

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

KIMBERLY DIMAS BRANCHI,

*Petitioner*

v.

BRIAN ACUNA, et al

*Respondents.*

Civil Action No. \_\_\_\_\_

**PETITIONER’S MOTION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Petitioner KIMBERLY DIMAS BRANCHI respectfully requests, in accordance with Local Rule 65.1, that this Honorable Court grant a temporary restraining order (“TRO”) and preliminary injunction against Respondents because, as demonstrated in the attached memorandum of law and other supporting documents, his detention by Respondents is unlawful.

Petitioner therefore requests an order enjoining Respondents from further detaining him. Upon filing of his underlying petition, undersigned counsel contacted the United States Attorney’s Office for the Western District of Louisiana on their position on this Motion on December 4, 2025 and upon information and belief they oppose this temporary restraining order.

Dated: December 4, 2025

Respectfully submitted,

/s/ David Rozas

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**CERTIFICATE OF SERVICE PURSUANT TO LOCAL RULE 65.1**

I hereby certify December 4, 2025, I electronically filed the foregoing document, supporting memorandum, and proposed order with the Clerk of the Court using the CM/ECF system. I will email this Motion and its supporting documents to the email and mail certified to the addresses for the United States Attorney's Office, Western District of Louisiana:

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**PETITIONER'S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

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## INTRODUCTION

Petitioner Kimberly Dimas Branchi motions for a temporary restraining order against Respondents pursuant to Rule 65 and the All Writs Act. Petitioner is a civil immigration detainee in Immigration and Customs Enforcement (“ICE”) custody. The Department of Justice (“DOJ”) denies Petitioner a bond hearing under its novel, erroneous interpretation of the Immigration and Nationality Act (“INA”). The DOJ’s interpretation relies on a sophomoric, excised reading of the INA contrary to the greater statute itself and due process under the Fifth Amendment. Petitioner therefore requests that the Court enjoin Respondents from transferring Petitioner outside of the Court’s jurisdiction and order that Respondents provide a bond hearing within seven days.

ICE detains Petitioner despite her apprehension in the interior of the United States, numerous family and community ties, and lack of criminal convictions. The DOJ recently instructed Immigration Courts to deny bond hearings to anyone who has not been formally admitted to the United States. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025). According to DOJ, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because she is “seeking admission” to the United States despite having lived here for approximately five years.

The DOJ’s novel interpretation is incorrect as § 1225 applies only “at the Nation’s borders and ports of entry.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Petitioner’s detention is actually governed by the “default” detention provision for people “already in the country,” 8 U.S.C. § 1226. *Id.* at 289. Those detained under §1226 are entitled to bond hearings. *Id.* at 303. A century of executive practice and the INA’s text and legislative history demonstrate that the old interpretation is the correct one.

Absent this Court’s intervention, Petitioner will remain unlawfully detained and separated from her family without an opportunity to make her case for bond. The public interest lies in discouraging unlawful government detention like the detention of Petitioner. As such, this Court should grant the instant Temporary Restraining Order (“TRO”) motion.

### FACTUAL BACKGROUND

Petitioner lived in the United States for years before ICE arrested her. Ms. Merida Perez entered the United States around 2020 without being apprehended by immigration officers. Verified Petition for Writ of Habeas Corpus. She has lived in the United States for five years without any issues with law enforcement. She was arrested and charged with a domestic abuse battery charge.

On November 19, 2025, ICE took Ms. Dimas Branchi into their custody following her scheduled check in.

On September 5, 2025, Respondent Bondi, through the Board of Immigration Appeals (“BIA”), issued *Yajure Hurtado*, which purports to subject any noncitizen who has not been formally admitted to the United States to mandatory detention. 29 I&N Dec. at 228. Since then, DOJ has refused to provide bond hearings to these detained noncitizens. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*11 (W.D. Tex. Sept. 22, 2025); *Alvarez Puga v. Assistant Field Off. Dir., Krome North Serv. Processing Ctr.*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at \*5 (S.D. Fla. Oct. 15, 2025) (collecting cases).

