UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LEYLA AMIRIAN, M.A. (age eleven), *Petitioners-Plaintiffs*, v. JOSE RODRIGUEZ, JR., in his official capacity as Warden, Dilley Immigration Processing Center; SYLVESTER M. ORTEGA, in his official capacity as Acting Field Office Director, San Antonio Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; TODD LYONS, in his official capacity as Senior Official Performing the Duties of the Director, U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *Respondents-Defendants*.	Case No. 5:25-CV-01816 **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioners Leyla Amirian and M.A. should not have needed to file this Petition. They are noncitizens detained by Respondents under a newfound statutory theory that has been rejected by many hundreds of courts, including courts in this District, in the last few months. Respondents, however, have refused to accept this near-unanimous rejection of their position,

choosing instead to relitigate the same failed arguments over and over. This wastes the Court's time, the time of Petitioners' counsel, and the time of Respondents' counsel.

2. Mrs. Amirian and M.A. are in the same situation as countless other noncitizens who have recently received habeas relief. They came to the United States to seek asylum, were processed and released on conditional parole by the Department of Homeland Security (DHS) under 8 U.S.C. § 1226, built a life in the United States, and did everything that DHS and the Department of Justice (DOJ) asked of them. They were nevertheless arrested and detained by Respondents on the purported authority of 8 U.S.C. § 1225(b)(2), a mandatory detention provision that is mutually exclusive of § 1226 and that the Supreme Court has said applies only to noncitizens seeking entry, not those already in the United States.

3. As countless courts have held, Respondents' actions violate the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. Ms. Amirian and M.A. should therefore be released immediately.

PARTIES

4. Petitioner Leyla Amirian is a citizen of Afghanistan who has lived in the United States since 2023. On or about October 16, 2025, ICE took her into custody. Mrs. Amirian remains detained at the Dilley Immigration Processing Center, 300 El Rancho Way, Dilley, TX 78017.

5. Petitioner M.A. is Mrs. Amirian's eleven-year-old son. He is a citizen of Afghanistan who has lived in the United States since 2023. On or about October 16, 2025, ICE took him into custody. M.A. remains detained at the Dilley Immigration Processing Center, 300 El Rancho Way, Dilley, TX 78017.

6. Respondent Jose Rodriguez, Jr. is sued in his official capacity as Administrator of the Dilley Immigration Processing Center, where Petitioners are detained. Respondent Rodriguez is a legal custodian of Petitioners.

7. Respondent Sylvester M. Ortega is sued in his official capacity as Acting Field Office Director, San Antonio Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, which has jurisdiction over the Dilley Immigration Processing Center. Respondent Ortega is a legal custodian of Petitioners.

8. Respondent Todd Lyons is sued in his official capacity as Senior Official Performing the Duties of the Director of U.S. Immigrations and Customs Enforcement. In that capacity, Respondent Lyons is a legal custodian of Petitioners.

9. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Respondent Noem is Petitioners' ultimate legal custodian.

10. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review (EOIR), Respondent Bondi is responsible for administration of the immigration laws as exercised by EOIR and is legally responsible for the pursuit of Petitioners' detention and removal. She is a legal custodian of Petitioners.

11. Respondent Daren K. Margolin is sued in his official capacity as Director of the Executive Office for Immigration Review. In that capacity, Respondent Margolin is responsible for administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and is legally responsible for the pursuit of Petitioners' detention and removal.

12. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing many provisions of the INA, including those involving the detention and physical of noncitizens.

13. Respondent Immigration and Customs Enforcement is the agency within DHS responsible for the detention and physical removal of noncitizens.

14. Respondent Executive Office for Immigration Review is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including in bond hearings.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

16. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

17. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims in this action took place in this District and because Defendants Rodriguez and Ortega reside in this District. Venue is also proper under 28 U.S.C. § 2241(d) and Rule CV-3(b)(3) of the local rules of the Western District of Texas because Petitioners are detained at a facility within this District and because their immediate physical custodian is located in this District. *See* L.R. CV-3(b)(3).

EXHAUSTION OF REMEDIES

18. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. §2241. *See, e.g.*, *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017).

