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 **MOTION FOR PRELIMINARY INJUNCTION**

MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The issues in this case have been decided hundreds of times in recent months—and in the overwhelming majority of cases, in the district and elsewhere, they have been decided in favor of habeas petitioners and against Respondents. That is no surprise, given that the theory Respondents have invented to justify the mass incarceration of noncitizens contravenes the plain

language of the Immigration and Nationality Act (INA), statements made by the Supreme Court, recent action by Congress, and Respondents' own decades-long position. The meaning of the INA does not change to suit Respondents' policy preferences, no matter how extreme those preferences may be. Nor will the statute's meaning change if, and when, Respondents once again recycle their failed arguments in an attempt to defend the imprisonment of an 11-year-old boy and his mother. Mrs. Amirian and M.A. should be immediately released pending the full adjudication of their habeas petition.

BACKGROUND

Petitioners Leyla Amirian and M.A., along with Mrs. Amirian's husband and daughter (M.A.'s father and sister) entered the United States without inspection in 2023 after fleeing the threat of Taliban-imposed violence and persecution. DHS briefly detained them and then released them on recognizance under 8 U.S.C. § 1226 with an order of supervision. The Amirians settled and quickly built community ties in Southern California. They have no criminal record, and they have fully complied with their order of supervision.

Although the Amirians belong to ethnic and religious minorities that are routinely persecuted in Afghanistan, and although the Taliban shot at Mr. Amirian while he was driving, an immigration judge denied their asylum application in October 2025. They promptly appealed to the Board of Immigration Appeals. However, shortly after the immigration judge's decision, U.S. Immigration and Customs Enforcement (ICE) required the Amirians to attend a check-in at which it detained the entire family and separated them under its newfound theory that everyone who entered the country without inspection is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Mr. Amirian has since—like countless other noncitizens subject to the current campaign of mass incarceration—prevailed on a habeas petition challenging his detention. Mrs.

Amirian and M.A. currently remain imprisoned at the Dilley Immigration Processing Center in Dilley, Texas.

ARGUMENT

I. Petitioners Are Likely to Succeed on the Merits of Their Claims

A. Petitioners, Who Were Released on Conditional Control and Then Re-Arrested Inside the United States Years Later, May Not Be Detained Under 8 U.S.C. § 1225(b)(2)(A)

Respondents purported to detain the Amirians under the authority of 8 U.S.C. § 1225(b)(2)(A). But as an overwhelming number of federal courts have since held, noncitizens who are arrested in the interior of the United States may not be detained under that section. Rather, as a general matter, they may be detained only under 8 U.S.C. § 1226(a), which renders them eligible for bond. *See, e.g.*, *Galdamez Martinez v. Noem*, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Tinoco Pineda*, 2025 WL 3471418; *Ortega Munoz v. Noem*, 2025 WL 3218241, at (W.D. Tex. Nov. 7, 2025); *Cardona-Lozano*, 2025 WL 3218244; *see also Brito Hidalgo v. Rycroft*, 2025 WL 3473360, at *3 (E.D. Mich. Dec. 3, 2025) (citing more than 70 cases). There are good reasons for the mountain of precedent rejecting Respondents' position—including that their position is inconsistent with statements of the Supreme Court that are binding in this circuit.

Section 1225(b)(2)(A) applies only "in the case of … an applicant for admission, if the examining immigration officer determines that [a noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, [the noncitizen] shall be detained." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The plain language of the statute thus demonstrates that it applies only to noncitizens who are "applicants for admission" and are "seeking admission" to the United States. *Ortega Munoz*, 2025 WL 3218241, at *2; *accord, e.g.*, *Tinoco Pineda*, 2025 WL 3471418, at *5; *Galdamez Martinez*, 2025 WL 3471575, at *6; *Cardona-Lozano*, 2025 WL 3218244, at *4.

Indeed, the Supreme Court has said as much. In a lengthy, detailed discussion of the INA's detention provisions, the Court drew an express distinction between noncitizens "seeking admission into the country," who are detained under § 1225(b)(2)(A), and those "already in the country," who are instead detained under § 1226 and are generally eligible for bond. *Jennings*, 583 U.S. at 289; *accord id.* at 303; *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). And although Respondents fail to mention this part of *Jennings*, it is binding even if the justices spoke in *dicta*. *See McRorey v. Garland*, 99 F.4th 831, 837 (5th Cir. 2024) ("We … are generally bound by Supreme Court dicta, especially when it is recent and detailed.") (quotation omitted).

In any event, a close reading of § 1225(b)(2)(A) bears out the reading of the Court in *Jennings* and the innumerable opinions agreeing with that reading. "Congress' use of verb tense is significant in construing statutes," *United States v. Wilson*, 503 U.S. 329, 333 (1992), and § 1225(b)(2)(A) uses the present participle "seeking admission." That tense "denotes an ongoing process" that "necessarily implies some sort of present-tense action." *Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (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*, 2025 WL 2371588, at *7. And Respondents' longstanding regulations implementing § 1225 similarly refer to "arriving [noncitizens]," 8 C.F.R. § 235.3(c), a term defined to include only "applicant[s] for admission coming or attempting to come into the United States at a port-of-entry," 8 C.F.R. § 1.2; *see, e.g.*, *Lopez Santos v. Noem*, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025).