### ARGUMENT

A movant seeking a TRO must establish that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities

tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Petitioner is likely to succeed on the merits. DOJ’s refusal to provide bond hearings to unadmitted noncitizens apprehended in the interior of the United States like Petitioners violates 8 U.S.C. § 1226. The plain language and legislative history of § 1226, canons of statutory construction, longstanding executive practice, and the structure of § 1225 demonstrate that § 1226 rather than § 1225 controls Petitioners’ detention. Petitioners are also likely to succeed because holding Petitioners without an individualized bond hearing violates their procedural due process rights. Petitioners have significant interests in freedom from detention and family unity. An individualized hearing would greatly reduce the chances of erroneous deprivation of those interests. The public’s interest lies in liberty and the burden to Respondents of providing hearings is low as it has routinely provided such hearings for a century. These continuing violations and forced separation of Petitioners’ families constitute irreparable harm. The government and public have no interest in continuing Petitioners’ unlawful detention. As such, the TRO should issue.

#### **I. This Court Has Jurisdiction Over Petitioner’s Motion**

The Court has ample authority under 28 U.S.C. § 2241 and under Rule 65 of the Federal Rules of Civil Procedure to order bond hearings—a remedy that has regularly been ordered by this Court. Habeas corpus invests in federal courts broad, equitable authority to “dispose of the matter as law and justice require,” 28 U.S.C. § 2243, as the “very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 292 (1969).

This Court has jurisdiction over Petitioners’ statutory and due process claims as they do not challenge any discretionary decision, but rather whether Respondents have the legal authority to detain them without bond hearings. *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at

\*2 (W.D. La. Aug. 27, 2025). Rule 65 provides this Court jurisdiction to issue a TRO requiring bond hearings *Id.* at \*4.

## II. Petitioner is Likely to Succeed on the Merits

### A. Petitioner's Statutory Claim is Likely to Succeed

A movant is not required to show entitlement to the relief sought in the underlying matter. *See Janvey v. Alguire*, 647 F.3d 585, 595–96 (5th Cir. 2011). Rather, the movant need only demonstrate “a prima facie case.” *Id.* When government detention violates a federal statute, that detention is unlawful and must be remedied by a court by granting a habeas writ. *See Tran v. Gonzales*, 411 F. Supp. 2d 658, 670 (W.D. La. 2006), *aff'd sub nom. Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Here, Petitioners' detention is governed by 8 U.S.C. § 1226(a), which requires DOJ to provide noncitizens with a bond hearing. DOJ, in this case, refuses to do so. As such, detention is unlawful under § 1226(a).

The detention of noncitizens in removal proceedings who were not apprehended on the border is governed by 8 U.S.C. § 1226. Noncitizens detained under § 1226, except those who have certain criminal histories, are entitled to individualized determinations concerning their eligibility for release during the pendency of removal proceedings. *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at \*5 (W.D. La. Sept. 11, 2025).

Respondent Bondi, however, has denied Petitioner an individualized determination through the BIA's *Yajure Hurtado* decision. 29 I&N Dec. at 228. The essential holding of the BIA's decision is that all people who enter the United States without inspection are “applicants for admission” and are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.*<sup>1</sup>

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<sup>1</sup> An avalanche of courts, examining *Yajure Hurtado* have found that the decision was not entitled to deference and that its holding was incorrect. *See* Memorandum Order, *Ventura Martinez v. Trump*, No. 3:25-cv-01445-JE-KDM, Dkt. 17 at \*2 (W.D. La. Oct. 22, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at \*3 n.3 (S.D. Tex. Oct. 7, 2025) (collecting cases).

The section relied upon by Respondents to detain Petitioner without a bond hearing reads, “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 [removal proceedings].” 8 U.S.C. § 1225(b)(2)(A). In turn, an “applicant for admission” is “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters).” 8 U.S.C. § 1225(a)(1).

On the other hand, § 1226 provides that any noncitizen “may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). In addition, “[e]xcept as provided in subsection (c),” DOJ may release such noncitizens on bond. *See* 8 U.S.C. § 1226(a)(1)-(3). Petitioners’ ongoing detention is governed by 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2)(A). The plain language of § 1226, implications of the statutory structure of § 1226(c)’s mandatory detention provisions, a century of executive practice, § 1226’s legislative history, and § 1225’s structure all indicate that § 1226 applies here.

