UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Enma Jamileth Tinoco Pineda, Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director; Rose Thompson, Warden of Karnes County Immigration Processing Center Respondents.	Civil Case No. 5:25-cv-1518

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

For over three years, the Petitioner has lived in the United States, building a life and creating ties to her community. Yet today,s he remains in immigration detention—not because Congress required it, but because the government has chosen to misread the law. On or around January 22, 2022, the Petitioner was arrested under 8 U.S.C. § 1226 by U.S. immigration officials after she entered the United States unlawfully and placed in removal proceedings before an Immigration Judge (IJ). *See* Exh. A–B. On February 14, 2022, the U.S. Department of Homeland Security (DHS) released the Petitioner from custody under a release order on her own recognizance. *See* Exh. C. The Petitioner fully complied with this order and is seeking to regularize her status through an application for asylum.

1. Despite the Petitioner's full compliance with her release order, the Respondents detained her on or around November 6, 2025. They claim that the Petitioner is subject to mandatory

detention under 8 U.S.C. § 1225(b)(2)(A), relying on the Board of Immigration Appeals' (BIA) recent and its deeply flawed decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA rewrote decades of settled law, holding that every noncitizen who entered the country without inspection is automatically subject to mandatory detention. *Id.* at 229. This Court has already rejected the Respondents' erroneous interpretation of the statute. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (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); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 1:25-cv-06373-DEH, 2025 WL 2398831 (S.D.N.Y. Aug. 12, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Vasquez Garcia v. Noem*, No. 3:25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025);

Jimenez v. Berlin, ---F. Supp. 3d---, 2025 WL 2639390, at *10 (D. Mass. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sep. 21, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923 (N.D. Cal. Sep. 25, 2025); *Savane v. Francis*, No. 1:25-CV-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-RGE-WPK, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Barrera v. Tindall*, No. 3:25-CV-541, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025); *Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025); *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara, et al.*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Sanchez-Alvarez v. Noem et al.*,, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025);

Betancourt Soto v. Soto et al., No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Arce-Cervera v. Kristi Noem, et al.*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *Erazo v. Hardin et al.*, No. 2:25-CV-891-KCD-DNF, 2025 WL 3187136 (M.D. Fla. Nov. 14, 2025); *Cruz Gutierrez v. Thompson, et al.*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Sacvin v. De Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432 (D.N.M. Nov. 14, 2025); *see also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (due process grounds); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (same); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (same); *Hernandez-Fernandez v. Lyons, et al.*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (same); *Gonzalez Martinez v. Noem et al.*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (same); *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025) (same); *Barros v. Noem et al.*, No. EP-25-CV-488-KC, 2025 WL 3154059 (W.D. Tex. Nov. 10, 2025) (same).

Absent immediate relief, the Petitioner will continue to suffer irreparable harm from unlawful detention. Accordingly, Petitioner moves the Court for a Temporary Restraining Order (TRO) and a preliminary injunction prohibiting the Respondents from continuing to unlawfully detain her during the pendency of her Petition for Writ of Habeas Corpus.

I. STATEMENT OF FACTS

The Petitioner, a citizen of Nicaraga, entered the United States without inspection on or about January 22, 2022. She was apprehended by U.S. immigration officials shortly after her entry and ordered to appear before an IJ. *See* Exh. A–B. The NTA charges her as being inadmissible for

being present in the United States without admission or parole. *See* Exh. A. On January 22, 2022, DHS released the Petitioner from custody pursuant to Form I-200A, Order of Release on Recognizance, which provided that, "[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations," Petitioner was being released on her "own recognizance." *See* Exh. C.. In doing so, DHS determined that the Petitioner posed no danger or flight risk and that pursuing her removal was not a priority. *See Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Petitioner has no criminal history and has complied with her order of release on recognizance.

