UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SABRINA AYLEN CARMONA SANCHEZ, *Petitioner*, v. RAFAEL VERGARA, Warden of Adams County Correctional Center, *et al*., *Respondents*.	No.: 5:26-cv-46-DCB-BWR **URGENT AND NECESSITOUS MOTION**

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

After several years building a life here in the United States and diligently attending all hearings in her pending immigration case, Petitioner Sabrina Carmona Sanchez was detained by Immigration and Customs Enforcement ("ICE") and wrongfully classified as "seeking admission" under 8 U.S.C § 1225(b)(2)(A), in direct contradiction to the plain reading of the Immigration and Nationality Act's ("INA") detention scheme and the Constitution's due process guarantee. Respondents' patently wrongheaded interpretation and application of § 1225(b)(2) has been held unlawful by a groundswell of federal court orders in every circuit in the country. As other courts have held in hundreds of other cases, individuals like Ms. Carmona Sanchez can only be detained under the INA's permissive pre-removal order detention provision, 8 U.S.C. § 1226(a); therefore, she is entitled by law to an individualized custody determination by ICE and review of that determination before a neutral decisionmaker. The irreparable harm experienced by Ms. Carmona Sanchez—a transgender woman detained in a men's ICE detention facility, where she is facing constant threats and harassment and has been denied necessary medical care—increases with every

hour she continues to be wrongfully subjected to mandatory detention. Because she meets the requirements for a temporary restraining order, and because release is an available and proper remedy here in light of her particular circumstances, Ms. Carmona Sanchez respectfully asks this Court to order her immediate release from Respondents' custody.

FACTS

I. Ms. Carmona Sanchez Entered the United States Without Inspection in 2023, and is Seeking Asylum in the United States Based on the Persecution She Faced as a Transgender Woman

Ms. Carmona Sanchez is a 41-year-old native and citizen of Ecuador. ECF No. 1 ("Pet.") ¶ 14. She is a transgender woman who identifies and presents as female. *Id*. ¶ 25. Her government-issued identity documents from Ecuador list her legal sex as female. *Id*. For over two decades, she has been receiving hormone replacement therapy medications. *Id*. Prior to her detention, she was receiving gender-affirming care—including hormone replacement therapy, regular psychological counseling, and several gender-affirming surgeries—at a clinic in New York City. *Id*. ¶ 26.

Ms. Carmona Sanchez fled her native Ecuador in or around 2011 due to threats, violence, and persecution she faced as a transgender woman. *Id*. ¶ 18. After initially living in Chile, she came to the United States in 2023. *Id*. On November 15, 2023, she entered the United States without inspection. *Id*. ¶ 19. Shortly thereafter, she was apprehended by immigration authorities. *Id*. Because she was experiencing a medical emergency at the time of her apprehension, she was initially transported to a hospital for medical care, and was then transferred to U.S. Customs and Border Protection ("CBP") custody. *Id*. The next day, she was released from CBP custody on her own recognizance and issued a Notice to Appear ("NTA") in immigration court in New York City. *Id*. By issuing the NTA, the Department of Homeland Security ("DHS") placed Ms. Carmona Sanchez in full removal proceedings under 8 U.S.C. § 1229a.

On the NTA, DHS charged Ms. Carmona Sanchez as removable under Section 212(a)(6)(A)(i) of the INA (8 U.S.C. § 1182(a)(6)(A)(i)) as a noncitizen "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." ECF No. 1-1 at 3 (NTA). The box for "You are an arriving alien" was not checked on the NTA. *See id*. The release order specifically referenced Section 236 of the INA (8 U.S.C. § 1226) as the authority for Ms. Carmona's detention. *See id*. at 2.

Upon her release, Ms. Carmona Sanchez traveled to Queens, New York, where she continued to reside with her partner until her arrest by ICE last month. *Id*. ¶ 22. She dutifully attended all of her hearings in immigration court. *Id*. ¶ 23. She filed *pro se* applications for asylum and other protection-based forms of relief from removal and later obtained immigration counsel to assist with these pending applications. *Id*. ¶ 24.

II. In Early January, ICE Detained Ms. Carmona Sanchez and Rapidly Transferred Her to Louisiana and then Mississippi by Air in Contravention of Medical Advice

On January 3, 2026, Ms. Carmona Sanchez was arrested by local law enforcement in Long Island, New York. Pet. ¶ 28. Despite apparently not being charged with any crime, instead of being released, she was transferred to ICE custody. *Id*. A few weeks prior, Ms. Carmona Sanchez had undergone facial surgery, and her doctors told her she should not fly. *Id*. ¶ 30. Ms. Carmona Sanchez, with visible scarring still on her face, informed ICE officials of this fact, but they boarded her on a plane anyway, flying her from New Jersey to Louisiana. *Id*. ¶¶ 30–31. After spending a night on the floor without a mattress or bedding at a detention center in Louisiana, ICE boarded Ms. Carmona Sanchez on another flight, this time to Mississippi. *Id*. ¶¶ 32–33.