### **1. The Plain Language of § 1226(a) Entitles Petitioners to Bond Hearings**

The plain text of § 1226 demonstrates that it applies to Petitioner. Subsection a of the statute authorizes bond hearings for noncitizens “arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226(c) exempts discrete categories of noncitizens with certain criminal histories from being released. *See* 8 U.S.C. § 1226(c)(1)(A), (C). Decisions about whether a noncitizen will be removed are made in removal proceedings in which Immigration Courts “determine[] whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.” 8 U.S.C. §

1229a(a)(3). Section 1226(a) is the “default” detention authority by which DHS may detain a noncitizen during removal proceedings. *Jennings*, 583 U.S. at 298.

In this way, section 1226(a) references § 1229a(a)(3). And § 1229a(a)(3) contemplates that removal proceedings determine whether noncitizens not admitted to the United States “may be admitted.” The Supreme Court endorsed this interpretation in *Jennings*. 583 U.S. 281 (2018). The Court explained § 1226 is the statute that authorizes detaining people “already in the country,” explicitly distinguishing them from “aliens seeking admission into the country” who are detained under § 1225. *Id.* at 289. Section 1225, the Court found, “applies primarily to [noncitizens] seeking entry into the United States” who claim fear of return to their home country at a United States border. *Id.* at 297. This Court has twice followed the Supreme Court’s interpretation and found that petitioners who were “already in the country” merited bond hearings under § 1226(a). *See Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at \*3 (W.D. La. Aug. 27, 2025); *Lopez Santos*, 2642278, at \*5. Other districts courts too have almost unanimously found that the text of the INA supports a finding that § 1226 rather than § 1225 applies to noncitizens in Petitioner’s situation. *See Buenrostro-Mendez*, 2025 WL 2886346, at \*3 (collecting cases). We urge the Court to do the same here.

## **2. Canons of Statutory Construction Demonstrate Entitle Petitioners to Bond Hearings**

Recent amendments to § 1226 reinforce that it governs Petitioner’s detention. The Laken Riley Act (“LRA”) added language to § 1226 that directly references people who have entered without inspection and 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) for entering the United States without inspection or § 1182(a)(7)(A) for lacking valid documentation to enter the United States and have certain criminal histories are subject to §

1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By explicitly naming these inadmissibility grounds, Congress reaffirmed that § 1226 covers noncitizens charged under § 1182(a)(6)(A) or (a)(7)(A).

To begin, “when Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). As such, the fact that “Congress specifically carved out categories of inadmissible noncitizens from § 1226(a)’s discretionary detention framework logically implies that Congress intended inadmissible noncitizens outside of those categories... to come within that framework.” *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at \*8 (D.N.H. Sept. 8, 2025); *see also* *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*6 (D. Mass. July 7, 2025).

Other canons support § 1226’s applicability to Petitioner as well. First, “a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.” *Clark v. Rameker*, 573 U.S. 122, 131 (2014) (internal citations omitted). If, as the BIA in *Yajure Hurtado* claims, “Section 1225 ... and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1258. Specifically, the LRA extended mandatory detention to noncitizens “present in the United States without being admitted or paroled” accused or convicted of specified criminal offenses. 8 U.S.C. § 1226(c)(1)(E); 1182(a)(6)(A). “But if all such persons were already subject to mandatory detention under § 1225(b)(2)(A), then § 1226(c)(1)(E) would be meaningless.” *Jimenez*, 2025 WL 2639390, at \*9.

Relatedly, “[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.” *Stone v. Immigration and Naturalization Serv.*, 514 U.S. 386, 397 (1995). If § 1225(b)(2)(A) already subjected unadmitted noncitizens to mandatory detention, Congress would have no reason to pass a statute that subjects unadmitted criminal noncitizens to mandatory detention. *See Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at \*7 (D. Mass. July 24, 2025) (“If... a non-citizen’s inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 [LRA] amendment would have no effect”).