19. Even if exhaustion were generally required, it would not be required in this case for three reasons. *First*, Ms. Amirian and M.A. raise constitutional and statutory challenges to their detention, and neither type of claim requires exhaustion. *See Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021) (constitutional claims); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024)) (statutory claims).

20. *Second*, the Supreme Court has recognized that exhaustion is unnecessary where, as here, detention is causing the petitioner irreparable harm. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

21. *Third*, exhaustion would be futile. Under the BIA's decision in *Matter of Yajure Hurtado*, immigration judges do not grant bond or release requests for noncitizens designated as being present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

STATEMENT OF FACTS

22. Leyla Amirian and her son M.A. are citizens of Afghanistan. They entered the United States without inspection in November 2023 together with Mrs. Amirian's husband and daughter, who are M.A.'s father and sister. The family came to the United States to seek asylum on the basis of ethnicity, religion, and imputed political opinion.

23. DHS initially detained the Amirians and then quickly released them on their own recognizance under 8 U.S.C. § 1226. *See* Ex. 1, attached.

24. The family quickly acclimated to the United States and had significant community support in Southern California. Mrs. Amirian and M.A. have no criminal records, fully complied with the order of supervision, and have cooperated with ICE consistently during their time in the United States.

25. The family are all members of the Tajik minority ethnic group and the Shia sect of Islam. Both groups are persecuted minorities in Afghanistan.

26. Mr. Amirian sought asylum, withholding, and protection under the Convention Against Torture. Because the Taliban believed that Mr. Amirian had aided the American government, they shot at his car—hitting a passenger twice—issued multiple warrants for his arrest, and interrogated others in an attempt to find him. Since the family fled Afghanistan, the Taliban has continued to pursue Mr. Amirian and his family with threats of violence.

27. On October 14, 2025, an immigration judge denied Mr. Amirian's application for relief. The family promptly filed an appeal with the Board of Immigration Appeals. Because that appeal remains pending, Petitioners are not subject to a final removal order.

28. On or about October 15, 2025, ICE requested that the Amirians appear at a check-in as part of their conditional release. At that check-in, which took place nearly two years after they first entered the United States, ICE detained the entire family. ICE also separated the family. Mrs. Amirian and M.A. were sent to the Dilley Immigration Processing Center, while Mr. Amirian and the Amirians' teenage daughter were sent to two different immigration detention centers in California.

29. Mr. Amirian filed a habeas petition in the district court for the Southern District of California challenging his detention as a violation of the Immigration and Nationality Act and

the Due Process Clause of the Fifth Amendment. On November 17, 2025, the District Court ordered Mr. Amirian's release. He now awaits reunification with his family.

30. DHS has imprisoned Mrs. Amirian and her son in Dilley, Texas since October 2025. Mrs. Amirian suffers from fibroids that cause serious blood loss. Since their re-detention, Mrs. Amirian has suffered from extreme anxiety, and M.A.'s mental health has greatly suffered.

31. Mrs. Amirian and M,A. were re-detained without any notice, a hearing, or an individualized determination that they are either a flight risk or a danger to the community. Neither ICE nor an immigration judge has conducted any subsequent custody review.

LEGAL BACKGROUND

32. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

33. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person … of … liberty … without due process of law." U.S. Const. amend. V.

34. "[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.").

35. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

36. The Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of individuals charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

37. Moreover, even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

38. The INA provides two different sources of detention authority relevant to this case.[1] *First*, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens who are in full removal proceedings in immigration court. Unless they have been convicted of certain crimes (and Petitioners have not), noncitizens detained under § 1226(a) are entitled to a bond hearing. *See* 8 U.S.C. § 1226(a), (c); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

---

[1] The detention provisions of 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1231(a), which respectively cover noncitizens placed in expedited removal and noncitizens with final orders of removal, are not germane here.

39. *Second*, 8 U.S.C. § 1225(b)(2)(A) governs the detention of recently arrived noncitizens who are "applicant[s] for admission" and who are "seeking admission" but not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(a)(3), (b)(2)(A). The courts have held that detention under § 1225(b)(2)(A) is mandatory. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *see Maldonado v. Macias*, 150 F. Supp. 3d 788 (W.D. Tex. 2015).

