UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

M.B.M. [redacted] (age sixteen). *Petitioners-Plaintiffs*, *v.* PAMELA BONDI, United States Attorney General; KRISTI NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, JOSE RODRIGUEZ, in his official capacity as Warden of the Dilley Immigrant Processing Center; *Respondents.*	§	Cause No. 5:26-cv-00666 **MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

1. Petitioners M.B.M. and her minor child [redacted], citizens of Mexico, have resided in the United States since 2017. Petitioners are currently in the physical custody of Respondents at the Dilley Immigration Processing Center in Dilley, Texas. They have been unlawfully detained since September 2025. Through their previously filed Petition for Writ of Habeas Corpus, incorporated herein by reference, Petitioners challenge their unlawful detention and seeks immediate injunctive relief to remedy the ongoing constitutional violation. ***See* ECF 1, Petition for Writ of Habeas Corpus**
2. As discussed in his Petition for Writ of Habeas Corpus, Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the statutory language of the Immigration and Nationality Act, and the Flores Settlement Agreement because Petitioners are being held without the opportunity to request release from custody. Across the country, immigration judges are accepting this illegal theory and declining jurisdiction, thereby denying Petitioners any opportunity for an individualized custody determination. This deprivation of meaningful hearing violates substantive and procedural due process.
3. Petitioners' detention also violates the Immigration and Nationality Act and the Flores Settlement Agreement.
4. Immediate relief is necessary to remedy this ongoing constitutional violation, but also to alleviate the severe harm that the Petitioners are facing in detention. The

harm is especially severe to minor [redacted] who has missed half a school year due to his prolonged detention. Exh. 1 School Records of [redacted] The last uncontested status - the *status quo ante* - *is* Petitioner's release. Federal district courts throughout the country, including courts in this District and Circuit, have overwhelmingly granted relief to immigrant detainees in virtually identical circumstances.

5. The courts have recognized that noncitizens who entered without inspection and then resided in the United States for years cannot be deemed subject to mandatory detention under§ 1225(b)(2) but are rather detained under 8 U.S.C. 1226(a). Such detention without the opportunity to request release violates both statutory law and constitutional due process. Accordingly, Petitioner respectfully requests that this Court issue a temporary restraining order requiring their immediate release to restore the *status quo ante*, followed by a preliminary injunction maintaining their release pending final resolution of their habeas petition.

II. STATEMENT OF FACTS

6. Petitioners are a native and citizens of Mexico who have lived in the United States since early 2017. The family have created a life in the United States, and minor [redacted] has been enrolled and attending school at Edison High School in San Antonio. Petitioners were granted protection from their home country of Mexico by an Immigration Judge pursuant to the Convention **Against Torture.** ***See*** **ECF 1, Petition for Writ of Habeas Corpus, Exh. 1 Written Order of Immigration Judge Granting Protection from Deportation to Mexico in the form of Protection under the Convention Against Torture.**

7. After the Immigration Judge granted this protection in 2019 Petitioners faithfully checked in with ICE by visiting their local ICE office. ***See* ECF 1, Petition for Writ of Habeas Corpus Exhibit 2, ICE Check-In Sign-Ins.** Petitioners have abided by their supervision requirements and have built a life in San Antonio, Texas free from the extreme abuse they suffered in Mexico. ***See* ECF 1, Exhibit 1.**
8. On approximately September 30, 2025, ICE unlawfully revoked Petitioners Release. *See* **ECF, Exhibit 3, Notice of Revocation of Release.** The Release Revocation states that ICE intended to effectuate their removal to Mexico, the exact country they were granted protection from. *Id.* This attempt to return Petitioners to the country in which they were tortured violates principles on non-refoulment. Respondents and their agents have given no explanation for Petitioners re-detention after years of complying with supervised release requirements, beyond a change in Presidential administrations. Most importantly, officials have given no indication that they have made progress on obtaining travel documents to a safe third country. In fact, the tactic employed by ICE to effectuate their removal is a consistent pressure to renounce their protection from torture in Mexico and voluntarily sign a deportation order to that country.
9. Respondents and their agents have provided no indication to Petitioners that there is a significant likelihood of their removal to a safe third country in the reasonably foreseeable future. Their detention serves no legitimate governmental purpose and is therefore unlawful especially considering that one Petitioner is a minor who has missed months of educational instruction.