Finally, “[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,” courts “generally presume[] the new provision should have been understood to work in harmony with what has come before.” *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025). This canon also supports § 1226’s applicability here. As discussed in subsection 3 below, the executive branch has granted unadmitted noncitizens apprehended in the interior of the United States bond hearings for over a century. When Congress amended § 1226(c) this year, it did so with this history and attendant case law presuming that such noncitizens are entitled to such bond hearings in mind. As such, Congress intended for the same understanding of § 1226 to apply moving forward. *Rodriguez Vazquez*, 779 F. Supp. 3d at 1259.

### **3. Longstanding Executive Practice Confirms that § 1226(a) Governs Petitioner’s Detention**

A “longstanding ‘practice of the government’”—like any other interpretive aid—“can inform [a court’s] determination of ‘what the law is.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (quoting *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 525 (2014)). Conversely, when “an agency claims to discover in a long-extant statute an unheralded power ... [courts] greet its

announcement with a measure of skepticism.” *Util. Air Regul. Grp. v. EPA*, 574 U.S. 302, 324 (2014).

The government has conceded in prior oral argument that “DHS’s long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.” *Roa v. Albarran*, No. 25-CV-07802-RS, 2025 WL 2732923, at \*4 (N.D. Cal. Sept. 25, 2025) (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022)). Agency administrative decisions and regulations have also presumed for decades that § 1226 governs the detention of those arrested within the United States. Twenty-eight years ago, the DOJ explained in the federal register that, “[d]espite being applicants for admission, aliens who are present without having been admitted (formerly referred to as aliens who entered without inspection) will be eligible for bond.” 62 Fed. Reg. at 10323 (Mar. 6, 1997) (emphasis added). The agency also stated that “[i]nadmissible aliens, except for arriving aliens, have available to them bond.” *Id.* In the following decades, the relevant regulations are unchanged. *Compare* 63 Fed. Reg. 27441, 27448 (May 19, 1998), with 8 C.F.R. § 1003.19(h)(2). Even today, the regulation governing IJs’ bond jurisdiction only limits an IJ’s bond jurisdiction to noncitizens subject to § 1226(c). *See* 8 C.F.R. § 1003.19(h)(2).

BIA decisions confirm that noncitizens who entered without inspection and have not been admitted have been granted bonds for at least fifty-two years. *See Matter of Toscano-Rivas et al.*, 14 I&N Dec. 523, 551 (BIA 1973) (explaining that the DOJ granted bond to five noncitizens who entered without inspection). These bond hearings have continued uninterrupted since. *See e.g. Matter of Velasquez*, 19 I&N Dec. 377, 379 (BIA 1986); *Matter of Aguilar-Aquino*, 24 I&N Dec. 747, 748 (BIA 2009); *Matter of Akmedov*, 29 I&N Dec. 166, 166-67 (BIA 2025). As such,

longstanding executive practice supports an interpretation of § 1226(a) that provides bond hearings to unadmitted noncitizens who have entered without inspection. See *Rodriguez Vazquez*, 779 F.Supp.3d at 1261; *Diaz Martinez*, 2025 WL 2084238, at \*8.

#### **4. The Legislative History Demonstrates that § 1226(a) Governs Petitioner’s Detention**

The current iteration of the INA’s discretionary statute, § 1226(a), was intended to “restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” See *Rodriguez Vazquez*, 779 F. Supp. 3d at 1260 (quoting H.R. Rep. No. 104-469, at 229 (1996)). Importantly, Congress made clear when it passed § 1226(a) that the statute “restates the current provisions ... regarding the authority ... to arrest, detain, and release on bond an alien.” H.R. Rep. No. 104-469, pt. 1, at 229 (1995).

The existing provisions before the 1996 passage of the current statute did not subject people who entered the United States unlawfully to mandatory detention. See 8 U.S.C. § 1252(a) (1994). This has been the case for over a century. See 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

Had Congress intended to subject millions of people to mandatory detention by passing § 1226, it would have explicitly said so. See *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). Because unadmitted noncitizens “were entitled to discretionary detention under [§] 1226(a)’s predecessor statute and Congress declared its scope unchanged ... this background

supports” the position those noncitizens are “subject to discretionary detention.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1260.