Following her release from custody, the Petitioner resided in Texas with her husband for over three years. She was granted employment authorization and was gainfully employed in a restaurant. While in proceedings, she timely filed an application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") on January 19, 2023. Her application remains pending before the Immigration Court, with her next master calendar hearing scheduled for December 11, 2025.[1]

On or about November 6, 2025, the Petitioner was unlawfully redetained at her routine check-in with the U.S. Immigration and Customs Enforcement (ICE) without any materially changed circumstances that would now render her a flight risk or danger to the community. Indeed, "[t]he law requires a change in relevant facts, not just a change in [the government's] attitude." *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D.

[1] Prior to the recent detention, the Petitioner's case had already been scheduled a final hearing on the merits of her asylum application on January 19, 2028.

Cal. July 11, 2025) (quoting *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 n.6 (S.D.N.Y. June 18, 2025)).

On September 5, 2025, the BIA issued its clearly erroneous precedential decision in *Yajure Hurtado*. Since *Yajure-Hurtado* misapplies the custody-related statutes of the Immigration and Nationality Act and violates the Petitioner's due process rights, the Petitioner filed a writ of habeas corpus with this Court on November 18, 2025. This motion for a temporary restraining order (TRO) and a preliminary injunction now follows.

II. ARGUMENT

A TRO should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974). The movant must establish four factors: (1) a likelihood of success on the merits; (2) a 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 is in the public interests. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is the opposing party, the final two factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Petitioner satisfies all four TRO factors. She is likely to succeed on the merits of her petition because her detention violates § 1226(a) which authorizes a custody hearing before the IJ and the Fifth Amendment's Due Process Clause. Next, the second prong is easily satisfied since the Petitioner is suffering—and will continue to suffer—irreparable harm from unlawful and unconstitutional detention, including the deprivation of liberty, economic burdens, and separation

from her community. Similarly, the third prong is met because the balance of equities strongly favors Petitioner, as halting unlawful detention imposes minimal burden on Respondents—indeed it will force them to comply with a statute passed by Congress—while allowing detention to continue inflicts profound and ongoing harm to the Petitioner. Finally, the public interest supports immediate relief, as it is always in the public interest to ensure government agencies comply with laws passed by Congress and refrain from unlawfully detaining people. As such, Petitioner is entitled to a TRO and a preliminary injunction ordering her immediate release from unlawful detention.

A. The Petitioner is likely to succeed on the merits of her Petition for Writ of Habeas Corpus.

1. The statutory language and legislative history of the applicable statutes demonstrate that the Petitioner is eligible for release on bond under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).

The Petitioner has a clear right to a custody hearing before an IJ under 8 U.S.C. § 1226(a)(2), which authorizes the IJ to grant bond to noncitizens who are detained pending the outcome of removal proceedings. The plain language of § 1226(a) and its legislative history all support the Petitioner's position. 8 U.S.C. § 1226(a) provides, in pertinent part, as follows:

> (a) Arrest, detention, and release
>
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
>
> (1) may continue to detain the arrested alien; and
>
> (2) may release the alien on—
>
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> (B) conditional parole . . .

This statutory language is applicable to the Petitioner's case and allows for her release on bond. Section 1226(a) applies to "an alien" arrested "on a warrant" who is "detained pending a decision on whether the alien is to be removed from the United States." This is a specific statute that is separate and apart from § 1225(b)(2)(A), which only applies to noncitizens arriving at the border or a port of entry. As the Supreme Court has stated § 1226(a) "authorizes the Government to detain certain aliens *already in the country* pending outcome of removal proceedings . . . ." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). The Petitioner had been in the country for over three years when hse was re-detained pending the outcome of her removal proceedings. The NTA filed with the immigration court charges her as being subject to removal as a person present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* The inexorable conclusion, therefore, is that she is a noncitizen present in the country pending the outcome of her removal proceed—eligible for bond under § 1226(a).

