UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

OSMANI RAMIREZ-MORALES, *Petitioner,* v. TODD M. LYONS, et al., Respondents.	)	Case No. EP-25-CV-00476-DCG-RFC

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner, Osmani Ramirez-Morales, is a citizen and national of Cuba. He is a fifty-three-year-old male who resides in New Jersey and is unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2). Petitioner is Lawful Permanent Resident (LPR) and last entered the United States on June 27, 2025 without being admitted or paroled after inspection by an Immigration Officer. He was detained at Santa Teresa, NM and charged as being a noncitizen present in the United States who has not been admitted or paroled pursuant to INA § 212(a)(6)(A)(i). On June 4, 2025, Immigration Judge Stephen Ruhle determined that he was neither a flight risk nor a danger to the community and granted a $3,000 bond. On September 5, 2025, the Board of Immigration Appeals (BIA) issued *Matter of Yajure-Hurtado,* 29 I&N Dec. 216(BIA 2025). On September 8, 2025, the Immigration Judge issued an amended order revoking Petitioner's bond on the basis that he does not have jurisdiction pursuant to *Matter of Yajure Hurtado.* Petitioner challenges the legality of his mandatory detention and requests a Temporary Restraining Order for his release from ICE custody, and to prohibit his transfer outside of El Paso, Texas.

FACTS OF THE CASE

Petitioner, a forty-three-year-old citizen and national of Cuba. He has been a LPR of the United States since 1995. In May of 2011, Petitioner traveled to Cuba with his mother to visit their family and was not able to return. The government of Cuba imprisoned him for 14 years as a political prisoner. Petitioner has three United States citizens daughters; his mother and sister are also United States citizens. Upon entry, he was issued a Form I-862, Notice to Appear ("NTA") alleging that he was present in the United States without admission or parole under 8 U.S.C. 1182(a)(6)(A)(i).

Through counsel, the Petitioner requested a bond hearing. On September 4, 2025, the Immigration Court granted Petitioner's request for release upon payment of $3,000 bond. However, on September 8, 2025, Petitioner's change of custody was revoked, finding that it did not have jurisdiction pursuant to *Matter of Yajure Hurtado.*

The NTA charges Petitioner with removability as an alien 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 8 U.S.C. §§1182(a)(6)(A)(i). *Id.*

The Petitioner does not have a final order of removal. The Petitioner's removal case is before the Immigration Court in El Paso, Texas. Petitioner does not have any active warrants or any recent criminal history that would change the circumstances from his initial custody determination made in on September 4, 2025, when he was released.

LEGAL ARGUMENT

Petitioner does not have a removal order. He is challenging the constitutionality of the statutory framework by which the Respondents are detaining him without bond under 8 U.S.C. § 1225(b)(2). Petitioner asserts that because he was detained in the interior, that if any detention is appropriate, it must be under 8 U.S.C. § 1226(a).

I. Motion for Temporary Restraining Order and Preliminary Injunctive Relief.

To obtain a temporary restraining order, a petitioner-plaintiff "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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland,* 637 F.2d 430 (5th Cir. 1981)). Under similar circumstances, courts within this Circuit have granted petitions for a writ of habeas corpus pursuant 28 U.S.C. § 2241 where, as here, the petitioner entered without inspection and was detained in the interior by the Department of Homeland Security under §§ 1225(a)(1), (b)(2) and sought immediate release.

Almost every district court that has taken up the issue of whether the Government has authority to detain an alien already present in the United States under the mandatory provision of the INA has concluded that "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" clearly support the finding that §1226 is the applicable statute, not §1225. *See Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (quoting *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025) and citing *Lopez-Arevalo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025*)*; at *1 & n. 3 (collecting cases); *Rodriguez v. Bostock,* 2025 WL 2782499, at *1 & n. 3 (W.D. Wash. Sept. 30, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025)); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, *24 (C.D. Ca. Jul. 28, 2025); Further, "[i]n 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." *Angel Fuentes v. Lyons et al.*, No. 5:25-cv-153, at *10 (S.D. Tex. filed October 16, 2025)(quoting *Lopez-Arevelo*, 2025 WL 2691828, at *7).

Petitioner is likely to succeed on the merits, especially given that ICE had been processing non-citizens in Petitioner's same circumstance under § 1226(a) for decades. Petitioner's detention is

unlawful under § 1225(b)(2) and a textbook violation of his Due Process rights.