**5. The Statutory Structure and the Textual Limitations of § 1225 Demonstrate that it Does Not Apply to Petitioner**

The statutory structure also strongly supports the long-accepted interpretation that § 1226(a) applies to Petitioners. “In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.” *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted). The title of a statute, as well, may assist a court in divining the statute’s meaning. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023).

The text of § 1225 as a whole demonstrates that it does not apply to the unadmitted noncitizens arrested within the United States. In its title, the statute makes clear that it concerns “inspection” and “expedited removal of inadmissible arriving aliens.” 8 U.S.C. §1225. Subsection (b)(1) of the statute encompasses only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney General designates, and only those who are “inadmissible” for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. 8 U.S.C. §1225(b)(1).

Section 1225(b)(2) is similarly limited to people applying for admission on arrival, but whom (b)(1) does not cover. The title explains that it addresses “[i]nspection of other [noncitizens].” 8 U.S.C. §1225(b)(2). The subsection further specifies that it applies only to “applicants for admission” (defined at § 1225(a)(1)) who “seek[] admission.” *Id.* By stating § 1225(b)(2) applies only to those “seeking admission,” Congress plainly confirmed it did not intend to sweep up those who previously entered and began residing in the United States. One district court illustrated this limitation:

[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not describe them as ‘seeking admission’ (or ‘seeking’ ‘lawful entry’) at that point – one would say they had entered unlawfully but now seek a lawful means of remaining there.

*Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at \*7 (S.D.N.Y. Aug. 13, 2025). Or, as this Court recently held, a noncitizen who has lived in the United States has not “arrived (think Section 1225) in the United States, and he has instead been present (think Section 1226) ever since.” *Ventura Martinez*, No. 3:25-cv-01445-JE-KDM at \*6. Respondents have taken this position regularly, explaining in previous litigation that “seek[ing] admission’ ... entails affirmative actions to gain authorized entry.”<sup>2</sup> Section 1225(b)(2)(A), therefore, requires that a person be both an “applicant for admission” and “also [be] doing something” following arrival in an attempt to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at \*6. Petitioners were not applying for admission, they were living in the United States with their families when ICE detained them.

Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens]arriving from contiguous territory,” i.e., “the case of [a noncitizen] . . . who **is arriving** on land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores § 1225’s focus on those who are presently arriving at the United States’ borders. Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), and sets out procedures for “inspection[s]” of people “arriving in the United States,” 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d). For the reasons above, applying to noncitizens like Petitioners apprehended

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<sup>2</sup> Br. for Fed. Appellees, *Crane v. Johnson*, No. 14-10049, 2014 WL 4960589, at \*14 (5th Cir. Sept. 29, 2014).

within the United States “impermissibly expands the scope of the statute beyond the ordinary meaning of its text.” *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at \*7 (D. Mass. Oct. 3, 2025).

### **B. Petitioner’s Procedural Due Process Claim is Likely to Succeed**

Petitioner’s due process claim is likely to succeed because Respondents arbitrarily and without legal authority deprived them of an opportunity to be heard about the propriety of their detention. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). At its core, due process requires “that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348-49 (1976). In determining the process due, courts balance (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.” *Id.*; see also *Maniar v. Warden Pine Prairie Corr. Ctr.*, No. 6:18-CV-00544, 2018 WL 11544220, at \*2 (W.D. La. July 11, 2018) (applying *Mathews* in an immigration detention context).

Respondents’ continued detention of Petitioner without bond hearings violates his procedural due process rights. Petitioner’s private interest in her liberty is high. The lack of bond hearings carries a high risk of erroneous deprivation of her liberty. The government’s interest in maintaining the current procedures is minimal as it has provided such hearings for over a century. As such, Respondents have violated Petitioner’s Fifth Amendment rights.

### **1. Petitioner Has a Significant Interest in Release**

Petitioner's liberty interest is significant as "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Detained noncitizens also have a significant interest in family integrity. See *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at \*2 (W.D. Tex. Sept. 8, 2025). ("[T]he right to rejoin...immediate family...ranks high among the interests of the individual."); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982).