III. Argument

Factors governing the application for a request for Temporary Restraining Order

10. The factors that govern an application for a temporary restraining order are the same as those that govern a request for preliminary injunction. *Hill v. Green County Sch. Dist.*, 848 F. Supp. 697, 703 (S.D. Miss. 1994) (citing *Canal Auth. v. Callaway,* 489 F.2d 567 (5th Cir. 1974)). Under well-settled Fifth Circuit precedent, the movant must show: (1) there is a substantial likelihood that the plaintiff will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs whatever damage the proposed injunctive relief would cause the defendant; and (4) the granting of the injunction is not adverse to the public interest. *Anderson v. Jackson,* 556 F.3d 351,360 (5th Cir. 2009) (quoting *Canal Auth.,* 489 F.2d at 572).

11. On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *See Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000). The decision of whether to grant or deny a TRO is within the Court's discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017). To show immediate and irreparable harm, a plaintiff must demonstrate it is likely it will suffer irreparable harm in the absence of preliminary relief. *Winter v. Nat. Res. Def Council*, 555 U.S. 7, 20 (2008). However, a "[s]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Lake Charles Diesel, Inc. v. General Motors Corp*, 328 F.3d 192, 195 (5th Cir. 2003). As demonstrated below, all four

factors weigh heavily in Petitioners' favor.

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

12. Petitioners are likely to succeed on the merits of their claim that their detention (a) violates Due Process and (b) violates the Immigration Nationality Act's detention provisions. Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention on virtually indistinguishable grounds, on statutory and constitutional grounds, including courts in this district. *See e.g. Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ , Petitioner, v. LYNCH et al.,* No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas,* No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *JU. v. Maldonado,* No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PEREZ PINA, v. STAMPER,* No. 2:25-CV-00509- SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem,* No. 25 CV 10865,

2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal,* No. 1:25-CV- 00418-SDN, 2025 WL 2494530 (D. Me. Aug . 29, 2025).

13. Petitioner is also very likely to prevail on his claim that his detention violates 8 U.S.C. § 1226(a). As district courts across the country have repeatedly concluded, Respondents' "interpretation of the statute (1) disregards the plain

meaning of§ 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Ochoa Ochoa v. Noem,* No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D.III. Oct. 16, 2025) (citations omitted). Federal courts across the country- including in the Western District of Texas, have consistently ruled in favor of petitioners with virtually identical facts.

14. Under *Zadvydas v. Davis*, detention beyond the removal period is permitted only where removal is reasonably foreseeable; where removal is remote or speculative, continued detention violates § 1231(a)(6) and the Fifth Amendment. Here, the government's inability to remove Petitioners for over five years, combined with its stated intent to remove them to the very country from which protection was granted, establishes that removal is not foreseeable and detention serves no legitimate statutory purpose.

15. Petitioners are also likely to succeed because the re-detention is unrelated to flight risk or danger to the community. Petitioners faithfully complied with all reporting requirements while on Orders of Supervision for years, maintained community ties, and presented themselves at every ICE check-in. The record contains no allegation of danger, absconding, or changed circumstances. Under controlling precedent, civil detention cannot become punitive or indefinite; detention must bear a reasonable relation to the government's removal objective. Where removal is speculative and supervision has proven effective, continued custody violates due process as applied.

16. Further, Petitioners are likely to succeed on the challenge that their detention violates the Flores Settlement Agreement. Minor Petitioner 's continued confinement

independently violates the Flores Settlement Agreement, which requires the government to release minors without unnecessary delay and place them in the least restrictive setting. The child had been safely living with his mother and attending school prior to detention, and his continued incarceration is causing educational and mental harm. Because lawful release conditions already exist and detention actively harms the minor, Petitioners are also likely to prevail on their *Flores* claim.

17. Finally, Petitioners are likely to succeed on their due process claim regarding removal to an unidentified third country. The government has not designated a lawful country of removal nor provided notice or an opportunity to present fear-based claims regarding any proposed third country. Removal without notice and opportunity to be heard violates basic procedural due process protection. The risk that the government may attempt expedited third-country removal without adequate safeguards further supports injunctive relief.

