

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

OLGA MARINA CRUZ RAPALO,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 3:26-CV-00031

**PETITIONER'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

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INTRODUCTION

Petitioner, Olga Marina Cruz Rapalo (“Ms. Cruz Rapalo”), by and through undersigned counsel, files this emergency motion for a Temporary Restraining Order (“TRO”) and/or a Preliminary Injunction. Ms. Cruz Rapalo seeks an immediate order compelling Respondents to release her from the custody of U.S. Immigration and Customs Enforcement (“ICE”). Ms. Cruz Rapalo is 24-year-old citizen and native of Honduras who last entered the United States without inspection (EWI) on or about April 9, 2021. She is a devoted and loving mother to her two disabled children, [REDACTED] (6 years-old) and [REDACTED] (4-years-old). Both children suffer severe speech or language impairments. They are unable to speak for themselves and rely on their mother to communicate their needs.

Ms. Cruz Rapalo plays a crucial role in his family’s life as the primary financial provider and emotional rock of the family, Ms. Cruz Rapalo’s current detention by ICE has immediate and obvious consequences on her family. Because she is neither a flight nor safety risk, and she is not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2), Ms. Cruz Rapalo's detention by ICE without a bond hearing violates both the Immigration and Nationality Act and the due process clause of the U.S. constitution. The instant petition is being filed seeking this Court's urgent intervention in the form of an order enjoining ICE from continuing to unlawfully detain her. Indeed, Ms. Cruz Rapalo is separated from her family and has been deprived of the bond hearing the Immigration & Nationality Act, U.S. constitution, and decades of agency practice, leave no doubt she is entitled to.

Ms. Cruz Rapalo, however, has not been and will not be provided with the bond hearing required by 8 U.S.C. § 1226 as DHS in conjunction with Executive Office of

Immigration Review (EOIR)¹ (collectively “the government”) recently announced they would be following a new novel interpretation of 8 U.S.C. § 1225(b)(2)(A). Specifically, the government’s new novel interpretation subjects every noncitizen who entered the U.S. without inspection to mandatory detention without the statutorily required bond hearing before a neutral IJ. As a result, Ms. Cruz Rapalo is currently being unlawfully detained by ICE.

In recent weeks, district courts across the Country, including in both the Western District of Texas and Southern District of Texas, have been rejecting the government’s novel (unsupported) interpretation of the § 1225(b)(2)(A), granting the habeas petitions of individuals similarly situated to Ms. Cruz Rapalo, and ordering ICE to either immediately release the Ms. Cruz Rapalo or promptly provide a bond hearing before a neutral IJ.² Ms.

¹ The term EOIR or immigration courts are used interchangeably throughout this motion to refer to the agency vested with the responsibility of presiding over bond hearings, removal hearings, and appeals under the INA.

² See e.g., *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Choglio Chafila v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this

Cruz Rapalo respectfully requests that this Court join the rapidly growing list of courts finding such detention unlawful and expeditiously ordering the government to remedy it.

**STATEMENT CONCERNING THE NEED FOR PROMPT REVIEW AND
ADJUDICATION**

This Motion is predicated on a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, a remedy that Congress and the courts have long recognized demands swift judicial review. Indeed, 28 U.S.C. § 2243 mandates an expedited show-cause response precisely because the petition's central claim is an ongoing, unlawful deprivation of liberty. It is axiomatic that the loss of liberty, even for a single day, constitutes profound and irreparable harm. Therefore, the failure to rule on the requested injunction within 14 days is not mere delay; it is a constructive denial of the motion itself. Each day of inaction inflicts the very irreparable injury the petition seeks to prevent, rendering the extraordinary remedy of habeas functionally meaningless and frustrating the "swift" relief that § 2243 requires.

The irreparable harm of Ms. Cruz Rapalo's unlawful detention is particularly unnecessary when one considers the fact that the government's attempt to mandate the detention of all EWI aliens is a thinly veiled strategy to coerce individuals into abandoning claims for statutory relief, such as Cancellation of Removal and Withholding of Removal for which they are eligible. This policy disproportionately affects the very aliens who would typically qualify for a bond—those eligible for relief from removal (significantly

decision); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025).

lowering flight risk and often requiring the absence of any convictions that make them a danger or would mandate detention under § 1226(c)(1)(A)). By subjecting aliens to mandatory detention, the government forces these individuals to pursue their applications from within an ICE facility, fundamentally changing the decision-making process.