DOJ's refusal to provide bond hearings keeps Petitioners detained at Winn Correctional Center away from their families. This detention separates Ms. Dimas Branchi, who has recently turned 18, from her mother. As such, Petitioners' private interest is strong.

### **2. The Stay Procedure's Risk of Erroneous Deprivation of Petitioner's Interests is High**

The risk of erroneous deprivation without a bond hearing is high. Because "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," mandatory detention in situations other than those explicitly carved out by Congress "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Martinez*, 2025 WL 2598379, at \*3 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). Of course, the Government has "a generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live." *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at \*6 (W.D. Tex. Oct. 16, 2025).

However, detention without a hearing means that noncitizens are not provided "an individualized assessment of the necessity of their detention." *Lopez-Arevelo*, 2025 WL 2691828, at \*11. The lack of these protections runs a high risk of depriving non-dangerous persons who present minimal flight risks of their liberty. *Id.* In other words, "absent a pre-detention hearing in

front of a neutral arbiter, the risk of erroneous deprivation is high.” *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at \*10 (N.D. Cal. Sept. 26, 2025); *see also Hernandez Fernandez v. Vergara*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at \*9 (W.D. Tex. Oct. 21, 2025).

Additional safeguards would reduce the risk of erroneous deprivation as a bond hearing “will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community.” *Vieira*, 2025 WL 2937880, at \*7. A bond hearing therefore would give a noncitizen “the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond” and would therefore “greatly reduce the risk of an erroneous deprivation of his liberty.” *Lopez-Arevelo*, 2025 WL 2691828, at \*11.

### **3. The Burden of Additional Safeguards is Low**

The third *Mathews* factor demands consideration of the “administrative burden and other societal costs that would be associated with requiring” additional process. 424 U.S. at 347. Given the long history of conducting bond hearings for noncitizens, the incremental burden in this case is “minimal” and “cannot be terribly burdensome.” *Id.* at \*11.; *see also Singh v. Andrews*, No. 25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at \*8 (E.D. Cal. July 11, 2025) (“In immigration court, custody hearings are routine and impose a ‘minimal’ cost.”). Moreover, the Government, in a recent analogous case has conceded that it “has conducted such hearings for the past thirty years until a change in the agency's interpretation of the law.” *Vieira*, 2025 WL 2937880, at \*6. As detailed above, the Government has likely conducted these hearings for over a century. Government concerns about flight risk and dangerousness can be ameliorated by presenting evidence of those concerns at a hearing. *Id.*

The Government does “have a generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live.” *Id.* at \*6. However, “the public interest weighs against detention without a hearing” because “‘unnecessary detention’ of noncitizens ‘imposes substantial societal costs.’” *Chogllo Chafra v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at \*11 (D. Me. Sept. 22, 2025) (quoting *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021)). These costs include the separation of families, the removal of “breadwinners, caregivers, parents, siblings and employees” from the community, and economic decline of communities from which noncitizens are removed. *Hernandez-Lara*, 10 F.4th at 33.

As to the Petitioner particularly, she does not present any danger to the community. Though she has been arrested for domestic abuse battery as a juvenile, those charges were dismissed and Kimberly was ultimately transferred to a juvenile group home in Texas; *see also Romero-Nolasco v. McDonald*, No. 25-CV-12492-MJJ, 2025 WL 2778036, at \*3 (D. Mass. Sept. 29, 2025) (finding that concerns over pending charges are best addressed in bond hearings themselves)..

Petitioner has family ties in the United States, including her parents. She has lived in the United States for five years and graduated from High School in Baton Rouge. She was detained at an ICE check in. Any concerns of flight may be addressed at a bond hearing at which an Immigration Court considers whether a financial bond or “alternatives to detention could sufficiently mitigate that risk.” *Maniar*, 2018 WL 11544220; *see also Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (finding that “due process likely requires consideration of financial circumstances and alternative conditions of release” in Immigration Court bond proceedings). As such, the public would only be minimally burdened by providing bond hearings in this case. Because all three *Mathews* factors favor Petitioners', this Court should join a growing number of jurisdictions that have found that deprivation of bond hearings for unadmitted noncitizens arrested

in the United States likely violates the Fifth Amendment procedural due process rights. See *Hernandez Fernandez*, 2025 WL 2976923, at \*10 (collecting cases).