40. The distinction between Section 1225 and Section 1226 carries immediate consequences for noncitizens upon their arrival in the United States. Noncitizens detained under § 1225(b)(2)(A) may be paroled into the United States by DHS "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). The Supreme Court, however, has stated that this "express exception to detention implies that there are no *other* circumstances under which [noncitizens] detained under § 1225(b) may be released." *Jennings*, 583 U.S. at 300.

41. Noncitizens processed by DHS under § 1226, in contrast, may also be released on bond or on "conditional parole." 8 U.S.C. § 1226(a)(2)(A)-(B). As Respondents recognize, "[r]elease on … conditional parole under" § 1226(a)(2)(B) "is legally distinct from release on humanitarian parole under" § 1182(d)(5)(A). *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023); *see also, e.g.*, *Cruz-Miguel v. Holder*, 650 F.3d 189, 195 (2d Cir. 2011) (drawing the same distinction) *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (same). One form of conditional parole under § 1226(b)(2)(A) involves DHS releasing noncitizens on recognizance. *See, e.g.*, *Ortega-Cervantes*, 501 F.3d at 1115-16; *Hasan v. Crawford*, ___ F. Supp. 3d ___, 2025 WL 2682255, at *7 (E.D. Va. Sept. 19, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215 (D. Mass. 2025).

42. The "distinction" between humanitarian parole under § 1182(d)(5)(A) and conditional parole under § 1226(a)(2)(B) "involves more than an officer's choice of paperwork."

Martinez, 792 F. Supp. 3d at 215. Humanitarian parole "permits a non-citizen to physically enter the country, subject to a reservation of rights by [DHS] that it may continue to treat the non-citizen 'as if stopped at the border.'" *Id.* (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020)). Conditional parole "instead releases a non-citizen already in the country from domestic detention." *Id.*

43. Congress enacted both § 1226(a) and § 1225(b)(2)(A) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585 ("IIRIRA").

44. Before IIRIRA, most noncitizens detained within the United States—even those who entered without inspection—were entitled to a custody hearing, while people apprehended at the border were eligible only for release on parole. *See* 8 U.S.C. § 1252(a) (1994).

45. Congress explained when passing IIRIRA that § 1226(a) "restates the current provisions in section [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).

46. When EOIR issued regulations implementing IIRIRA in 1997, it explained that "despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled … will be eligible for bond and bond redetermination." 62 Fed. Reg.10312, 10323 (Mar. 6, 1997).

47. For decades after Congress passed IIRIRA, Respondents treated § 1225(b)(2) as applying to noncitizens apprehended at or near the border and § 1226(a) as applying to noncitizens "who [were] already present in the United States" when detained. *Lopez Santos v. Noem*, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) (citing *Jennings*, 583 U.S. at 303).

Thus, for decades, noncitizens arrested while already present in the United States were entitled to bond hearings unless their criminal history made them ineligible for bond under § 1226(c).

48. Respondents have radically departed from this longstanding interpretation of the INA in recent months. In July 2025, ICE—"in coordination with" DOJ—announced as a categorical new policy the view that any noncitizen who had not been formally admitted to the United States is subject to mandatory detention under § 1225(b)(2). *See* ICE, *Interim Guidance Regarding Detention Authority for Applications for Admission.*[2]

49. On September 5, 2025, the BIA parroted this novel interpretation in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA asserted that, "under the plain reading of the INA," noncitizens "who are present in the United States without admission are applicants for admission as defined under" § 1225(b)(2)(A). *Id.* at 220. On that basis, the BIA held that all noncitizens who are present in the United States without admission are subject to mandatory detention under § 1225(b)(2)(A) and are ineligible for bond hearings. *Id.* at 216.

50. Federal courts do not owe deference to agency interpretation of statutes. Rather, they exercise "independent legal judgment" to interpret statutes. *Loper Bright*, 603 U.S. at 401.

