

1225(b)(2), which was supposed to be a routine reporting appointment with ICE. Ms. Foladi was initially detained upon entry into the U.S. in 2023, and released on recognizance pursuant to 8 U.S.C. § 1226(a). Nonetheless, on December 4, 2025, ICE detained Ms. Foladi at a routine reporting appointment in Tucson, Arizona, under 8 U.S.C. § 1225(b)(2). Petitioner challenges the legality of her mandatory detention and requests a Temporary Restraining Order for her release from ICE custody, and to prohibit her transfer outside of Arizona.

FACTS OF THE CASE

Ms. Foladi is a twenty-nine-year-old citizen and national of Afghanistan, and she resides in Arizona. She fled [REDACTED]

[REDACTED] She initially entered the United States on or about January 30, 2023, and has remained in the country since then. *See* Petitioner for a Writ of Habeas Corpus App'x Ex. D (Notice to Appear alleges a January 30, 2023, entry date). After entry in 2023, she was issued a Form I-862, Notice to Appear (“NTA”) in the Immigration Court in Memphis. *See id.* The NTA alleges that she was present in the United States without admission or parole. At her initial entry in 2023, the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) processed Ms. Foladi, detained her, and ultimately released her on her own recognizance.

Petitioner presented herself with her husband on December 4, 2025 at a call-in appointment with ICE, and they were both arrested in Tucson, Arizona. She had been regularly presenting herself at her check-ins with ICE, and had no reason to expect to be detained at this appointment. Upon seeing her husband placed in handcuffs, she lost consciousness. When she spoke with medical staff, they told her she could go to the hospital for medical attention, but she would be separated from her husband. Petitioner recently had kidney surgery, and is in pain while in detention. She requested a second blanket as the cold exacerbates her pain in her kidney and back, and that request still has not been granted after over a week in detention. She can only communicate to her husband through a three-way call with an individual outside of detention. It

took days of coordination to simply hear her husband's voice again. She has not been provided with halal food in accordance with her religious faith while in detention, although she has requested it. She has not been given a prayer mat to perform her prayers in accordance with her religious faith, instead being reduced to putting her jacket on the floor to pray on.

The NTA charges Ms. Foladi with removability as an alien present in the United States who has not been admitted or paroled pursuant to 8 U.S.C. § 1182(a)(6)(A). *Id.*

The Petitioner has no criminal record. The Petitioner does not have a final order of removal. She is married to her Afghan national spouse, who was also detained under the same circumstances, and has filed his own petition for a writ of habeas corpus in the District of Arizona, challenging his unlawful detention.

The Petitioner's removal case is now before the Board of Immigration Appeals after her asylum application was denied by the immigration judge on November 6, 2024. Ms. Foladi does not have any active warrants or negative criminal history that would change the circumstances from her initial custody determination made in January 2023, when she was released. She has complied with all conditions of her release on recognizance.

LEGAL ARGUMENT

Ms. Foladi does not have a final removal order. Ms. Foladi is challenging the constitutionality of the statutory framework by which the Respondents are detaining her without a predeprivation hearing. Petitioner asserts that she was unlawfully detained without a predeprivation hearing after she was re-arrested on December 4, 2025.

I. Motion for Temporary Restraining Order and Preliminary Injunctive Relief.

To obtain a temporary restraining order, a petitioner-plaintiff "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); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981)). Under similar circumstances, courts within this Circuit have granted petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 where, as here, the petitioner was re-arrested absent a predeprivation hearing.

In a parallel case in this District, *Rosado v. Figueroa*, the court found that “[a]lthough ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody they have a protected liberty interest in remaining out of custody.” *Rosado v. Figueroa*, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025). In *Rosado*, the petitioner was re-detained “after six years of being released on recognizance from an initial detention on inspection, without prior notice, a showing of changed circumstances, or a meaningful opportunity to object.” *Id.* at 13. The Court in that case found that she was re-detained in violation of the procedural requirements of the Fifth Amendment. *Id.*

Ms. Foladi is likely to succeed on the merits. Ms. Foladi’s detention is a textbook violation of her Due Process rights.