This new interpretation weaponizes detention as a coercive tool, forcing aliens into an untenable "cost-benefit" analysis. To even schedule an individual hearing for relief, an alien must first demonstrate *prima facie* eligibility to the court. However, they are then forced to weigh the *possibility* of winning their case—which is never guaranteed—against the *certainty* of remaining in detention for months. Faced with the harsh realities of confinement (such as strip searches and a total loss of liberty) for what may be a 50/50 chance of success, many individuals who are otherwise eligible for relief provided by Congress are pressured to "throw in the towel" and accept removal.

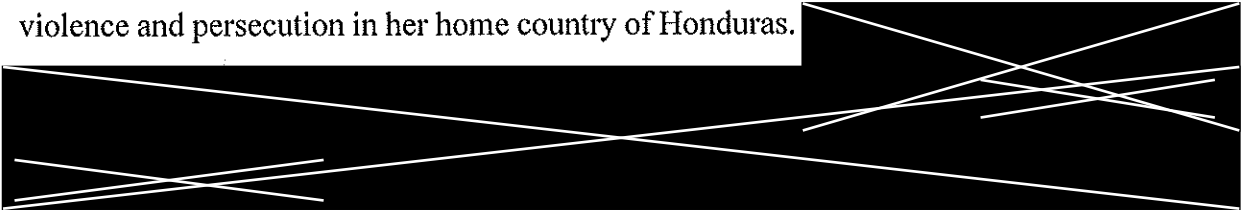
The situation is compounded by the current DHS practice of appealing *grants* of relief. An alien must now consider that even if they win their case, DHS may appeal, forcing them to remain detained throughout the lengthy appeal process, which could stretch their total time in custody to eight months or more *after* an immigration judge has already ruled in their favor. This strategy effectively deters aliens from pursuing the very relief Congress intended to make available, using procedural detention not as a tool for public safety but as a means to force capitulation.

Delays in the adjudication of this habeas petition and those brought by aliens like Ms. Cruz Rapalo facilitates exactly what the government is trying to achieve. Accordingly,

the failure to promptly address Ms. Cruz Rapalo's motion (in no more than 10-days) effectively acts as a constructive denial of it.

STATEMENT OF FACTS

Ms. Cruz Rapalo is a 24-year-old citizen and native of Honduras who last entered the United States without inspection (EWI) on or about April 9, 2021. She was fleeing violence and persecution in her home country of Honduras.



Ms. Cruz Rapalo is a devoted and loving mother to her two disabled children;  (6 years-old) and U.S. citizen child  (4 years-old). Ms. Cruz Rapalo is the children's primary caregiver, and they rely on her for their wellbeing. Both children suffer from disabilities and attend   suffers from severe speech or language impairment and is enrolled in special education services with the Richardson ISD. For the 2025 school year,  qualified for additional special education services in the area of articulation as well as expressive receptive language.

 suffers from a severe speech impairment and requires special education services. He is not yet speaking using phrases and sentences. He uses gestures more often to communicate. Presently, he is attending pre-kindergarten at  in Desoto, Texas. Both require significant care due to their disabilities. Although her children receive special education and accommodations at school, they are at high risk of regressing because of their lengthy separation from their mother as she has remained in ICE detention since August 2025.

As stated above, her two children are disabled have been separated from their loving and devoted mother. She is their primary caregiver as they require extensive care. Since the boys cannot speak for themselves, she must act as their main interpreter or communicator. Without her, it has been very difficult to meet the boys' needs and wellbeing.

Ms. Cruz Rapalo has been working as a painter since her arrival to the U.S. She is the primary financial provider and caregiver for her children. Furthermore, her mother, Maritza Rapalo, was diagnosed with vaginal cancer three years ago. Ms. Cruz Rapalo drove an hour to take her mother to chemotherapy and radiation treatments. Presently, her mother is being treated for possible colon cancer. However, without Ms. Cruz Rapalo she will not be able to attend any medical treatment needed as she relies on her to drive and accompany her to any medical appointments or treatments. Her family relies on her heavily for emotional and financial support.

Ms. Cruz Rapalo is a faithful and active member of *Templo De Dios* (Temple of God) for the past four years. She attends church three times a week; Wednesday, Fridays and Sunday. She contributes her knowledge and faith by leading bible study on Wednesdays. While in ICE detention, she continues to manifest her faith by leading bible study and prayer groups.

