

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ARNOLDO TIUL CAAL, and K.M.T.B., a
Minor Child by and through Her Parent and
Guardian Arnoldo Tiul Caal,

Civil Case No. 5:26-cv-625

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

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

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

/s/ Madison McWithey

Madison McWithey

Texas State Bar No. 24119481

8150 N. Central Expressway, Ste. M1101

Dallas, TX 75206

(214) 468-8100

madison@udasheranton.com

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
INTRODUCTION	6
STATEMENT CONCERNING THE NEED FOR PROMPT REVIEW AND ADJUDICATION	7
STATEMENT OF FACTS	9
LEGAL STANDARD	11
I. The status quo is Mr. Tiul Caal and K.M.T.B. being released from ICE custody and on the Order of Recognizance they were on immediately preceding ICE's sudden unjustified re-detention of them in Washington—thousands of miles away from where they are now detained in Texas.	11
II. Petitioners are Likely to Succeed on the Merits of their Claims.....	13
i. Petitioners Detention Violates Due Process.....	14
ii. Their Detention Violates the Relevant Statutes.....	17
III. Petitioners Face Immediate and Irreparable Harm.....	23
IV. The Balance of Equities and Public Interest Weighs in Petitioner's Favor.	23
CONCLUSION	25

TABLE OF AUTHORITIES

Cases

Adrian Conejo Arias and L.C.R. a Minor Child v. Noem, et. al., Order, No. SA-26-CV-415-FB (W.D. Tex. Jan. 31, 2026) 6, 10

Aguilar Maldonado v. Olson, No. 25-cv-3142, — F.Supp.3d —, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)..... 17

Al Otro Lado v. McAleenan, 394 F. Supp. 3d 1168 (S.D. Cal. 2019)..... 18

Aransas Project v. Shaw, 775 F.3d 641 (5th Cir. 2014)..... 23

Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)..... 17

Benitez v. Noem, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025)..... 17, 18

Canal Auth. of State of Fla. v. Callaway, 489 F.2d 567 (5th Cir. 1974)..... 11

Corley v. United States, 556 U.S. 303 (2009) 19

Demore v. Kim, 538 U.S. 510 (2003) 14

Dos Santos v. Noem, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) 17

Enrique Bernat F., S.A. v. Guadalajara, Inc., 210 F.3d 439 (5th Cir. 2000)..... 11

Gomes v. Hyde, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).... 17

Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty., 415 U.S. 423 (1974)..... 11

<i>Günaydin v. Trump</i> , No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025)	15
<i>Hamdi v. Rumsfeld</i> , 542 U.S. 507 (2004)	14
<i>Hernandez-Lara v. Lyons</i> , 10 F.4th 19 (1st Cir. 2021)	15
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018)	19
<i>Jimenez v. FCI Berlin, Warden</i> , No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025) ..	22
<i>Lepe v. Andrews</i> , No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025)	17
<i>Lopez Santos v. Noem</i> , No. 3:25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025)	22
<i>Lopez-Campos v. Raycraft</i> , No. 2:25-cv-12486, — F.Supp.3d —, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)	17, 19
<i>Maldonado Bautista v. Santacruz</i> , No. 5:25-cv-01874-SSS-BFM (C.D. Cal. July 28, 2025)	17
<i>Martinez v. Hyde</i> , No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238 (D. Mass. July 24, 2025)	17
<i>Martinez v. Secretary of Noem</i> , No. 5:25-cv-01007-JKP, 2025 WL 2598379, (W.D. Tex. Sept. 8, 2025)	17
<i>Matthews v. Eldridge</i> , 424 U.S. 319 (1976)	14, 15, 16
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	23, 24
<i>RGI, Inc. v. Tucker & Assocs., Inc.</i> , 858 F.2d 227 (5th Cir. 1988)	12

<i>Romero v. Hyde</i> , No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)	17
<i>Rosa v. McAleenan</i> , 583 F. Supp. 3d 840 (S.D. Tex. 2019).....	24
<i>United States v. Wilson</i> , 503 U.S. 329 (1992).....	18
<i>Vasquez Garcia v. Noem</i> , 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025).....	17
<i>Velasco Lopez v. Decker</i> , 978 F.3d 842 (2d Cir. 2020).....	15
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	11
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001)	23

Statutes

8 U.S.C. § 1225(b)(1)	19
8 U.S.C. § 1226	16, 19, 22
8 U.S.C. § 1226(a).....	16, 19, 22
8 U.S.C. § 1357	22

Other Authorities

Pub. L. No.119-1, 139 Stat. 3 (2025)	20
--	----

Regulations

8 C.F.R. § 1.2.....	21
---------------------	----

INTRODUCTION

On January 22, 2026, Petitioner Arnoldo Tiul Caal was dropping off K.M.T.B. off at elementary school when suddenly DHS officers abruptly appeared in the same aggressive masked manner many have seen play out on the news in recent months. Without warning, explanation, or anything resembling a process, they were detained by DHS and then transported approximately 2,069 miles in ICE custody to the Diley Detention Center in South Texas. All of this was done despite the fact that they had (and continue to have) an asylum application pending in immigration court, had been released on an Order of Release on Recognizance (ORR) pursuant to 8 U.S.C. § 1226 after DHS determined nearly seven years earlier that they posed no risk of flight or danger.