18. Because Petitioners demonstrate unlawful post-order detention, absence of foreseeable removal, violation of statutory and constitutional protections, and independent illegality of the minor's detention, they have shown a strong likelihood of success on the merits sufficient to warrant issuance of a Temporary Restraining Order. Petitioners further discussed their Due Process and statutory arguments in their Petition for Writ of Habeas Corpus, and hereby incorporates those arguments by reference. **See ECF 1, ¶ 32-64.**

Petitioners are suffering irreparable harm in detention

19. Unlawful detention in an immigration context is inherently a substantial threat of irreparable injury. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (*citing Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)(finding that plaintiffs

"established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time.")

20. Further, the detention of [redacted] minor is particularly harmful. [redacted] has lost approximately half a year of school instruction and is suffering mentally in detention. He shoes signs of serious mental harm, including periods of not eating and loss of motivation.

21. To the extent Respondents would argue there is a benefit to Petitioners remaining in custody to allow ICE to locate a safe third country, that benefit is negated by the six years that Respondents have been unable to locate a safe third country for Petitioners. Four months of these six years Petitioners have been detained, and prior to detention they faithfully reported to ICE for check-ins. At no check-in did ICE provide petitioner travel documents to a safe third country. This speculative administrative efficiency is significantly outweighed by Petitioners' loss of liberty and the harm being caused tot them by their detention. The concrete harm to Petitioners vastly exceeds any inconvenience to the government.

Balance of the Equities and Public Interest

22. The final two factors for injunctive relief-the balance of equities and the public interests merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009), *Mock v. Garland*, 75 F.4th 563, 577 (5th Cir. 2023). Here, the Petitioners face harm through unlawful and arbitrary detention depriving them of their liberty, robbing [redacted] of crucial education and causing severe mental health concerns for minor Petitioner in particular.

23. Petitioners anticipate that Respondents will assert a countervailing public interest in enforcement of the country's immigration laws. "But the public also has an interest in the government following those laws." *Hernandez Ramiro v. Bondi et al.*, 5:25-CV-01207-XR (W.D. Tex. Oct. 15, 2025) (*citing Kostak v. Trump*, No. 3:25-CV-1093 , 2025 WL 2472136, at *2 (W.D. La. Aug . 27, 2025)). The Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice..." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder* , 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

Release is necessary to maintain the Status Quo

24. In granting temporary restraining orders, courts must only grant such relief as necessary to maintain the status quo. *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822 (5th Cir. 1976) ("[T]he office of a temporary restraining order is to preserve, for a very brief time, the status quo, so as to avoid irreparable injury pending a hearing on the issuance of a preliminary injunction.") The status quo is the "last uncontested status." *United States v. F.D.I.C.*, 881 F.2d 207,210 (5th Cir. 2010).

25. Here, the status quo is Petitioner's unequivocal release from detention. "The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy." *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). "With regard to the specifics of the relief that might be ordered, in recent months many federal district courts" including the Western District, have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights." *Id*; *See Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 22025) (holding detention under § 1225(b) is unlawful and ordering release from custody). *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025)(ordering release form custody reasoning Respondent did not argue that Petitioner was being detained pursuant to section 1226 and so finding "no reason to consider" Section 1226 as a basis for Petitioner's current detention);*Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at* 13 (W.D. Tex. Oct. 1, 2025); *See also JU. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at 10 (E.D.N.Y. Sept. 29, 2025); Zumba *v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at 11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at 19 (D. Ariz. Aug. 11, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267, at l (D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025).

26. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed "as of 2020, the 'vast majority'-an 'overwhelming consensus '-of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo*, 2025 WL 2691828, at *12 (*citing Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted). "Allocating the burden in this manner reflects the concern that '[b] ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" (*citing German Santos*, 965 F.3d at 214). "And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Id.*; *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); *JMP. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at 14; *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at 12 (D. Colo. Aug. 8, 2025).

IV. CONCLUSION

27. For the foregoing reasons, Petitioners respectfully requests that this Court grant Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

DATED this 5th day of February 2026.

/s/Amanda Aguilar
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CERTIFICATE OF SERVICE

I hereby certify that on February 5th a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

Justin R. Simmons | U.S. Attorney's Office for the Western District of Texas
ATTN: Civil Process Clerk
601 NW Loop 410,
San Antonio, Texas 78216
and by email at: USATXS.CivilNotice@usdoj.gov

Jose Rodriguez Jr., Warden
Dilley Immigration Processing Center
300 El Rancho Way
Dilley, TX 78017
United States

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 5th of February 2026.

/s/Amanda Aguilar
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