On, August 18, 2025, Ms. Cruz Rapalo was arrested in Dallas County, Texas for "Simple Assault Family Violence." She received a citation at the time, but her case is still pending. She was later transferred to the custody of Immigration and Customs Enforcement (ICE).

On August 20, 2025, the Department of Homeland Security (DHS) issued a Notice to Appear (NTA) in Dallas, Texas, initiating removal proceedings under 8 U.S.C. § 1229a against her. The NTA alleges that Ms. Cruz Rapalo is not a U.S. citizen and is present in the United States without having been admitted or paroled. In accordance with these facts, he is charged as being subject to removal from the U.S. pursuant to section 8 U.S.C. § 1182(a)(6)(A)(i). Ms. Cruz Rapalo is currently detained at the El Paso Camp East Montana detention facility in El Paso, Texas. ICE did not set a bond for Ms. Cruz Rapalo when she was detained. This coupled with the government's new (incorrect) interpretation of 8 U.S.C. § 1225(b)(2)(A), as set forth in *Matter of Hurtado*, means that Ms. Cruz Rapalo will not be provided with a bond hearing.

Because Ms. Cruz Rapalo is being detained in ICE custody without being afforded the bond hearing required under the law, he seeks this Court's urgent intervention.

LEGAL STANDARD

The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief.³ To obtain a TRO, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm; (3) the threatened injury outweighs any harm the order might cause the defendant; and (4) the injunction will not disserve the public interest.⁴

I. Ms. Cruz Rapalo Is Likely to Succeed on the Merits of his Claims.

³ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

⁴ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

Ms. Cruz Rapalo is substantially likely to succeed on the merits of his claims because his detention is unlawful under both the INA and the Due Process Clause of the Fifth Amendment. Respondents’ new, radical interpretation of the INA—which subjects all noncitizens who entered without inspection (“EWI”) to mandatory detention—reverses nearly three decades of consistent agency practice, defies multiple canons of statutory construction, and violates the Constitution. This novel theory, recently rubber-stamped by the Board of Immigration Appeals (“BIA”) in *Matter of Hurtado*, 29 I & N Dec. 216 (BIA Sept. 5, 2025), is a thinly veiled attempt to achieve through executive fiat what Congress has not authorized: the categorical denial of bond hearings to a class of noncitizens long understood to be eligible for them. As numerous federal district courts have already concluded, this position is legally indefensible. The multitude of detailed legal reasons with citations to supporting authority demonstrating a strong likelihood of success are included in the Habeas Petition filed immediately before the instant motion.⁵

i. Her Detention Violates Due Process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.⁶ To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Mathews*, courts weight the following factors:

- (1) the private interest that will be affected by the official action;

⁵ (ECF No. 1 at pp. 9 – 42.)

⁶ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

(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.⁷

Ms. Cruz Rapalo addresses the *Matthews* factors in turn.

Private interest. It is undisputed Ms. Cruz Rapalo has a significant private interest in being free from detention. “The interest in being free from physical detention” is “the most elemental of liberty interests.”⁸ Moreover, when assessing the private interest, courts consider the detainee’s conditions of confinement, namely, “whether a detainee is held in conditions indistinguishable from criminal incarceration.”⁹

Ms. Cruz Rapalo has not only been held in ICE detention without a bond hearing or the possibility of obtaining one for months, she was also moved hundreds of miles across the state in ICE’s custody. As in *Günaydin*, “he is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement.”¹⁰ The first *Matthews* factor supports Ms. Cruz Rapalo’s claim of a Fifth Amendment violation.

⁷ *Matthews*, 424 U.S. at 335.

⁸ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

⁹ *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

¹⁰ *Id.*

Risk of erroneous deprivation. Under this factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.”¹¹ The government’s new position claiming any noncitizen present in the U.S. without having been inspected by an immigration officer (colloquially referred to as “EWI”) is subject to mandatory detention without a bond hearing is the sole reason he has been and continues to be unlawfully detained. Notably, the government’s new position contradicts nearly three decades of consistent agency action holding bond hearings and setting bond for noncitizens who are EWI. Significantly, a bond hearing before a neutral adjudicator in accordance with 8 U.S.C. § 1226(a), like the ones that took place for decades prior to July 2025, is exactly the place for any claimed interest the government has in detaining Ms. Cruz Rapalo (e.g. assuring appearance at hearings and public safety) to be heard and ultimately ruled on by a neutral adjudicator. This *Matthews* factor weighs in favor of Ms. Cruz Rapalo , too.

