: If DHS disagrees with a custody decision, it can keep Petitioner detained for a minimum of 90 days, without a truly discernable end point. This auto-stay provision has been deemed *ultra vires* and a violation of the APA by several courts. See, e.g., *Leal-Hernandez v.*

Noem, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025)(finding the government's use of automatic stay provision to appeal IJ's bond decision ultra vires because it "renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity"); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sep. 3, 2025) (holding that the automatic stay provision is ultra vires because it "exceeds the statutory authority Congress gave to the Attorney General"); *Zavala v. Ridge*, 310 F. Supp. 2d. 1071, 1079 (N.D. Cal. 2004) (finding the automatic stay regulation ultra vires because it "effectively eliminates the discretionary nature of the immigration judge's determination and results in a mandatory detention . . . of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention"); *see also Anicasio v. Kramer*, No. 25-cv-3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).

The automatic stay regulation violates the Administrative Procedure Act (APA) and is ultra vires because it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C), and Petitioner moves for this Court to enjoin Respondents from invoking it at or after any future bond hearing ordered by this Court.

CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant her Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Ms. Vargas Palacios' Petition, and Motion violated the Fifth Amendment, of the United States Constitution, 28 U.S.C. § 2241, the APA, and the INA;
2. Enjoin Respondents from denying bond under § 1225(b)(2);
3. Order a bond hearing under U.S.C. § 1226(a) within 7 days;

4. Enjoin Respondents from invoking the auto-stay provisions at 8 C.F.R. § 1003.19(i)(2), should an Immigration Judge grant a bond
5. Grant Petitioner such other relief as the Court deems appropriate and just.

Respectfully submitted on this 14th day of November 2025, ,

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Minneapolis, MN 55418

Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submits this verification on behalf of the Petitioner. Undersigned counsel has discussed with Petitioner the events described in this Petition for Motion for Preliminary Injunction and Temporary Restraining Order and, on the basis of those discussions, verify that the statements in the Petition are true and correct to the best of her knowledge and belief.

Date: 14 November 2025 /s/ Jennifer Scarborough
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

to be served on all counsel of record via ECF.

Dated this 14th day of November 2025,

/s/ Jennifer Scarborough
Jennifer Scarborough