Contrary to the findings in *Yajure-Hurtado*, 8 U.S.C. § 1225(b)(2)(A) has no application to this case. That statute states, in pertinent part, that "in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). The Petitioner who entered the country illegally over three years ago was obviously not applying for admission when she was redetained and was not "seeking admission into the United States." Consequently, § 1225(b)(2)(A) does not require her mandatory detention. As multiple courts have explained, the Respondents' interpretation contravenes basic canons of statutory construction. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *6; *Jimenez*, 2025 WL 2639390, at *10; *Guerrero Orellana*, 2025 WL 2809996, at *7 ("After all, § 1225(b)(2)(A) requires that the noncitizen be both an 'applicant for admission'

and 'seeking admission.' If the provision 'were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute.'") (alterations in original)). Moreover, the Petitioner's initial detention was under § 1226(a), and her present arrest is pursuant to the same authority. *See, e.g.*, *Gomes*, 2025 WL 1869299, at *5–8; *Jimenez*, 2025 WL 2639390, at *5–6.

The Petitioner's interpretation of the statutory language is supported by the recent passage of the Laken Riley Act (LRA), which demonstrates that Congress did not intend for § 1225(b)(2)(A) to apply to all noncitizens who entered without inspection. Section 1226(c) is an exception to § 1226(a)'s general bond authority and requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January 2025, Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Pub. L. No. 119-1, 139 Stat. 3. The LRA would not have been necessary if all noncitizens who entered the country illegally were already subject to mandatory detention under § 1225(b)(2). The Respondents' construction to the contrary contradicts the statutes' plain language and Congressional intent as manifested in the recent passage of the LRA.

The Petitioner's reading of the statutory language is further bolstered by the congressional reports issued at the time of the statute's enactment. Both §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA). Before the IIRIRA's

passage, noncitizens who entered the country without inspection were subject to discretionary release from detention. *See Guerrero Orellana*, 2025 WL 2809996, at *9. A congressional report issued during the IIRIRA's passage confirms that the revised § 1226(a) "restates the current provisions ... regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Id.* (citing H.R. Rep. No. 104-828, at 210 (1996) and H.R. Rep. No. 104-469, pt. I, at 229 (1996)). Thus, rather than eliminating bond eligibility for individuals who entered without inspection, Congress reaffirmed the Attorney General's longstanding authority to arrest and release such individuals under § 1226(a). *Id.*

The Respondents have recognized in other forums that § 1226(a) allows for release on bond for noncitizens who entered the country unlawfully. During oral argument in *Biden v. Texas*, the Solicitor General explained that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." *Chogllo Chafla*, 2025 WL 2688541, at *23 (quoting Tr. of Oral Argument at 44:24–45:20, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)); *see also Martinez v. Hyde*, 2025 WL 2084238, at *12 n.9 (D. Mass. July 24, 2025). Likewise, the Supreme Court in *Jennings* stated that "§ 1226 applies to aliens already present in the United States" and "permits the Attorney General to release those aliens on bond." 583 U.S. at 303.

The statutory language is unambiguous and allows for the Petitioner's release on bond; but if the Court finds the statutes are ambiguous, the BIA's interpretation in *Yajure Hurtado* is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). In *Loper Bright*, the Supreme Court held that "Courts must exercise their independent judgment in deciding whether an agency has acted within its

statutory authority" while according only "due respect" to an agency's interpretation. *Id.* at 413, 370. The amount of "respect" owed to an agency's interpretation depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). The BIA's current position is inconsistent with earlier pronouncements, decades of prior practice, and the reasoning adopted by multiple federal district courts. For nearly thirty years, immigration judges, noncitizens' counsel, and attorneys for DHS uniformly understood § 1226(a) to confer bond eligibility on noncitizens who entered without inspection. The BIA's new interpretation is wrong, receives no judicial deference, and should be given little respect.

2. Detaining the Petitioner without an individualized bond hearing violates due process of law.

The Respondents cannot deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "[T]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [that the Due Process Clause] protects." *Id.* at 690. The Petitioner has a weighty liberty interest in her freedom even if the "government wields significant discretion." *Rosado*, 2025 WL 2337099, at *11. The Respondent's decision to hold the Petitioner without access to a bond hearing where she can contest her detention violates the Petitioner's right to procedural due process of law.