During her initial detention in the New York area and Louisiana, ICE detained Ms. Carmona Sanchez with other women. *Id*. ¶ 34. After Ms. Carmona Sanchez informed an ICE

official that she is transgender during an intake interview in Louisiana, she was transferred to Adams, a men's detention facility. *Id*.

Now that Ms. Carmona Sanchez is detained at Adams, her removal case has been transferred from the immigration court in New York City to an immigration judge who hears cases of individuals detained in Louisiana and Mississippi. *Id*. ¶ 35. Her prior removal defense counsel has sought to withdraw her representation, and her current pro bono immigration counsel at a New York-based organization is now planning to enter an appearance and represent Ms. Carmona Sanchez in removal proceedings going forward. *Id*. ¶ 37. Ms. Carmona Sanchez has not been afforded the opportunity to seek release from detention on bond while her removal case remains pending. *Id*. ¶ 36. She is currently waiting for the immigration court to schedule her next hearing on the merits of her removal case. *Id*. ¶ 35.

Ms. Carmona Sanchez has now been detained for approximately one month without any individualized custody determination or bond hearing. This is because Respondents have misclassified Ms. Carmona Sanchez as "seeking admission" under 8 U.S.C. § 1225(b)(2)(A) pursuant to a July 8, 2025 DHS policy ("July 8, 2025 Policy") that rejected the well-established understanding of the statutory detention framework, reversed decades of practice, and rolled out this unlawful practice nationwide.[1] This policy has since been vacated as unlawful. *Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3713987, at *22 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). Nevertheless, DHS's representatives in the immigration courts and immigration judges have continued misclassifying bond-eligible § 1226(a) people as subject to mandatory detention under

[1] *See* Am. Immigr. Lawyers Assoc., *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025), https://bit.ly/4teDTaM.

§ 1225(b)(2) and refuse to conduct bond hearings on that basis.

III. Ms. Carmona Sanchez's Health and Safety Are at Grave Risk as Long as She Remains Detained in Adams

Ms. Carmona Sanchez is a transgender woman who identifies and presents as female, and has been receiving gender-affirming medical care, including hormone replacement therapy, for decades. Pet. ¶¶ 15, 25–26. She has been a victim of violent crime before, and she is at great risk of rape or assault in immigration detention simply because of her identity as a transgender woman. *Id.* ¶¶ 27, 39. She is currently detained in a men's detention center and sleeping in an open dorm with about 100 men. *Id.* ¶¶ 34, 38. Though she is permitted to shower privately in the healthcare unit, she is required to use the communal restroom in her dorm, where the toilets do not have doors or privacy screens. Because she fears for her safety in the restroom, she waits to use the restroom until everyone has gone to sleep. *Id.* ¶ 38. Detained men at Adams have already verbally harassed and threatened her, calling her slurs and making lewd sexual comments and advances. *Id.*

Additionally, Ms. Carmona Sanchez's healthcare needs are not being met at Adams. She and the undersigned attorneys have requested that she be provided with the prescription hormone replacement therapy she was receiving prior to detention as well as certain gender-affirming clothing and personal hygiene items, and as of the date of this filing, those requests have gone unanswered. *Id.* ¶ 40. Ms. Carmona Sanchez underwent facial feminization surgery on December 16, 2025, and has not received adequate follow-up care for this surgery while in detention. She is suffering complications, including bleeding from her hairline, eyes, and nose and signs of infection. *Id.* ¶ 41.

ARGUMENT

I. The Court Should Grant a Temporary Restraining Order

To obtain a temporary restraining order, a petitioner "must establish that [s]he is likely to succeed on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland,* 637 F.2d 430, 435 (5th Cir. 1981).

Ms. Carmona Sanchez is likely to succeed on the merits of both of the claims in her petition. This is clear from the overwhelming consensus that has emerged among district courts in this Circuit and throughout the country on this legal issue and from ICE's own historic understanding of the law that led noncitizens in Ms. Carmona Sanchez's same circumstance to be deemed detained under § 1226(a) for decades. Ms. Carmona Sanchez's detention under § 1225(b)(2) is *ultra vires*, and any purported detention under § 1226(a) has been in clear violation of her due process rights. Ms. Carmona Sanchez also faces irreparable harm each day she is unlawfully detained. Dozens of courts throughout the country, including within the Fifth Circuit, have issued temporary restraining orders in recent months in cases with claims like Ms. Carmona Sanchez's, easily concluding that unlawful detention without a bond hearing constitutes irreparable harm. *See, e.g.*, *Kostak v. Trump*, No. 3:25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Ortega-Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *3 (S.D. Tex. Oct. 10, 2025). This irreparable harm is elevated by her serious medical needs and lack of safety in detention as a transgender woman. Finally, the constitutional violations Ms. Carmona Sanchez suffers as a result of her unlawful detention far outweigh any burden the Respondents would suffer. As such, this Court should grant Ms. Carmona Sanchez's motion for a temporary restraining order.