Respondents’ competing interests. Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents’ interests.¹² Ms. Cruz Rapalo does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. Ironically, it is Ms. Cruz Rapalo who is asking the Court to enforce such laws as the currently exist; meanwhile, the government is asking everyone to ignore multiple provisions of the INA.

¹¹ *Id.* at *8.

¹² *Matthews*, 424 U.S. at 335.

Ms. Cruz Rapalo is not a flight risk nor a danger to the community. Nor is Ms. Cruz Rapalo described in any of the provisions of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19 which would subject him to mandatory detention without the right to a bond hearing before an IJ. Accordingly, the government's interest in upholding the Constitution and immigration laws is fulfilled through the relief sought by Ms. Cruz Rapalo's habeas petition.

Because all three *Matthews* factors favor Ms. Cruz Rapalo's position, this Court should determine that Ms. Cruz Rapalo is likely to succeed in demonstrating that his detention without a bond hearing based on nothing more than being EWI contravenes his due process rights under the Fifth Amendment.¹³

ii. Her Detention Violates the Relevant Statutes.

The government's detention of Ms. Cruz Rapalo without a bond hearing, based on its new interpretation of 8 U.S.C. 1225(b)(2)(A), is contrary to the INA's plain text, its clear structural divisions, and its recent legislative amendments. Indeed, as several district courts have already pointed out:

the government's "interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice."¹⁴

¹³ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

¹⁴ *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025); see also, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F.Supp.3d —, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24,

Furthermore, the statutory scheme, read as a coherent whole, demonstrates that Ms. Cruz Rapalo's detention is governed by the discretionary framework of 8 U.S.C. 1226, which mandates the very bond hearing he has been denied.

First, the plain language of 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens like Ms. Cruz Rapalo who were apprehended in the interior of the United States years after their entry. As a growing number of courts have found, the statute mandates detention only for an individual who is (1) an "applicant for admission," (2) is "*seeking admission*," and (3) is determined by an examining officer to be "not clearly and beyond a doubt entitled to be admitted."¹⁵ The government's new interpretation, formalized and perceived as binding on IJs by the BIA's decision in *Matter of Hurtado* issued on September 5, 2025, conveniently ignores the second, critical element: that the person must be actively "seeking admission." A noncitizen who entered years ago and has since resided in the United States is not, by any plain sense meaning of the term, "seeking admission" when apprehended by interior enforcement officers. The statute's use of the present progressive tense—

2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, — F.Supp.3d —, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025).

¹⁵ 8 U.S.C. § 1225(b)(2)(A); *see also* *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

“seeking”—unambiguously limits its application to the context of an arrival at a port of entry or the border, not to an arrest occurring long after the act of entry is complete.¹⁶

By reading the phrase “seeking admission” out of the statute, the government violates the foundational interpretive canon against surplusage, which requires that courts “give effect, if possible, to every clause and word of a statute.”¹⁷ This textual distinction reflects the INA’s broader structure, which carefully distinguishes between two different contexts of enforcement. Section 1225, titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings,” governs the process of inspection and admission at the border.¹⁸ In contrast, 8 U.S.C. § 1226, titled “Apprehension and detention of aliens,” governs the arrest and detention of noncitizens already present within the United States.¹⁹ Ms. Cruz Rapalo, having been arrested in the interior decades after her entry, falls squarely within the purview of 8 U.S.C. § 1226, and therefore, her detention is subject to the discretionary bond provisions of this statute.

¹⁶ See *Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); accord *Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). See also *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in 8 U.S.C. Sec. 1225 (1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

¹⁷ *Corley v. United States*, 556 U.S. 303, 314 (2009).

¹⁸ See *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that “U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under 8 U.S.C. §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)”) (emphasis added).

¹⁹ *Id.* 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 . . . years.”).