"To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319." *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors are:

(1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

The private "interest in being free from physical detention is 'the most elemental of liberty interests.'" *Martinez*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Since the Respondents unreasonably claim that the Petitioner is subject to mandatory detention under their new interpretation of 8 U.S.C. § 1225(b)(2), they may claim she has no legitimate liberty right. However, presuming the vast majority of district courts on this issue are wrong, and the Petitioner is subject to mandatory detention, the "Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] [previously] released . . . *prior to the manifestation of this interpretation*." *Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828, at *10 (W.D. Tex. Sept. 22, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8 (W.D. Tex. Oct. 21, 2025). Since the Petitioner has been in the U.S. for over three years, was previously released by the Respondents from custody, the Petitioner possesses a cognizable interest in her freedom from detention and DHS must demonstrate by clear and convincing evidence that continued detention is warranted based on dangerousness or a flight risk. *See, e.g.*, *Lopez-Arevelo*, 2025 WL 2691828, at *11; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017) ("Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed

circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.").

The second *Mathews* factor considers whether the "challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez*, 2025 WL 2598379, at *3 (quoting *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025)); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751, at *9 (W.D. Tex. Oct. 21, 2025). Here, the IJ is deprived of jurisdiction to consider the Petitioner's bond application based on *Yajure-Hurtado*. As such, there was no review of whether the Respondents are justified in redetaining the Petitioner nor can there be such review. There is a high risk, therefore, that her liberty is being erroneously deprived. This is especially true when considering the Respondents' prior decision to release her on her own recognizance.

On the third *Mathews* factor relating to Government interests, the Respondents have an interest in ensuring that the Petitioner appears for her hearings and is not a danger to his community. However, its prior decision to release her is indicative of a governmental determination that the Petitioner is neither dangerous nor a flight risk. Moreover, the Government's interest in mandatory detention runs contrary to Congressional intent which plainly allows for bond eligibility under 8 U.S.C. § 1226(a). The *Mathews* factors all weigh in favor of the Petitioner. The Court should order the Respondents to cease detaining the Petitioner without an individualized bond hearing.

3. Should the Court find *Yajure* is correct, then it should not apply retroactively.

In *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape," retroactive application

would "contravene[] basic presumptions about our legislative system" and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying *Yajure Hurtado* to individuals like the Petitioner, who entered the United States without inspection years before the BIA's decision, would be impermissibly retroactive. The BIA's decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying *Yajure Hurtado* would strip these long-established rights and impose a new disability by rendering them ineligible for bond, contrary to settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

4. The Respondents' failure to follow their own regulations constitutes an *Accardi* violation.

In 1997, after Congress amended the INA through the IIRIRA, the EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies explained that "[d]espite being applicants for admission, aliens who are *present without having been admitted or paroled* (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing

regulations. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2)(A) to individuals like Petitioner.

The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates her continued detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, which for decades have recognized that noncitizens present without admission are eligible for a bond hearing. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country."). Such protection is not a mere regulatory grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 514 (2003).

Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

B. Petitioner will suffer irreparable injury as a result of her unlawful detention.

In the immigration context, unlawful detention alone constitutes irreparable injury. *See Gudino v. Lowe*, No. 1:25-CV-00571, 2025 U.S. Dist. LEXIS 75099, at *32 (M.D. Pa. Apr. 21, 2025) (citing *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (finding that

immigration detention can cause irreparable harm because individuals are likely to be detained unlawfully for an indefinite period and emphasizing economic harm)); *see also de Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury'") (internal citation omitted). Courts have similarly recognized that threatened removal satisfies the irreparable injury requirement, including harms such as separation from family and home, uncertainty about legal status, and difficulties establishing a life in the United States, such as access to healthcare, education, and employment. *See, e.g.*, *Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807, 836 (N.D. Cal. 2025) (describing harms from removal, including separation from family and communities, loss of authorization to work, and educational opportunities); *Mataca v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (loss of liberty due to detention is "perhaps the best example of irreparable harm"); *Carmona v. Bondi*, No. CV-25-00110-TUC-JGZ, 2025 WL 786514, at *3 (D. Ariz. Mar. 12, 2025) (finding that a detainee facing potential removal has shown irreparable injury such that the ex parte TRO should be granted).