A. Ms. Carmona Sanchez is Likely to Succeed on the Merits of Her Statutory and Due Process Claims

Under similar circumstances to Ms. Carmona Sanchez's, courts across the country, including multiple courts within this Circuit, have granted petitions for a writ of habeas corpus pursuant 28 U.S.C. § 2241 where, as here, the petitioner has been present in the United States for several years and was detained in the interior, with ICE incorrectly citing § 1225(b)(2) as the detention authority. These courts have been granting habeas relief based on statutory claims as well as due process claims. *See, e.g.*, *Fabian-Granados v. Bondi*, No. 1:25-cv-2068-DAE, 2026 WL 90061 (W.D. Tex. Jan. 8, 2026); *Martinez v. Noem*, No. EP-25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Ortega-Aguirre*, 2025 WL 3684697; *see also* R. & R., *Cun Chitay v. Bondi*, 5:25-cv-00113-DCB-ASH (S.D. Miss. Jan. 22, 2026), ECF No. 11 at 13.

1. There Has Been an Onslaught of Court Rulings Rejecting Respondents' New Interpretation of § 1225(b)(2)

On July 8, 2025, DHS issued a policy rejecting the well-established understanding of the statutory detention framework and reversing decades of agency practice. Pursuant to this policy, DHS's representatives in the immigration courts began to request that immigration judges nationwide misclassify bond-eligible § 1226(a) people as subject to mandatory detention under § 1225(b)(2) and refuse to conduct bond hearings on that basis.

On September 5, 2025, the Board of Immigration Appeals ("BIA") adopted this same position in a published decision, *Matter of Yajure Hurtado.* 29 I. &. N. Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who entered the United States without admission or parole were "seeking admission" and thus subject to § 1225(b)(2) and ineligible for bond. Therefore, all immigration judges are directed to misclassify people in this manner, making them ineligible for bond throughout the course of proceedings that can take at least several months and, in many cases, years.

Since Respondents adopted their new policy and the BIA followed suit, the overwhelming majority of district courts throughout the country, including courts in the Fifth Circuit, have

concluded, "'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades.' support finding that § 1226 applies to these circumstances." *Buenrostro Mendez v. Bondi*, No. 4:25-cv-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (quoting *Pizarro Reyes v. Raycraft*, No. 2:25-cv-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sep. 9, 2025)); *see also Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 681 (W.D. Tex. 2025) ("In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect."). Many of these courts have found, "the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1304 (W.D. Wash. 2025) (collecting cases); *Demirel v. Fed Det. Ctr. Philadelphia*, No. 2:25-cv-5488, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (explaining that there are now "288 district court decisions addressing this issue" and in "all but six, the Government's interpretation of the INA . . . was rejected"); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the "chorus" of courts).

This Court already has before it a Report and Recommendation to join the chorus of federal courts that have concluded Respondents' interpretation and application of § 1225(b)(2) to deny bond eligibility to people who are not "seeking admission" is unlawful. R. & R., *Cun Chitay v. Bondi*, 5:25-cv-00113-DCB-ASH (S.D. Miss. Jan. 22, 2026), ECF No. 11 at 13 (concluding that petitioner "was not 'seeking admission' at the time of his detention," which occurred years after he entered the United States without inspection, and thus "Respondents may not detain him under § 1225(b)(2)"). If adopted, that holding would be binding here.

In addition to the hundreds of individual habeas cases granting relief on this issue, the U.S. District Court for the Central District of California certified a class of noncitizens that includes Ms. Carmona Sanchez and entered a final declaratory judgment declaring the July 8, 2025 Policy

unlawful and vacating it under the Administrative Procedure Act as "not in accordance with law." *Bautista v. Santacruz*, 2025 WL 3713987, at *2, *16, *32 (C.D. Cal. Dec. 18, 2025); *see Chalal v. Bowen*, *No.* 5:25-cv-03546-SB-DSR, 2026 WL 136228, at *2 (C.D. Cal. Jan. 14, 2026) (noting that respondents conceded that a noncitizen released on their own recognizance was entitled to a bond hearing under *Maldonado Bautista*); *Ramos v. LaRose*, No. 25-cv-3726 JLS-DEB, 2025 WL 3769997, at *1 (S.D. Cal. Dec. 30, 2025) (same).