51. Hundreds of federal courts, including courts in the Fifth Circuit, have already rejected Respondents' newfound, hyper-expansive interpretation of § 1225(b)(2) and have ordered Respondents to conduct bond hearings for noncitizens detained under that interpretation. *See, e.g.*, *Castanon-Nava v. DHS*, ___ F.4th ___, 2025 WL 3552514, at *8-*9 (7th Cir. Dec. 11, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Santiago v. Noem*,

[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880, (W.D. Tex. Oct. 16, 2025); *Gonzalez Martinez v. Noem*, 2025 WL 2965859, (W.D. Tex. Oct. 21, 2025); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Becerra-Fernandez v. Lynch*, 2025 WL 3562572 (W.D. Mich. Dec. 12, 2025); *Shen v. Larose*, 2025 WL 3552747, at *7-*9 (S.D. Cal. Dec. 11, 2025); *Paredes Quispe v. Rose*, 2025 WL 3537279, at *4-*6 (M.D. Pa. Dec. 10, 2025); *Rivera Esperanza v. Francis*, 2025 WL 3513983, at *2-*6 (S.D.N.Y. Dec. 8, 2025); *Singh v. Noem*, 2025 WL 3254727, at *5 (D.N.M. Nov. 21, 2025); *Camacho v. Hollinshead*, 2025 WL 3228998 (D. Idaho Nov. 19, 2025); *Demirel v. Fed. Detention Ctr.*, 2025 WL 3218243, at *4 (E.D. Pa. Nov. 18, 2025); *see also Barco Mercado v. Francis*, 2025 WL 3295903, at *4 n.22, & App. A (S.D.N.Y. Nov. 26, 2025) (collecting cases from across the country).

52. As these courts have recognized, Respondents' new interpretation is contrary to the text of the INA. The statutory text instead hews to Respondents' previous, longstanding interpretation that § 1225(b)(2) applies to noncitizens "who are seeking entry into the United States," while § 1226(a) applies to noncitizens "who are already present in the United States." *Lopez Santos*, 2025 WL 2642278, at *4; *accord, e.g.*, *Jennings*, 583 U.S. at 297, 303. Indeed, "'our immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" *Martinez*, 792 F. Supp. 3d at 222(quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)).

53. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Such decisions are made in removal proceedings in immigration court. *See* 8 U.S.C. § 1229a(a)(1).

54. The text of § 1226 explicitly applies to people charged with being inadmissible, including those who entered without inspection. Just this year, Congress enacted 8 U.S.C. § 1226(c)(1)(E), which states that people who are "inadmissible under" 8 U.S.C. § 1182(a)(6)(A) because they entered without inspection are subject to mandatory detention if they are charged with, arrested for, or convicted of certain crimes. *Id.*; *see* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress would not have included that provision in § 1226 unless some noncitizens who entered without inspection could otherwise be eligible for bond. Indeed, on Respondents' new reading of the INA, § 1226(c)(1)(E) does nothing at all, because everyone who enters without exception is subject to mandatory detention notwithstanding their criminal history.

55. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The section's title refers to "inadmissible *arriving* [noncitizens]." 8 U.S.C. § 1225 (emphasis added). And as the courts have noted, the word "'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425, at *5). Furthermore, the text of § 1225 repeatedly refers to "inspections," and that term is generally understood to refer to determinations of admissibility made at the time of entry. *See* 8 U.S.C. § 1225(a)(1) (Inspection of noncitizens who are applicants for admission); *Vieira*, 2025 WL 2937880, at *5 (discussing the well-established distinction between individuals

seeking admission and those who have already effected entry); *see also* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

56. The use of the present participle in the phrase "seeking admission" in § 1225(b)(2)(A) further demonstrates that its applicability does not extend to people already present in the United States. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."). A present participle "denotes an ongoing process" that "necessarily implies some sort of present-tense action." *Martinez*, 792 F. Supp. 3d at 218 (quotation omitted). After all, "someone 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." *Lopez Benitez v. Francis*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act, 8 U.S.C. §§ 1225 & 1226

57. Petitioners reallege and incorporate by reference all of the allegations above as if set forth fully herein.

58. Noncitizens in removal proceedings who are detained while already present within the United States are subject to detention under § 1226(a) unless they are placed in expedited removal or have committed a crime that subjects them to detention under § 1226(c). In contrast, the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) apply only to noncitizens seeking entry into the United States, not those already present in the country.