In this case, the Petitioner will continue to suffer irreparable harm from the Respondents' violation of the INA, its implementing regulations, and the Fifth Amendment's Due Process Clause. Indeed, the deprivation of Petitioner's fundamental liberty interest alone constitutes irreparable harm. In addition, she is separated from her husband and community, is unable to work due to detention, and is facing ongoing uncertainty about her legal status, all of which further compounds the injury. Each of these factors independently constitutes irreparable harm warranting immediate injunctive relief.

C. The remaining factors weigh in favor of a TRO and preliminary injunction.

The remaining factors—the possibility of harm to other interested parties and the public interest—also weigh in favor of granting a TRO and preliminary injunction and directing the Petitioner's immediate release. First, Respondents will not be harmed by releasing the Petitioner. On the contrary, the Petitioner's release will bring the Respondents in conformity with law, which cannot be considered harmful. By enacting § 1226(a), Congress clearly indicated that noncitizens present without admission may be released from custody pending the outcome of removal proceedings. Therefore, the Respondents will not be prejudiced by a requirement to respect the will of Congress and to abide by its own regulations and decades of administrative practice. Any administrative burden imposed on Respondents by temporarily halting unlawful detention is minimal and far outweighed by the substantial harm Petitioner continues to suffer each day her liberty is denied. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Second, the public interest is always served when the government acts lawfully. By granting a TRO and preliminary injunction ordering the Petitioner's immediate release, the Court will order the government to follow the INA, its implementing regulations, and the Fifth Amendment, which is necessarily in the public interest. "In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights." *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997); *see also Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377, 400 (6th Cir. 2001); *Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention . . . ."). The government suffers no cognizable harm from being enjoined from unconstitutional conduct. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th

Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.").

Moreover, "[a]s a practical matter, if a Plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor plaintiff." *AT&T v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). Petitioner has shown a clear likelihood of success on the merits and will clearly suffer irreparable harm if the Court does not order her release from custody. As such, the balance of equities and the public interest weigh decisively in favor of issuing a temporary restraining order and preliminary injunction.

D. Petitioner has complied with the requirements of Federal Rule of Civil Procedure 65.

Petitioner asks this Court to find that he has complied with the requirements of Fed. R. Civ. P. 65, for the purpose of granting a temporary restraining order. Pursuant to Rule 65(b)(1), this Court "may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse party can be heard in opposition; and 2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required."

Here, Petitioner's verified petition clearly demonstrates immediate and irreparable injury. The undersigned's motion also contains a certification regarding notice to opposing counsel. The U.S. Attorney's Office represents Respondents in civil litigation in which they are named as respondents. While proper service may not have been made on Respondent's counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to

the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met.

Rule 65(c) also 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 the instant suit, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to release Petitioner from unconstitutional detention, should not result in any conceivable financial damages to Respondents. *See, e.g., Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 WL 1382859, *6 (N.D. Cal. May 12, 2025).

I. CONCLUSION

For the foregoing reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction prohibiting the Respondents from continuing to detain him pending the resolution of her Writ of Habeas Corpus and to order that he be released. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release."). Alternatively, the Court should grant this motion, find that the Respondent is eligible for a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden to demonstrate by clear and convincing evidence that the Petitioner's detention is justified, and order the Respondents hold the hearing without delay.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 65(B)

The undersigned certifies that on November 19, 2025, she emailed Assistant United States Attorney Lacy McAndrew notice of Petitioner's intention to file the motion for TRO. The undersigned further certifies that on November 19, 2025, a copy of the verified writ of habeas corpus, and this motion, along with all exhibits, is being served to the Respondents by certified mail return receipt requested and by electronic email at Lacy.McAndrew@usdoj.gov and usatxw.civil.immigration.notices@usdoj.gov.

/s/ Alejandra Martinez
Alejandra Martinez