Despite clear guidance from federal courts and the vacatur of the July 8, 2025 Policy, Respondents continue to misclassify detained people under § 1225(b)(2) and deny them bond hearings unless they are ordered by a court to do so. This is creating what at least one court has described as a "judicial emergency." That court, the U.S. District Court for the Middle District of Georgia, is similar to this one: home to one of the largest immigration detention centers and "receiving an extraordinary number of petitions for habeas corpus relief seeking a bond hearing." Standing Order 2026-01 at 1, *In re: 28 U.S.C. § 2241 Immigration Petitions for Bond Hearings Stewart Detention Center* (M.D. Ga. Jan. 29, 2026).[2] The volume of habeas petitions in that court—and increasingly in this one—"has created an administrative judicial emergency." *Id.* The Middle District of Georgia has thus instituted a process referring § 2241 immigration detention petitions to federal Magistrate Judges for screening. If those cases raise a claim of misapplication of § 1225(b) resulting in denial of a bond hearing, the court will enter an order requiring a bond hearing within seven days.[3] *Id.* at 2-4.

2. Respondents Are Violating the Immigration and Nationality Act by

[2] *Available at* https://www.gamd.uscourts.gov/sites/gamd/files/general-ordes/2241StandingOrder.pdf.

[3] The Middle District of Georgia first ruled on November 1, 2025 that Respondents' misapplication of § 1225(b)(2) in cases like this one was unlawful and has since issued numerous similar orders. *See e.g.*, *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025); *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025). Yet, "the Government refuses to provide bond hearings to persons who fall within the parameters of the Court's rulings in *J.A.M.* and *P.R.S.* unless the Court orders the Government to do so in each individual case." Standing Order 2026-01 at 2.

Detaining Ms. Carmona Sanchez Under 1225(b)(2)

Ms. Carmona Sanchez is being erroneously subjected to mandatory detention pursuant to the July 8, 2025 Policy. The government's new position belies the statutory text of the INA because if § 1226(a) did not cover inadmissible noncitizens, as the government now purports that it does, there would be no reason for § 1226(c), a carve-out to § 1226(a), to specify that it governs certain persons who are inadmissible because inadmissible noncitizens would not be subject to § 1226 at all. Instead, § 1226(c) would have only needed to address people who are "deportable" for certain offenses after being lawfully admitted. By including inadmissible individuals under § 1226(c), Congress clarified that, by default, § 1226(a) covers persons who are inadmissible. In other words, if someone is determined to be inadmissible and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct). A contrary interpretation would ignore § 1226(a)'s plain text and structure and render meaningless § 1226's language that specifically addresses individuals who have entered without inspection. *See Shi v. Lyons*, No. 1:25-cv-274, 2025 WL 3637288, at *6 (S.D. Tex. Dec. 12, 2025); *Guzman v. Bondi*, No. 1:25-cv-2055-RP, 2025 WL 3724465, at *4 (W.D. Tex. Dec. 23, 2025).

The July 8, 2025 Policy also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2). Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of present-tense action." *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025). The "'seeking admission'

requirement mean[s] a noncitizen present in the United States without admission *who has recently arrived and is actively seeking admission*, not a noncitizen who has been residing in the country for years." *Silva v. Bondi*, No. 1:25-cv-2155-DAE, 2026 WL 90060, at *6 (W.D. Tex. Jan. 12, 2026) (quoting *Cardona-Lozano v. Noem*, No. 1:25-cv-1784-RP, 2025 WL 3218244, at *4 (W.D. Tex. Nov. 14, 2025) (emphasis in original)); *see also Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE, 2025 WL 3251728, at *3 (W.D. Tex. Nov. 5, 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." *See Lopez Benitez v. Francis,* 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025); *Cardona-Lozano*, 2025 WL 3218244, at *4; *Rojas Vargas*, 2025 WL 3251728, at *3; *Martinez*, 792 F. Supp. 3d at 218 ("Respondents' selective reading of the statute—which ignores its 'seeking admission' language—violates the rule against surplusage and negates the plain meaning of the text."). If Congress had intended to collapse those "seeking admission" and those who are inadmissible into a single category of individuals, it would have used a single term, and would not have taken pains to articulate a definition of "applicant for admission."

The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and *release on bond*[] [a noncitizen] who is not lawfully in the United States." *Rodriguez*, 779 F. Supp. 3d at 1260 (quoting H.R. Rep. No. 104-469, at 229 (1996)) (emphasis added). It also reflected nearly a century of law in the United States of allowing people inside the country to seek release from detention while the government decided whether or not to deport them. *See* 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing

for release on bond, including for noncitizens alleged to have entered the United States without inspection). Indeed, shortly after the enactment of the Illegal Immigration Reform and Immigrant Responsibility of Act of 1996, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR"), which houses the Immigration Courts and BIA, issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject the government's new proposed interpretation of the law at issue).