### **III. Petitioner and Her Family Will Suffer Irreparable Harm Without a TRO**

Preventing irreparable harm is the “central purpose of a preliminary injunction.” *Parks v. Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975). As such, an injunction should usually issue if “the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Monumental Task Comm., Inc. v. Foxx*, 157 F. Supp. 3d 573, 582–83 (E.D. La. 2016), *aff’d sub nom. Monumental Task Comm., Inc. v. Chao*, 678 F. App’x 250 (5th Cir. 2017) (quotations omitted). The Fifth Circuit requires only a “substantial threat” of irreparable injury, which is defined as “harm for which there is no adequate remedy at law.” *DSC Commc’ns Corp. v. DGI Techs., Inc.*, 81 F.3d 597, 600 (5th Cir.1996).

Where “an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Book People, Inc. v. Wong*, 91 F.4th 318, 340–41 (5th Cir. 2024). This Court recently held in an identical context to this case that the “unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm.” *Kostak*, 2025 WL 2472136, at \*3; *see also Ventura Martinez*, No. 3:25-cv-01445-JE-KDM at \*6. Courts may also consider reasonable fears of medical and emotional decline of family members. *Martinez*, 2025 WL 2598379, at \*5.

Petitioner would suffer irreparable harm absent this Court’s immediate intervention. For the reasons detailed above, Petitioner’s continued detention without a bond hearing is unconstitutional. Continued detention would also subject Petitioner’s family to irreparable harm. As such, Respondents’ deprivation of Petitioner’s liberty and the toll of further unlawful detention on their families satisfies the irreparable harm standard.

#### IV. The Balance of the Equities and the Public Interest Favor a TRO

Where the government is a party to the case, the third and fourth injunction factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As an initial matter, the public interest is served by the protection of constitutional rights. *See Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996). More specifically, the public interest lies in requiring “the Government to ensure compliance with its own laws.” *Kostak*, 2025 WL 2472136, at \*4. This Court recently held that the “threatened injury, [the noncitizen’s] continued detention without a bond hearing in violation of her Fifth Amendment rights, far outweighs the burden to Respondents of conducting a bond hearing.” *Id.* In addition, “the public has no interest in incarcerating people who have no basis to be detained.” *Ventura Martinez*, No. 3:25-cv-01445-JE-KDM at \*6.

So too in the instant case. The Court must weigh the unconstitutional detention of Petitioners against the minimal governmental burden of providing bond hearings, the type of bond hearings it has provided for a century to similarly situated individuals. As in *Kostak* and *Ventura Martinez*, the scale tips in favor of preventing unconstitutional detention.

Additionally, the public has little interest in depriving Petitioner of a bond hearing because the Immigration Court is required to find that “release would not pose a danger to other persons or property” before granting bond. 8 C.F.R. § 1003.19(h)(3).<sup>3</sup> As discussed in section II, subsection B above, neither Petitioner is dangerous or presents an unredeemable flight risk. Given the lack of risk posed by Petitioner and the strong public interest in assuring that the government follows the law and does not detain people illegally, the public interest lies in providing bond hearings.

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<sup>3</sup> The “vast majority...of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.” *Lopez-Arevalo*, 2025 WL 2691828, at \*12; *see also Vieira*, 2025 WL 2937880, at \*7 (collecting cases). This Court should do the same if it finds in Petitioner’s favor.

**V. Petitioner's Request Waiver of Rule 65(c) Security.**

Petitioner's request that the Court exercise its authority waive Rule 65(c)'s security requirement. The Court may waive security in its discretion. *Kostak*, 2025 WL 2472136, at \*4. In this case, Respondents will not incur any costs or damages if the requested relief is granted in this case. Therefore, Petitioner request that the Court waive any security.

**CONCLUSION**

Respondents' detention of Petitioner without a bond hearing violates the INA and Fifth Amendment. Petitioner and her family will suffer irreparable harm should detention continue. The public's interest weighs against unlawful detention. As such, the Court should enjoin Respondents from continuing to detain Petitioner without providing bond hearings.

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