59. Petitioners' prior release on recognizance under 8 U.S.C. § 1226(a)(2)(B)—release that would not be possible if Petitioners were subject to detention under 8 U.S.C. § 1225(b)(2)—necessarily renders them subject to re-detention only under 8 U.S.C. § 1226(a).

60. Petitioners' continued detention under 8 U.S.C. § 1225(b)(2) violates the INA.

COUNT TWO

Violation of the Fifth Amendment (Substantive Due Process)

61. Petitioners repeat and reallege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

62. The Fifth Amendment of the U.S. Constitution provides that "[n]o person" shall "be deprived of life, liberty, or property, without due process of law."

63. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Moreover, "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens] whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

64. The only permissible purposes of detention under § 1226(a)—preventing danger to the community and flight risks—are not present here.

65. As DHS determined when it released Mrs. Amirian and M.A., they are neither a flight risk nor a danger to the community. Respondents' detention of Mrs. Amirian and M.A. is therefore unjustified. Accordingly, Mrs. Amirian and M.A. are being detained in violation of their constitutional right to Due Process under the Fifth Amendment, and they should be released immediately.

COUNT THREE

Violation of the Fifth Amendment (Procedural Due Process)

66. Petitioners repeat and reallege the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

67. "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against [them] and opportunity to meet it." *Mathews*, 424 U.S. at 348 (cleaned up). The government's infringement on the liberty interest of Mrs. Amirian and M.A. triggers a procedural right under the Fifth Amendment to contest that infringement. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

68. The sufficiency of a process is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews*, 424 U.S. at 335.

69. The interest that Mrs. Amirian and M.A. have in their liberty from arbitrary imprisonment, and their ability to contest that imprisonment, is extremely significant.

70. Respondents' failure to grant an individualized hearing on whether the detention of Mrs. Amirian and M.A. is justified to prevent flight or mitigate risk of danger to the community creates a high risk of erroneous deprivation of liberty. *See Zadvydas*, 533 U.S. at 690.

71. Respondents incur no additional burden by providing Mrs. Amirian and M.A. with a bond hearing, because doing so merely comports with both the requirements of the INA

and the constitutional protections guaranteed by the Fifth Amendment, and because Respondents have routinely provided such hearings for decades.

72. The ongoing detention of Mrs. Amirian and M.A. is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

1) Assume jurisdiction over this matter;

2) Order that Petitioners not be transferred outside of the Western District of Texas while this habeas petition is pending;

3) Issue a Preliminary Injunction requiring Respondents to release Petitioners while this petition is pending;

3) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioners from custody, or, in the alternative, provide them with a bond hearing under 8 U.S.C. § 1226(a) within five days;

4) Declare that Petitioners' detention is unlawful;

5) Award Petitioners reasonable attorneys' fees and costs for this action under the Equal Access to Justice Act, 28 U.S.C. § 2414, and/or any other applicable statute; and

6) Grant Petitioners any further relief this Court deems just and proper.

December 19, 2025

/s/ Kristy Blumeyer-Martinez
Kristy Blumeyer-Martinez
Texas Bar No. 24087177
Farha Rizvi
Texas Bar No. 24122999
The Refugee and Immigrant Center for Education and Legal Services
P.O. Box 786100
San Antonio, TX 78278
Telephone: (210) 469-4218
Telephone: (210) 951-8756

Facsimile: (210) 625-6835
kristy.blumeyermartinez@raicestexas.org
farha.rizvi@raicestexas.org

Attorneys for Petitioners

VERIFICATION

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

/s/ Farha Rizvi
Farha Rizvi
Texas Bar No. 24122999
The Refugee and Immigrant Center for Education and Legal Services
P.O. Box 786100
San Antonio, TX 78278
Telephone: (210) 951-8756
Facsimile: (210) 625-6835
farha.rizvi@raicestexas.org

Attorney for Petitioners