The 2025 Laken Riley Act ("LRA") amendments to § 1226, Pub. L. No. 119-1, 139 Stat. 3 (2025), also confirmed Congress's intent that individuals not admitted or paroled be detained pursuant to § 1226 if they are detained while already in the United States. In the LRA amendments, Congress passed an entirely new provision expressly making inadmissible individuals who have been convicted of certain crimes subject to mandatory detention under § 1226(c)(1)(E). "The government's new position would strip any 'real and substantial effect' from the language that the Laken Riley Act added to Section 1226(c), as the Secretary could rely on Section 1225 to

mandatorily detain every alien subject to Section 1226(c)(1)(E)." *Shi*, 2025 WL 3637288, at *6. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178, 189 (2020); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

Finally, the fact that the Respondents released Ms. Carmona Sanchez on her own recognizance in 2023 is strong evidence of the Respondents' misapplication of § 1225(b)(2) as to Petitioner. *See* NTA. ICE could *only* have released Ms. Carmona Sanchez on her own recognizance under § 1226(a) following an individualized determination that she was neither a flight risk nor a danger to the community. *See* 8 C.F.R. § 1236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release a [noncitizen] . . . provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding."); *see also Lopez Benitez*, 795 F. Supp. at 485. Indeed, the Order of Release on Recognizance issued to Ms. Carmona Sanchez in November 2023 specifically references § 1226 (Section 236 of the INA) as the authority for her detention—and for the agency's discretion to release her pending resolution of her immigration case. *See* NTA at 2. Release on one's own recognizance is not available under § 1225(b), which generally requires detention unless a person is paroled into the country for humanitarian reasons. *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018); *see also Martinez*, 792 F. Supp. 3d at 215 (explaining that petitioner's release on her own recognizance "does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ('[i]n accordance with section 236 of the Immigration and Nationality Act')"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a

noncitizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under § 1226). Ms. Carmona Sanchez was not paroled into the United States under § 1182(d)(5)(A), the only available form of release for individuals subject to § 1225(b)(2); nor did she receive a credible fear interview typically afforded to individuals seeking admission who express a fear of return, as Ms. Carmona Sanchez did when she was in CBP custody. *See* Pet. ¶ 20.

Considering the above, § 1226 leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole, such as Ms. Carmona Sanchez. As the Supreme Court has recently held, this Court is not required to defer to the agency's contrary interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024). While "the judgment of the Executive Branch may help inform" the Court's inquiry, *id.* at 413, it does so only to the extent of its "power to persuade." *Id.* at 402 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Moreover, the agency's interpretation has now been vacated as unlawful under the Administrative Procedure Act. *Bautista*, 2025 WL 3713987, at *22.

Ms. Carmona Sanchez was detained after years of continuous presence in the United States, not while "seeking admission." Further, her pending asylum application is not legally considered a process of "seeking admission." *See Matter of V-X-*, 26 I. & N. Dec. 147 (BIA 2013) (finding grant of asylum is not an "admission"). As a result, Ms. Carmona Sanchez does not meet the requirements of § 1225(b)(2). The only valid authority to detain her is § 1226(a), and her continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires.*

3. Ms. Carmona Sanchez's Detention Also Violates the Due Process Clause

The Fifth Amendment protects the right to be free from deprivation of life, liberty or property without due process of law. U.S. Const. amend. V. The Due Process Clause extends to

all persons within the United States regardless of status, including noncitizens, whether here lawfully, unlawfully, temporarily, or permanently. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Demore v. Kim*, 538 U.S. 510, 523 (2003). "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)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Under *Mathews*, courts weigh the following three 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." 424 U.S. at 335.

a. Petitioner's Private Interest

As to the first *Mathews* factor, "the interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Ms. Carmona Sanchez has been detained for almost a month at Adams in conditions that are indistinguishable from criminal incarceration. *See* Pet. ¶ 17. This detention prevents her from seeing her family, accessing her medical care (including post-surgery follow up), and deprives her of any privacy and freedom of movement.

Moreover, regardless of how they now interpret § 1225(b)(2) and whether that interpretation is lawful, Respondents created a liberty interest in *continued* liberty when they chose to release Ms. Carmona Sanchez on her own recognizance, and they are not free to deprive her of that liberty interest now without any process. *See Lopez-Arevelo*, 801 F. Supp. 3d at 685 ("Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance *prior to the manifestation of this interpretation*."

(footnote omitted) (emphasis in original) (quoting *Espinoza v. Kaiser*, No. 1:25-cv-01101-JLT-SKO, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025))). Courts have equated re-detention after release from immigration detention to criminal parole revocation—in both cases, people rely "on at least an implicit promise that [release] will be revoked only if [they] fail[] to live up to the [release] conditions." *Id.* at 685 (quoting *Young v. Harper*, 520 U.S. 143, 147–48 (1997)). Such people "thus have a protected liberty interest in their '*continued* liberty.'" *Id.* at 685 (quoting *Young*, 520 U.S. at 147) (emphasis added).