Needless to say, as U.S. District Court Judge Fred Biery recently put it in a strikingly similar case, the instant "case has its genesis in the ill-conceived and incompetently-implemented government pursuit of daily deportation quotas, apparently even if it requires traumatizing children."¹ And exactly like the father and minor child petitioners in that case, the Petitioners in this one are seeking "nothing more than some modicum of due process and the rule of law."²

For these reasons and those set forth below as well as in the habeas petition filed earlier today, Petitioners respectfully request the Court grant this motion and order ICE to immediately release Petitioners thereby restoring the status quo of this father and ten year

¹ *Adrian Conejo Arias and L.C.R. a Minor Child v. Noem, et. al.*, Order, No. SA-26-CV-415-FB (W.D. Tex. Jan. 31, 2026).

² *Id.*

old child being free from restraint on the same ORR they were on before being abruptly and unnecessarily detained by ICE.

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

This Motion—seeking the release of a father and his ten year old daughter—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 Petitioner'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, 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 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 Petitioners facilitates exactly what the government is trying to achieve. Accordingly, the failure to promptly address Petitioner's motion (in no more than 10-days) effectively acts as a constructive denial of it.

STATEMENT OF FACTS

Petitioner Arnoldo Tiul Caal is a devoted father to his 10-year-old daughter K.M.T.B. whom he lives with in Spokane, Washington. Petitioners come from 

 Being a member of this population, Petitioner Arnoldo Tiul Caal has suffered discrimination, including physical assaults. Both Petitioners do not speak English fluently.

Petitioner Arnoldo Tiul Caal is a single father. He is responsible for all facets of K.M.T.B.'s life, including driving her to school, providing stability and guidance, and ensuring her safety. Because K.M.T.B.'s mother lives in Guatemala, Petitioner Arnoldo Tiul Caal is truly her sole caregiver.

To support his daughter, Petitioner Arnoldo Tiul Caal works in construction. Through this role, he is the sole financial provider to his daughter.

Petitioners have no criminal history and never been in trouble with law enforcement prior to this interaction. Petitioners' last entry into the U.S. was in February 2019. After a period of detention, they were ordered released on recognizance and with instructions to report to check-ins as required. Petitioner Arnoldo Tiul Caal reported to all check-ins he was asked to report for as required.

After being released from ICE custody on Order for Release on Recognizance (ORR) in 2019, Petitioner Arnoldo Tiul Caal filed an I-589 Application for Asylum in his removal proceedings. The next hearing in those removal proceedings was scheduled before the IJ for March 2, 2027, in Seattle, WA. This date and Petitioners compliance with all they

have been asked, demonstrate that they were not and are not a flight risk or safety concern to immigration officials.

Unfortunately, this case and many others demonstrate that ICE's decisions to arrest and detain non-citizens are in recent months are driven by quotas, and rarely (if ever) have anything to do with flight, danger, or even enforcing the immigration laws.³ After all, this father and his young child were lawfully pursuing their asylum applications in immigration court and, in accordance with the INA and its implementing regulations, were scheduled for a hearing before an IJ. Nonetheless, on the morning January 22, 2026, Petitioner Arnoldo Tiul Caal was dropping off K.M.T.B. off at elementary school when they were detained by ICE. Petitioners were not given any prior notice that they would be detained, never received any notice or communications indicating they had failed to comply with the ORR, and after 11-days in ICE custody which included transporting Petitioners in ICE custody 1,000s of miles they still have received absolutely no process whatsoever concerning their current detention.

Because Petitioner is being detained in ICE custody without being first afforded any process whatsoever and without being afforded the bond hearing required under the law, they seek this Court's urgent intervention.

³ *Adrian Conejo Arias and L.C.R. a Minor Child v. Noem, et. al.*, Order, No. SA-26-CV-415-FB (W.D. Tex. Jan. 31, 2026).