Furthermore, a provision Congress added to § 1226 just this year demonstrates that—contrary to Respondents' position—some noncitizens who enter without inspection are subject to

detention under § 1226(a). Section 1226(c)(1)(E) states that people who are "inadmissible under" 8 U.S.C. § 1182(a)(6)(A), which covers only noncitizens who enter without inspection, are subject to mandatory detention if they are charged with, arrested for, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E). By creating a "'specific exception'" to § 1226(a) that requires mandatory detention of *some* noncitizens who entered without inspection, Congress directly indicated its understanding that *not all* such noncitizens are subject to mandatory detention. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (quoting *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see, e.g.*, *Gutierrez v. Thompson*, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Cardona-Lozano*, 2025 WL 3218244, at *5. And Respondents' position that all noncitizens who enter without inspection are subject to mandatory detention would render this recent addition to the statute superfluous. *See, e.g.*, *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) ("duty" of courts is "to give effect, if possible, to every clause and word of a statute").

The fact that the Amirians were apprehended shortly after entering the United States and then released on recognizance does not change matters. *See, e.g.*, *Becerra-Fernandez v. Lynch*, 2025 WL 3562572, at *4-*7 (W.D. Mich. Dec. 12, 2025) (petitioner previously released on recognizance not subject to § 1225(b)(2)(A); *Shen v. Larose*, 2025 WL 3552747, at *7-*9 (S.D. Cal. Dec. 11, 2025) (same); *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).

Indeed, the Amirians' prior release confirms that they may not be detained under § 1225(b)(2)(A). DHS initially provided them with conditional release under § 1226 in the form of release on recognizance. *See* Pet. Ex. 1. Petitioners could not have been "simultaneously" subjected to § 1225 and § 1226, because "one provides for discretionary release … while the other mandates detention without discretion." *Juan Lucas v. LaRose*, 2025 WL 3485163, at *7 (S.D. Cal. Dec. 4, 2025). And Respondents may not "simply switch tracks" post hoc "and purport to subject Petitioner[s] to mandatory detention under § 1225(b) after previously releasing [them] under § 1226(a)." *Id.* (quotation omitted); *accord, e.g.*, *Huaman-Rodriguez v. Lynch*, 2025 WL 3267768, at *7 (W.D. Mich. Nov. 24, 2025); *Boffill v. Field Office Dir.*, 2025 WL 3246868, at *6 (S.D. Fla. Nov. 20, 2025); *Quishpe-Guaman v. Noem*, 2025 WL 3201072, at *4 (S.D. Ind. Nov. 17, 2025); *Patel v. Crowley*, 2025 WL 2996787, at *5-*6 (N.D. Ill. Oct. 24, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 215-17 (D. Mass. 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *6-*7 (D. Ariz. Aug. 11, 2025); *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *7 (W.D. Tex .Oct. 21, 2025) (citing cases).

In short, the Amirians entered the United States in 2023, and Respondents processed them under § 1226. Now, two years later, Respondents re-arrested Petitioners in the interior of the United States. Given those facts, they are—under the Supreme Court's reading of the INA, Congress's reading of the INA, Respondents' own longstanding reading of the INA, and the reading of the INA adopted by the overwhelming majority of courts to address the issue—not subject to detention under § 1225(b)(2)(A). They are therefore likely to succeed on the merits of their claim that their detention under § 1225(b)(2)(A) violates the INA.

B. Petitioners' Redetention Without Any Hearing to Determine If They Are Flight Risks or a Danger to the Community Violates Due Process

1. Substantive Due Process

Mrs. Amirian and M.A. are likely to succeed on the merits of their claim that their detention violates their substantive due process rights under the Fifth Amendment. Those rights protect the liberty interest in "[f]reedom from imprisonment, " which "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quotation omitted). Immigration detention is civil and must "bear a reasonable relation to the purpose for which the individual" is detained, so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also Schall v. Martin*, 467 U.S. 253, 264 (1984) (requiring detention to be a proportional rather than excessive response to a legitimate state objective). And where immigration detention is not mandatory by statute, its only legitimate purposes are mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 426 (1979) ("The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger.").

Mrs. Amirian and M.A. are, as explained above, not subject to mandatory detention. And they are neither a flight risk nor a danger to the community. They have lived in the United States for more than two years, and they have strong community that preclude any risk of flight, and Mrs. Amirian's complete lack of criminal history demonstrates that she does not pose a danger to the community. Mrs. Amirian and M.A. are therefore likely to succeed on their Fifth Amendment substantive due process claim.

2. Procedural Due Process

Finally, Mrs. Amirian and M.A. are likely to succeed on their procedural due process claim under the Fifth Amendment. 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." *United States v. Salerno*, 481 U.S. 739, 746 (1987). 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). Each factor weighs heavily in favor of Mrs. Amirian and M.A.