Ms. Carmona Sanchez has an indisputable liberty interest in being free from detention.

b. The Risk of Erroneous Deprivation

Next, because § 1226(a)—the INA's discretionary detention provision—is the only valid authority under which Respondents may detain Ms. Carmona Sanchez, Respondents were required to comply with the regulatory requirements under that statute both when initially detaining Ms. Carmona Sanchez and in having that exercise of discretion subsequently reviewed by an immigration judge. *See* 8 C.F.R. §§ 1003.19, 1236.1. The purpose of the discretionary detention statute and its implementing regulations is precisely to prevent an erroneous deprivation of liberty. Respondents' failure to comply with these procedural protections has caused Ms. Carmona Sanchez to be erroneously deprived of her fundamental physical liberty. "[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Loper Bright Enters.* 603 U.S. at 413. Respondents have failed to comply with the existing constitutional limits at two separate stages.

First, before the Government may exercise such discretion to detain a person, "§ 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020). "That conclusion

follows from the text of § 1226(a), which provides that the Attorney General 'may continue to detain' an arrested noncitizen, as '[t]he Supreme Court has interpreted similar 'may' language in other provisions of the INA to require the Attorney General to make 'some level of individualized determination.'" *Lopez Benitez*, 795 F. Supp. 3d at 493 (quoting *Velasaca*, 458 F. Supp. 3d at 235 (quoting *I.N.S. v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991) (interpreting 8 U.S.C. § 1252))). It appears that this individualized custody determination never took place. To the contrary, Respondents have disclaimed the authority to conduct the requisite individualized determination by categorizing individuals like Ms. Carmona Sanchez as subject to mandatory detention. *See Lopez Benitez*, 795 F. Supp. 3d at 495. When DHS has failed to make any individualized custody determination in exercising their § 1226(a) detention authority, courts have regularly found that the noncitizen's due process rights have been violated. *See, e.g.*, *id.*; *Maldonado v. Cabezas*, No. 25-cv-13004, 2025 WL 2985256, at *6 (D.N.J. Oct. 23, 2025).

Then, if DHS ultimately decides to detain a noncitizen after conducting such an assessment, that noncitizen may appeal said decision before an immigration judge, who must consider the same factors. *See* 8 C.F.R. § 1003.19(d), (e). The Respondents' decision to continue to utilize the now-vacated July 8, 2025 Policy and the BIA's decision in *Yajure Hurtado* to adopt this wrongful statutory categorization has deprived Ms. Carmona Sanchez of any meaningful opportunity to be heard and contest her detention, violating the due process principles incorporated into § 1226(a) and its implementing regulations. *See, e.g.*, *Lopez-Arevelo,* 801 F. Supp. 3d at 687; *George v. Noem,* No. 3:25-cv-2935-S-BW, 2025 WL 3852946, at *6 (N.D. Tex. Dec. 19, 2025), *report and recommendation adopted*, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026); *Ortega-Aguirre*, 2025 WL 3684697.

The government's failure to provide Ms. Carmona Sanchez any form of review whatsoever of her detention—including those procedures mandated by existing regulations—presents an

untenably high risk of erroneous deprivation of liberty.

c. The Government's Interest

Finally, while the United States has an interest in executing immigration laws that advance its stated policies, it has an equal and countervailing interest in consistent application of its laws and ensuring that those laws are applied under the proper means. It is not appropriate to utilize the "wrong" statute against any person to ensure their continued detention. Simply put, the government has no valid interest in enforcing an incorrect interpretation of the law.

Further, the Supreme Court has found that the government has only two valid interests in detaining noncitizens: (1) ensuring that noncitizens do not abscond and (2) preventing danger to the community. *Zadvydas*, 533 U.S. at 690. Respondents' decision to release Ms. Carmona Sanchez on her own recognizance nearly two and half years ago "in and of itself 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.'" *Lopez-Arevelo*, 801 F. Supp. 3d at 687 (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd*, 905 F.3d 1137 (9th Cir. 2018)). Ms. Carmona Sanchez is neither a flight risk nor a danger to the community, but rather has dutifully attended all immigration related hearings, is applying for various forms of immigration relief, and has significant community ties. *See* Pet. ¶¶ 23-24, 43. Further, any potential government interest in continued detention can be adequately served by an individualized custody determination where flight risk and dangerousness are taken into consideration.

As such, Respondents cannot show that their interest in detaining Ms. Carmona Sanchez without any opportunity for review outweighs her liberty interests. Nor can they claim that the effort and cost of providing her with the procedural safeguards already required by law is overly burdensome.

B. Ms. Carmona Sanchez is Experiencing Irreparable Harm Due to the Violation of Her Rights and the Heightened Dangers She Faces in Detention

Ms. Carmona Sanchez's unlawful deprivation of liberty is unquestionably an irreparable harm for which there is no adequate remedy at law. The deprivation of a person's liberty is, in and of itself, irreparable harm. *See Book People, Inc. v. Wong*, 91 F.4th 318, 340-41 (5th Cir. 2024). Dozens of courts throughout the country, including within the Fifth Circuit, have issued temporary restraining orders in recent months in cases with claims like Ms. Carmona Sanchez's, easily concluding that unlawful detention without a bond hearing is irreparable harm. *See, e.g.*, *Kostak v. Trump*, No. 3:25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Ortega-Aguirre*, 2025 WL 3684697, at *3.