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.⁴ 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.⁵

- I. **The status quo is Mr. Tiul Caal and K.M.T.B. being released from ICE custody and on the Order of Recognizance they were on immediately preceding ICE's sudden unjustified re-detention of them in Washington—thousands of miles away from where they are now detained in Texas.**

The status quo for purposes of injunctive relief is defined as "the last actual, peaceable, non-contested status which preceded the pending controversy."⁶ As the Fifth Circuit explained more than 50 years ago:

It is often loosely stated that the purpose of a preliminary injunction is to preserve the status quo. Indeed, some such notion may have influenced the district judge in this case, since he wrote of a 'status quo that would normally be entitled to temporary protection.' It must not be thought, however, that there is any particular magic in the phrase 'status quo.' The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable

⁴ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

⁵ *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).

⁶ *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974).

injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties, by the issuance of a mandatory injunction, or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.⁷

Here, the "pending controversy" is the re-detention of Mr. Tiul Caal and K.M.T.B. on January 22, 2026. The status *preceding* that controversy was seven years of liberty on an Order of Recognizance issued pursuant to 8 U.S.C. § 1226. That status was "peaceable" (issued a compliance letter annually including a few months before being detained) and "non-contested" (ICE renewed it annually). The government disrupted the status quo by arresting this father and his young child without the requisite findings, notice, or process of any kind. An injunction ordering release, therefore, does not *change* the status quo; it *restores* it. It returns the parties to the position they occupied before the government's allegedly unlawful act.

The Fifth Circuit has recognized that injunctive relief is appropriate to preserve the status quo contemplated by the parties' relationship.⁸ *RGI, Inc. v. Tucker & Assocs., Inc.*, 858 F.2d 227, 229 (5th Cir. 1988)

Here, the "relationship" was one of supervision, not incarceration. By treating detention as the status quo, the FCR rewards the government for its swift and unilateral deprivation of liberty. It effectively says because ICE has successfully thrown them in jail

⁷ *Id.* at 576.

⁸ *RGI, Inc. v. Tucker & Assocs., Inc.*, 858 F.2d 227, 229 (5th Cir. 1988) (holding that the Federal Arbitration Act did not divest district courts of jurisdiction to maintain the status quo pending arbitration).

before they could seek a TRO, that ICE detention is now the baseline. This creates a perverse incentive for executive agencies to act precipitously and without process when arresting and subjecting individuals to civil detention despite the absence of any justification (i.e. flight or danger) for such detention.

In sum, Petitioners' request for release is simply a request for the Court to restore the status quo while the merits of their legal arguments and habeas petition are litigated.

II. Petitioners are Likely to Succeed on the Merits of their Claims.

A. Petitioners are Likely to Succeed on the Merits of the Claim that Their Detention Without Process or a Bond Hearing Based on Nothing More than Being EWI is Unconstitutional and Unlawful.

Petitioners are substantially likely to succeed on the merits of their claims because their 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.⁹

i. Petitioners Detention Violates Due Process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.¹⁰ To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Matthews*, courts weight the following factors:

- (1) the private interest that will be affected by the official action;
- (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
- (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.¹¹

Petitioners addresses the *Matthews* factors in turn.

Private interest. It is undisputed Petitioners have a significant private interest in being free from detention. "The interest in being free from physical detention" is "the most elemental of liberty interests."¹² Moreover, when assessing the private interest, courts

⁹ (ECF No. 1 at pp. 9 – 42.)

¹⁰ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

¹¹ *Matthews*, 424 U.S. at 335.

¹² *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

consider the detainee's conditions of confinement, namely, "whether a detainee is held in conditions indistinguishable from criminal incarceration."¹³

Petitioners—which again, include a ten year old child—have not only been held in ICE detention without a bond hearing or the possibility of obtaining one for weeks, they were also moved more than 2,000 miles across the country in ICE's custody. As in *Günaydin*, they are "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."¹⁴ The first *Matthews* factor supports Petitioners' claim of a Fifth Amendment violation.

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."¹⁵ First, the government failed to provide any notice or process before showing up at an elementary school and taking Petitioners into custody. Second, 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 they have been and continue to be unlawfully detained. Notably,

¹³ *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)).

¹⁴ *Id.*

¹⁵ *Id.* at *8.

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 Petitioner (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 Petitioners, 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.¹⁶ Petitioner does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. Ironically, it is Petitioners who are asking the Court to enforce such laws as they currently exist; meanwhile, the government is asking everyone to ignore multiple provisions of the INA. Petitioners are not a flight risk nor a danger to the community. Nor are Petitioners described in any of the provisions of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19 which would subject them 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 Petitioners' habeas petition.