II. Ms. Foladi will likely succeed on the merits.

Ms. Foladi seeks her immediate release because she is unlawfully and unconstitutionally detained. Ms. Foladi, who had been initially detained and ordered released in January 2023, and subsequently apprehended in the interior, cannot be detained under 8 U.S.C. § 1225(b)(2)(A), but rather, must be detained under § 1226(a). However, the Petitioner asserts that no arrest was lawful in this case because there was no violation of the conditions initially placed upon release in January 2023.

A line must be drawn between how §§ 1225 and 1226 function when it comes to detention of noncitizens, and it is straightforward: detention authority under §1225 is exercised at or near the port of entry for those seeking admission, and detention authority under §1226 must be used when a non-citizen is arrested in the interior of the United States. *See Martinez v. Hyde*, – F.Supp.3d –,

2025 WL 2084238 at *4 (D. Mass. July 24, 2025)(The line historically drawn between these two sections, making sense of their text and overall statutory scheme, is that section 1225 governs detention of non-citizens “seeking admission into the country,” whereas action 1226 governs detention of non-citizens “already in the country.”); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)(“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border.”); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

At Ms. Foladi’s arrest on December 4, 2025, she was not apprehended while seeking admission at the port of entry. Instead, she was cited for a routine ICE check-in and was arrested. Therefore, Ms. Foladi should not have been detained under §1225(b)(2). Furthermore, she should not have been detained at all, absent any change in circumstances relating to her immigration matter. As previously stated, she has no criminal history and no outstanding warrants. She does not have a final order of removal, as her case is currently pending appeal at the Board of Immigration Appeals.

II. *Ms. Foladi will Suffer Irreparable Harm*

The harm that flows from the violation of Ms. Foladi’s constitutional rights is unquestionably irreparable. *See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of an alien’s liberty is, in and of itself, irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). (“[B]efore the Government

unilaterally takes away that which is sacred, it must provide a meaningful process.”).

Here, Ms. Foladi has been living and working in the United States for almost three years without incident. She and her husband, from whom she was separated during the course of her detention, have complied with all conditions of their release and have no criminal history to speak of. She suffers in the conditions of her detention, including making the practice of her religious faith more difficult, and severe pain after being detained only months after invasive kidney surgery.

III. *Balance of the Equities and Public Interest*

The “public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.” *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without bond of Ms. Foladi likely violated federal law and her due process. “There is generally no public interest in the perpetuation of unlawful agency action,” and “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

Here, Ms. Foladi's continued detention in violation of her Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

IV. *The Court Has Authority to Grant Ms. Foladi's Immediate Release Pending the Adjudication of Her Habeas Petition.*

As a general matter, writs of habeas corpus are used to request release from custody. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). A habeas court has “the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted.” *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at “common-law habeas corpus was, above all, an

adaptable remedy”).

Release in this case is appropriate. Here, DHS initially arrested and processed Ms. Foladi for release in January 2023. Ms. Foladi did not violate the terms of her release. The only thing that changed between his release in January 2023 and his re-arrest on December 4, 2025, was an apparent policy departure. The Petitioner has been detained since December 4, 2025. Every day she is detained is a gross violation of her constitutional protections under the Due Process Clause. Therefore, Petitioner argues that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court prevent her transfer while the instant Habeas pends.

B. CONCLUSION

For the foregoing reasons, the Court should grant the instant writ and order Ms. Foladi’s immediate release from ICE custody.

Dated: December 12, 2025

Respectfully Submitted,

/s/Pamela Rioles
PAMELA RIOLES
Arizona Bar No. 036763
Goldman Immigration PC
1575 W Ina Road
Tucson, AZ 85704
520-797-9229 (telephone)
pamela@ggoldmanlaw.com