And if Ms. Carmona Sanchez's unlawful detention were not injury enough, Ms. Carmona Sanchez also faces irreparable harm due to Respondents' inability to attend to her serious medical needs and safety in detention. When one is incarcerated, "the Constitution imposes . . . a corresponding duty to assume some responsibility for his safety and general well-being" and therefore provide "shelter, medical care, and reasonable safety." *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). Conditions can pose an unreasonable risk of future harm violative of the Eighth Amendment's prohibition against cruel and unusual punishment, as it would be "odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). And while Ms. Carmona Sanchez is in civil detention, people in civil immigration detention cannot be subjected to punitive conditions of confinement and are entitled to "more considerate treatment and conditions of confinement" than those in criminal custody. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982); *see also Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000); *Hare v. City of Corinth, Miss*, 74 F.3d 633, 643 (5th Cir. 1996) (en banc) (adopting the deliberate indifference standard articulated in *Farmer v. Brennan*, 511 U.S. 825 (1994)).

First, depriving Ms. Carmona Sanchez "adequate medical care[] is incompatible with the concept of human dignity and has no place in civilized society." *Brown v. Plata*, 563 U.S. 493, 511 (2011). Thus, it is of no surprise that the denial of medically necessary care constitutes irreparable harm. *See, e.g.*, *Jones v. Texas Dep't of Crim. Just.*, 880 F.3d 756, 759–60 (5th Cir. 2018) (allegations of deprivation "of necessary medical care . . . establish a sufficient risk of irreparable harm in the absence of injunctive relief").

Throughout Ms. Carmona Sanchez's arrest and detention, she has repeatedly informed Respondents that she is in the midst of post-operative recovery from facial surgery. But at every step, Respondents and their agents have failed to administer adequate medical care. Prior to being boarded on the plane, Ms. Carmona Sanchez made clear her doctor believed it was medically unsound to fly; Ms. Carmona Sanchez was boarded and flown regardless, and suffered pain and bleeding as a result. Pet. ¶¶ 29-31. And while detained at Adams, Respondents have failed to provide adequate post-operative care resulting in Ms. Carmona Sanchez's continued pain, bleeding from her eyes and ears, and improper recovery. *Id.* ¶ 41. This failure to provide care has resulted in Ms. Carmona Sanchez showing signs of infection, such as pus leaking from her post-operative wounds. *Id.*

In addition, despite informing Respondents of her diagnosis of gender dysphoria and her decades of medically necessary hormone replacement therapy treatment, Respondents have failed to provide such treatment for Ms. Carmona Sanchez's serious medical needs. *Id* ¶ 40. Gender dysphoria is a serious medical condition that, when untreated, "can cause significant distress, including increased risk of depression, anxiety, self-harm and suicidality." *Kingdom v. Trump*, No. 1:25-cv-691-RCL, 2025 WL 1568238, at *3 (D.D.C. June 3, 2025) (quotations and citations omitted). Failure to provide medically necessary gender dysphoria treatment to people in confinement, particularly where no individualized medical assessment has been completed, can

lead to irreparable harm. *Id.* at *11-12; *Benjamin v. Oliver*, No. 1:25-cv-04470-VMC, 2025 WL 3900855, at *5, 8 (N.D. Ga. Dec. 3, 2025).

Ms. Carmona Sanchez also faces irreparable harm due to her unsafe housing conditions. Carceral facilities "must take reasonable measure[s] to ensure the safety of the inmates." *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004). As a transgender woman housed in a dorm with approximately 100 men, Ms. Carmona Sanchez faces an unreasonably high risk of rape,[4] such that "injury is imminent." *Humana, Inc. v. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986). Since learning that Ms. Carmona Sanchez is transgender, Respondents have refused to house Ms. Carmona Sanchez safely—i.e., with other women—even though she was safely confined with other women before ICE officials learned of her transgender status. Pet. ¶ 34.

C. The Balance of Hardships and the Public Interest Favor a Temporary Restraining Order

When the government is defendant-respondent, "its interest and harm merge with the public interest." *See People of the Book, Inc.*, 91 F.4th at 341. "[I]t may be assumed that the Constitution is the ultimate expression of the public interest." *Def. Distributed v. United States Dep't of State*, 865 F.3d 211, 213 (5th Cir. 2017) *(quoting Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013)). As discussed above, Ms. Carmona Sanchez's abrupt detention without any due process violates the Constitution and federal law. Further, Respondents' inability to provide Ms. Carmona Sanchez proper post-operative care, medically necessary hormone therapy, or safe shelter conditions are likely constitutional violations themselves and could certainly lead to irreparable harm absent an injunction.