Because all three *Matthews* factors favor Petitioners' position, this Court should determine that Petitioners are likely to succeed in demonstrating that their detention

¹⁶ *Matthews*, 424 U.S. at 335.

without notice, process, or a bond hearing based on nothing more than being EWI contravenes due process rights under the Fifth Amendment.¹⁷

ii. *Their Detention Violates the Relevant Statutes.*

The government's detention of Petitioners 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."¹⁸

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

¹⁷ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

¹⁸ *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, 2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arazola-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).

First, the plain language of 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens like Petitioner 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.”¹⁹ 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—“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.²⁰

By reading the phrase “seeking admission” out of the statute, the government violates the foundational interpretive canon against surplusage, which requires that courts

¹⁹ 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)).

²⁰ 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”).

“give effect, if possible, to every clause and word of a statute.”²¹ 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.²² 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.²³ Petitioner, having been arrested in the interior decades after her entry, falls squarely within the purview of 8 U.S.C. § 1226, and therefore, his detention is subject to the discretionary bond provisions of this statute.

Second, as numerous courts—including this one²⁴—have repeatedly recognized in recent months, 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.²⁵ In January 2025, Congress passed the LRA for the purpose of making

²¹ *Corley v. United States*, 556 U.S. 303, 314 (2009).

²² 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).

²³ *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.”).

²⁴ See e.g. *Mendoza Euceda v. Noem*, Order, No. SA-25-CV-1234-OLG (W.D. Tex. Nov. 17, 2025).

²⁵ 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.”).

noncitizens who are present in the U.S. without being admitted or inspected by an Immigration Office.²⁶ 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”), and (2) a *conduct* requirement (having been charged with, arrested for, or convicted of specific offenses like burglary or theft).²⁷ 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 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

²⁶ Pub. L. No. 119-1, 139 Stat. 3 (2025).

²⁷ 8 U.S.C. § 1226(c)(1)(E).

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.²⁸ 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 IJs retain jurisdiction to grant bond to noncitizens in Petitioners' circumstances.²⁹ 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 coming or attempting to come into the United States at a port-of-entry."³⁰ 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 Petitioners. 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.

²⁸ <https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act>

²⁹ *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).

³⁰ 8 C.F.R. § 1.2.

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, Petitioners were arrested in the interior far from the land border and years after their release on ORR pursuant to 8 U.S.C. § 1226. Accordingly, their arrest and continued detention are governed by the authority provided in § 1226(a) and the U.S. Constitution. Both of which require "a more orderly and humane policy than" what took place here on a cold morning in front of an elementary school.

Here, Petitioners are likely to succeed on the claim that their detention violates the INA for all the reasons discussed above. The likelihood of success tips even further in his favor given that it is this position—not the government's—that this Court and numerous other district courts have agreed with when granting habeas petitions in recent months on this exact issue.³¹

³¹ See e.g., *Mendoza Euceda v. Noem*, Order, No. SA-25-CV-1234-OLG (W.D. Tex. Nov. 17, 2026); *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); *Chafla 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).

III. Petitioners Face Immediate and Irreparable Harm.

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”³² 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.³³ Each day Petitioners remain in custody, they are irreparably harmed by the loss of their fundamental liberty—a cruel irony for a father and child who came to the U.S. seeking to be free from arbitrary and capricious actions by government officials.

The harm is not merely abstract. Petitioners have already been subjected to the being transported across the country in ICE custody—and all the humiliating and degrading things that go along with such transportation while in custody. Absent relief from this Court, Petitioners will remain detained and potentially moved again, in what is becoming an increasingly long removal proceeding process, and as a result, denied of their liberty, removed from their livelihood, freedom, and elementary school, and removed from what had previously been a community where they belong.

IV. The Balance of Equities and Public Interest Weighs in Petitioner’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.”³⁴ Here, the balance

³² *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

³³ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

³⁴ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

of hardships weighs overwhelmingly in Petitioners' favor. The injury to Petitioners—unconstitutional detention and risk to their 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.³⁵

Conversely, the harm to Respondents is nonexistent. Petitioners are not among those Congress proscribed for mandatory detention. Nor are Petitioners—one of whom is a ten year old child—a danger to the community or a flight risk. Surely, Respondents cannot claim any, much less substantial, harm would be caused by immediately releasing Petitioners.³⁶ Furthermore, the public interest is served by preserving “life, liberty, and happiness” and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

³⁵ *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).

³⁶ *See Martinez*, 2025 WL 2598379, at *5.

CONCLUSION

For the above stated reasons, Petitioners respectfully requests that the Court immediately grant this motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering their immediate release from ICE custody.

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

/s/ Madison McWithey

Madison McWithey

Texas State Bar No. 24119481

8150 N. Central Expressway, Ste. M1101

Dallas, TX 75206

(214) 468-8100

madison@udashenanton.com

Attorneys for Petitioner