First, Mrs. Amirian and M.A. have a strong interest in freedom from arbitrary civil imprisonment. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (noting that "[t]he interest in being free from physical detention" is "the most elemental of liberty interests."). "[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington*, 441 U.S. at 425. This is especially so where, as here, detention is unlawful.

Second, the risk of erroneous deprivation under existing procedures is extreme. Respondents have offered no evidence that the detention of Mrs. Amirian and M.A. is justified to prevent flight or mitigate the risks of danger to the community. *See Zadvydas*, 533 U.S. at 690. They have strong economic and community ties to their home and are law-abiding members of their community. And Respondents have offered no individualized explanation for their continued detention. *See Santiago v. Noem*, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025). There is thus a grave risk of erroneous deprivation of their liberty.

Third, Respondents' interest in continuing to detain Mrs. Amirian and M.A. is minimal at best. Providing them with a bond hearing to evaluate whether their detention is warranted would not impair any legitimate interests that Respondents may have. *See, e.g., Lopez v. Sessions*, 2018 WL 2932726 (S.D.N.Y. June 12, 2018). To the contrary, providing such a hearing would comport with the requirements of the INA and Respondents' own regulations. Further, given that Respondents have routinely performed the type of custody hearing sought here, the limited administrative burden of providing such a hearing to Mrs. Amirian and M.A. carries no weight. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025).

In short, by denying Mrs. Amirian and M.A. even an opportunity to seek bond, Respondents have stripped them of their liberty without constitutionally sufficient procedures, and Respondents must—at a minimum—provide them with a bond hearing. *See, e.g., Vieira v. Anda-Ybarra*, 2025 WL 2937880 at *4 (W.D. Tex. Oct. 16, 2025). For these reasons, Mrs. Amirian and M.A. are likely to succeed on the merits of their procedural due process claim.

II. Petitioners Suffer Irreparable Harm Each Day They Remain in Unlawful Detention

Petitioners' ongoing detention is sufficient, standing alone, to show irreparable harm. "Courts considering ongoing confinement of noncitizens under DHS and [the] BIA's novel interpretation of § 1225(b)(2) have found irreparable harm resulting from confinement without likely constitutional or statutory authority." *Ortega Munoz v. Noem*, 2025 WL 3218241, at *5 (W.D. Tex. Nov. 7, 2025); *accord, e.g., Rojas Vargas v. Bondi*, 2025 WL 3251728, at *4 (W.D. Tex. Nov. 5, 2025); *Alvarez Ortiz v. Freden*, ___ F. Supp. 3d ___, 2025 WL 3085032, at *11 (W.D.N.Y. Nov. 4, 2025); *Guerrero Orellana v. Moniz*, ___ F. Supp. 3d ___, 2025 WL 2809996, at *9 (D. Mass. Oct. 3, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261-62 (W.D. Wash. 2025). This is because "the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm." *Kostak v. Trump*, 2025 WL 2472136, at *3 (W.D.

La. Aug. 27, 2025) (citing *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012)). Furthermore, Petitioners' detention continues to separate them from their immediate family—including the husband of Mrs. Amirian and father of M.A., who has already been released from custody on the basis of a similar habeas petition.

III. The Balance of the Equities and Public Interest Strongly Favor Petitioners

The merged factor of the balance of the equities and the public interest also weighs in favor of Mrs. Amirian and M.A. The public has a strong interest in ensuring that Respondents follow the law and provide basic due process protections. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997); *Kostak*, 2025 WL 2472136, at*4. There is also no evidence at all that either Mrs. Amirian or M.A. poses a flight risk or a danger to the community, meaning that "it is in no one's interest to detain" them. *Alvarez Ortiz*, 2025 WL 3085032, at *11; *accord, e.g.*, *Rojas Vargas*, 2025 WL 3251728, at *4.

Moreover, as shown above, Petitioners suffer irreparable harm each day they are unlawfully imprisoned. Respondents, in contrast, "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The ongoing deprivation of Petitioners' constitutional rights "far outweighs the burden to Respondents of conducting a bond hearing." *Kostak*, 2025 WL 2472136, at *4. Such hearings are routine, and the cost of holding them is minimal. *Lopez-Arevelo*, 2025 WL 2691828, at *12. And granting preliminary relief does not, of course, "bar [Respondents] from continuing removal proceedings for Petitioner[s] or from otherwise enforcing [the] immigration laws." *Ortega Munoz*, 2025 WL 3218241, at *5.

CONCLUSION

The Court should issue a preliminary injunction ordering Respondents to release Petitioners from custody while their habeas petition is pending.

Dated: December 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 19, 2025, I served this document by filing electronically with CM/ECF system and by directing it be mailed to Respondents.

/s/ Kristy Blumeyer-Martinez
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Attorney for Petitioners

CERTIFICATE OF CONFERENCE

I certify that on December 19, 2025, Kristy Blumeyer-Martinez, counsel for Petitioners, emailed the Respondents to confer via email. Respondents oppose this motion for preliminary injunction.

/s/ Kristy Blumeyer-Martinez
Kristy Blumeyer-Martinez
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