Granting an injunction will not cause Respondents to suffer any injury because "[t]here is

[4] Whitney Curry Wimbish, *ICE Deletes Rape Protection for Trans Immigrants*, THE AM. PROSPECT (Jan. 14, 2026), https://bit.ly/4a8vwFb.

generally no public interest in the perpetuation of unlawful agency action," and "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quotations and citation omitted). And Respondents can claim no hardship in releasing Ms. Carmona Sanchez. She is not a flight risk: prior to detention, Ms. Carmona Sanchez dutifully attended all her immigration hearings and appointments. She resided with her longtime partner and was involved in local community organizations. If released, Ms. Carmona Sanchez would return to her home, continue her post-operative recovery, and be able to resume her other medically necessary healthcare, such as hormone replacement therapy. If anything, Ms. Carmona Sanchez's post-operative recovery and her need for continued medical attention necessitates her proximity to the Community Healthcare Network clinic. Additionally, Ms. Carmona Sanchez is willing to comply with any conditions of her release, further minimizing any threatened harm to Respondents. *See Ortega-Aguirre*, 2025 WL 3684697, at *3; *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 339 (S.D. Tex. 2020) ("ICE has many other means besides physical detention to monitor noncitizens and ensure that they are present at removal proceedings and at time of removal, such as GPS monitoring and routine check ins.").

Here, Ms. Carmona Sanchez's continued deprivation of liberty without bond is in violation of her Fifth Amendment and statutory rights and far outweighs any burden the Respondents would suffer.

D. The Court Should Not Require Ms. Carmona Sanchez to Post Bond under Fed. R. Civ. P. 65(c)

The Court should not require security or nominal security under Fed. R. Civ. P. 65(c), as Mr. Carmona Sanchez is a detained person seeking due process. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (holding that the amount of security required by Rule 65(c) is

within the trial court's discretion, and the court "may elect to require no security at all"). Moreover, waiver of the security bond is appropriate because if the Court orders Ms. Carmona Sanchez's release from custody, Respondents will not incur any expenses. *See Kostak*, 2025 WL 2472136, at *4*; cf. Cohen v. Coahoma Cnty., Miss.*, 805 F.Supp. 398, 408 (N.D. Miss. 1992) (finding that preliminary injunction prohibiting law enforcement officers from coercing information from prisoners by inflicting physical pain would cost defendants nothing).

II. The Appropriate Remedy Is Immediate Release Pending the Adjudication of Ms. Carmona Sanchez's Habeas Petition

As numerous courts throughout the country have concluded in recent months, release is the proper remedy here. *See, e.g.*, *Dominguez Vega v. Thompson*, 5:25-cv-01439 (W.D. Tex. Nov. 20, 2025), ECF No. 6 at 11; *Ortega-Aguirre,* 2025 WL 3684697, at *3-4. Because Ms. Carmona Sanchez cannot be detained under § 1225(b)(2) and because there is no indication that Respondents claim she is detained under § 1226, which would require a bond hearing, the only relief available is release from custody. *Dominguez Vega*, 5:25-cv-01439 (W.D. Tex. Nov. 19, 2025), ECF No. 6 at 11. Moreover, because Respondents were required by regulation, statute, and the Constitution to conduct an individualized custody determination when detaining Ms. Carmona Sanchez, and they failed to do so, *see supra* Argument, Part I.A., the appropriate relief is to restore Ms. Carmona Sanchez to the status quo ante, which is release on her own recognizance. *See, e.g.*, *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[Release is the] usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it.") (quotations and citation omitted); *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025) (noting that in habeas, a court "may fashion a remedy that returns petitioner to her position prior to her unlawful detention"). Finally, given the unique risk of harm Ms. Carmona Sanchez faces as a transgender woman in a men's detention facility whose healthcare and safety needs are not being met, immediate release is appropriate and necessary.

If the Court is not inclined to grant Ms. Carmona Sanchez's release outright, then it should order Ms. Carmona Sanchez's release unless she is provided a bond hearing before an immigration judge within seven (7) days at which the government bears the burden of showing by clear and convincing evidence that Ms. Carmona Sanchez is a flight risk or danger to the community. *See, e.g.*, *Amelia C. P. v. Noem*, No. 3:25-cv-2872-K-BK, 2025 WL 3653872, at *3 (N.D. Tex. Dec. 17, 2025); *Perez v. Frink*, No. 4:25-cv-5357, 2025 WL 3626347, at *5 (S.D. Tex. Dec. 12, 2025); *Pineda Parada v. Rice*, No. 25-cv-1660, 2025 WL 3146250, at *3 (W.D. La. Nov. 4, 2025); *Gonzalez Martinez v. Noem*, No. 3:25-cv-430, 2025 WL 2965859, at *5 (W.D. Tex. Oct. 21, 2025).

CONCLUSION

For the foregoing reasons, the Court should grant a temporary restraining order requiring Respondents to immediately release Ms. Carmona Sanchez from their custody or, in the alternative, order Respondents to release her unless they provide her a bond hearing before an immigration judge within seven (7) days.

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Respectfully submitted,

s/ Korbin Felder

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