Second, as numerous courts have repeatedly recognized in recent weeks, the government’s new interpretation of the detention provisions renders the recently enacted Laken Riley Act (“LRA”) entirely superfluous and devoid of any meaning whatsoever.²⁰ In January 2025, Congress passed the LRA for the purpose of making noncitizens who are present in the U.S. without being admitted or inspected by an Immigration Office.²¹ The LRA specifically targets for mandatory detention a narrow class of noncitizens who meet two distinct criteria: (1) a *status* requirement (being inadmissible as EWI, and thus an “applicant for admission” under), and (2) a *conduct* requirement (having been charged with, arrested for, or convicted of specific offenses like burglary or theft).²² The very structure of this amendment is dispositive. By creating a new category of mandatory detention for EWI noncitizens *with* certain criminal histories, Congress legislated against the clear backdrop of the existing legal landscape—a landscape where EWI status *alone* was insufficient to trigger mandatory detention.

If the government’s new theory were correct, and all EWI noncitizens were already subject to mandatory detention under § 1225(b)(2)(A), then the LRA would accomplish nothing. It would be a meaningless legislative act. The canon against surplusage forbids such a conclusion. The LRA is powerful evidence that Congress understood and implicitly

²⁰ See e.g., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) (“The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.”).

²¹ Pub. L. No. 119-1, 139 Stat. 3 (2025).

²² 8 U.S.C. § 1226(c)(1)(E).

ratified the decades-long practice of affording bond hearings to EWI noncitizens who lacked the disqualifying criminal histories enumerated in 1226(c) or were among those described in 8 C.F.R. § 1003.19(h) such as arriving aliens (a discrete subset of “applicants for admission”).

The Executive Branch’s subsequent policy reversal is not merely a novel interpretation; it is an attempt to rewrite the statute and override a recent, specific legislative judgment, raising profound separation of powers concerns. Moreover, the BIA’s new interpretation, makes a liar out of the president who touted the LRA as a necessary piece of legislation that would “save countless innocent American lives” when he signed into law.²³ After all, if the LRA did absolutely nothing because, as DHS and EOIR suddenly claim, every noncitizen covered by the LRA’s amendments was already subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Third, the INA’s implementing regulations and broader statutory framework confirm that Immigration Judges (“IJs”) retain jurisdiction to grant bond to noncitizens in Ms. Cruz Rapalo’s circumstances.²⁴ Among other things, the regulations create a specific jurisdictional bar preventing IJs from conducting bond hearings for “arriving aliens” under 8 C.F.R. 1003.19(h)(2)(i)(B). An “arriving alien” is defined as an “applicant for admission

²³ <https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act>

²⁴ *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (“The EOIR’s regulations drafted following the enactment of the IIRIRA explained this distinction.”) (citing Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection).

coming or attempting to come into the United States at a port-of-entry.”²⁵ By explicitly carving out this specific subset of “applicants for admission,” the regulations create a powerful negative inference: IJs *do* have jurisdiction over “applicants for admission” who are not “arriving aliens,” a category that includes Ms. Cruz Rapalo. Again, if all “applicants for admission” were already subject to mandatory detention under § 1225(b)(2)(A), this carefully drawn regulatory distinction would be entirely pointless.

Furthermore, the INA’s distinct grants of arrest authority reinforce this conclusion. Sections 1225 and 1357(a)(2) authorize warrantless arrests at or near the border for those “entering or attempting to enter” the U.S. In contrast, both § 1226(a) and 8 U.S.C. § 1357(a) provide the authority for warrant-based arrests for interior enforcement and arrests of noncitizens already present in the U.S.

Here, Ms. Cruz Rapalo was arrested in the interior far from the land border and years after his entry. Accordingly, his arrest was governed by the authority provided in §1226(a). Likewise, his continued detention is governed by the same statute that authorized his arrest: § 1226 which entitles him to a bond hearing before a neutral IJ. Accordingly, Respondents refusal to provide this statutorily required bond hearing based on its new (unsupported) interpretation of § 1225(b)(2)(A).

Here, Ms. Cruz Rapalo is likely to succeed on his claim that his detention without a bond hearing violates the INA for all the reasons discussed above. The likelihood of success tips even further in his favor given that it is his position—not the government’s—

²⁵ 8 C.F.R. § 1.2.

that numerous district courts have agreed with when granting habeas petitions in recent weeks on this exact issue—including courts within the Fifth Circuit.²⁶

II. Ms. Cruz Rapalo Faces Immediate and Irreparable Harm.

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”²⁷ Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that “[f]reedom from imprisonment . . . lies at the heart of the liberty” protected by the Due Process Clause.²⁸ Each day Ms. Cruz Rapalo remains in custody, she is irreparably harmed by the loss of her fundamental liberty—a cruel irony for a woman who fled violence and persecution as she was being hunted down to be killed in Honduras.

The harm is not merely abstract. Ms. Cruz Rapalo has already been subjected to the being transported across the state in ICE custody—and all the humiliating and degrading things that go along with being transported while in custody (cuffs, chains, and repeated strip searches) Absent relief from this Court, Ms. Cruz Rapalo will remain detained and potentially moved again, in what is becoming an increasingly long removal proceeding

²⁶ See e.g., *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Chafila v. Scott*, et. al., No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *5–6 (D. Me. Sept. 21, 2025) (citing *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).

²⁷ *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

²⁸ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

process, and as a result, denied her liberty, removed from her livelihood and freedom, and removed from what had previously been a community where she belongs.

III. The Balance of Equities and Public Interest Weighs in Ms. Cruz Rapalo's Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—“merge when the Government is the opposing party.”²⁹ Here, the balance of hardships weighs overwhelmingly in Ms. Cruz Rapalo’s favor. The injury to Ms. Cruz Rapalo—unconstitutional detention and risk to his well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.³⁰

Conversely, the harm to Respondents is nonexistent. Ms. Cruz Rapalo is not among those Congress proscribed for mandatory detention. Nor is Ms. Cruz Rapalo a danger to the community or a flight risk. Moreover, to the extent the government disagrees with any of these statements, it has the same recourse it has had for decades: making those arguments to a neutral adjudicator during a bond hearing pursuant to § 1226. Surely, Respondents cannot claim any, much less substantial, harm would be caused by affording Ms. Cruz Rapalo a bond hearing, just as it has to similarly situation noncitizens for decades in accordance with the INA’s statutory scheme.³¹ Furthermore, the public interest is served by

²⁹ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

³⁰ *Id.* at 436 (describing public interest in preventing noncitizens “from being wrongfully removed, particularly to countries where they are likely to face substantial harm”); *see also Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

³¹ *See Martinez*, 2025 WL 2598379, at *5.

preserving “life, liberty, and happiness” and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

IV. Ms. Cruz Rapalo Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

Ms. Cruz Rapalo seeks injunctive relief to maintain the status quo by requiring ICE to either immediately release her or promptly provide her with a bond hearing before a neutral IJ. As stated above (repeatedly), the list of district courts that have recently concluded the government’s new position is plainly incorrect is a long one that is growing by the day.

While courts have been fairly unanimous in this finding and granting relief, the specific remedy has varied slightly.³² For example, “[s]ome courts have determined that the appropriate relief for an immigration detainee held in violation of due process is the Ms. Cruz Rapalo’s immediate release from custody.”³³ Alternatively, “[m]any courts in recent days order[ed] a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner’s continued detention by clear and convincing evidence.”³⁴ These remedies preserve rather than alter the status quo.³⁵ The status quo ante litem is “the

³² See *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025) (discussing the various forms of relief ordered by courts granting habeas relief in similar cases).

³³ *Id.* (citing *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025)).

³⁴ *Id.* (citing *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; and *Arostegui-Maldonado v. Baltazar*, — F. Supp. 3d —, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025)).

³⁵ *Nguyen v. Scott*, 2025 WL 2419288, at *10 (W.D. Wa. Aug. 21, 2025) (citing *Phong Phan v. Moises Beccerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025); *Pinchi v. Noem*,

last uncontested status which preceded the pending controversy.” For nearly thirty years, bond hearings before a neutral IJ were the status quo for noncitizens who were EWI and not described in § 1226(c) or 8 C.F.R. § 1003.19(h). This was the status quo, of course, because it is precisely what is required by the INA’s statutory scheme. Injunctive relief is, therefore, appropriate in Ms. Cruz Rapalo’s case.

CONCLUSION

For the foregoing reasons, Ms. Cruz Rapalo respectfully requests that the Court immediately grant his petition and this motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering his immediate release from ICE custody, or in the alternative a prompt bond hearing at which the government bears the burden of demonstrating flight or safety risk by clear and convincing evidence.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen

Texas State Bar No. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

972-256-8641

Dan@GividenLaw.com

No. 25-cv-05632-RMI-RML, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2024) (finding the “moment prior to the Petitioner’s likely illegal detention” was the status quo).