II. Petitioner will likely succeed on the merits.

Petitioner seeks his immediate release because he is unlawfully and unconstitutionally deemed ineligible for bond based on an erroneous finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). A plain reading of the statute makes clear that Petitioner, who was apprehended in the interior, cannot be detained under 8 U.S.C. § 1225(b)(2)(A), but rather, must be detained under § 1226(a).

In examining the relevant provisions of §§ 1225 and 1226, the Court considers "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The Court's "job is to interpret the words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wis. Cent. Ltd v. U.S.*, 585 U.S. 274, 277 (2018) (*quoting Perrin v. U.S.*, 444 U.S. 37, 42 (1979)); *see also New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (If courts could "freely invest old statutory terms with new meanings, we would risk amending legislation" and "upsetting reliance interests in the settled meaning of a statute") (internal quotations and citations omitted). Of course, the words of a statute "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (*quoting Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)). In *Jennings v. Rodriguez*, the Supreme Court analyzed the interplay between Section 1225 and Section 1226. 583 U.S. 281 (2018). The Supreme Court noted that Section 1225(b) applies primarily to "aliens seeking entry into the United States." *Jennings*, 583 U.S. at 297. The statute itself contemplates "arriving," "seeking," the present tense of someone at the port of entry, where the Government must determine whether an alien seeking to enter the country is admissible. *Kostak v. Trump*, No. 3:25-cv-01093, slip op. at 6 (W.D. La. Aug. 27, 2025) (Edwards, J.) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018)).

For non-citizens already present inside the United States, "Section 1226(a) creates a default rule for those aliens by permitting the Attorney General to release them on bond, 'except as provided in subsection (c) of this section." *See Jennings*, 583 U.S. at 303.

A line must be drawn between how §§ 1225 and 1226 function when it comes to detention of noncitizens, and it is straightforward: detention authority under §1225 is exercised at or near the port of entry for those seeking admission, and detention authority under §1226 must be used when a non-citizen is arrested in the interior of the United States. *See Martinez v. Hyde*, – F.Supp.3d –, 2025 WL 2084238 at *4 (D. Mass. July 24, 2025)(The line historically drawn between these two sections, making sense of their text and overall statutory scheme, is that section 1225 governs detention of non-citizens "seeking admission into the country," whereas action 1226 governs detention of non-citizens "already in the country."); *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 was already within the United States when apprehended. The following district court decisions from the Western and Southern District of Texas have held that Section 1226(a) and not Section 1225(b)(2) authorizes detention in cases similar to Petitioners: *Lopez-Arevalo v. Ripa,* 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gonzalez Martinez v. Noem*, 2025 WL 2965859 (W.D. Tex. (El Paso Division) Oct. 21, 2025); *Buenrostro Mendez v. Bondi*, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara*, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025).

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports the conclusion that § 1226(a) applies to Petitioners, not §1225. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. See H.R. Rep. No. 469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after

an unlawful entry to mandatory detention if arrested. This is important, because prior to IIRIRA, people like Petitioner were not subject to mandatory detention. See 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); see also H.R. Rep. No. 104-828, at 210.

Petitioner entered without inspection and detained in Santa Teresa, NM. Therefore, Petitioner should not have been detained under §1225(b)(2). The likelihood of success factor weighs in Petitioner's favor because Petitioner is likely to succeed on his claims that 8 U.S.C. § 1226(a) governs his detention, not 8 U.S.C. § 1225(b)(2) and that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of a bond hearing on the merits is unlawful.

III. Petitioner will Suffer Irreparable Harm

The harm that flows from the violation of Petitioner's constitutional rights is unquestionably irreparable. *See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of an alien's liberty is, in and of itself, irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). ("[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process."); *Bautista*, No.

2025 U.S. Dist. LEXIS 171364, *24 ("[T]he Court finds that the potential for Petitioner's continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a)).

As the Supreme Court has recognized, incarceration "has a detrimental impact on the individual" because "it often means loss of a job" and "disrupts family life." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972).

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II), aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022).

Thus, due to Petitioner's continued detention, he faces irreparable harm absent a temporary restraining order.

IV. Balance of the Equities and Public Interest

The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without bond of Petitioner likely violated federal law and his due process. "There is 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) (cleaned up). Petitioner has established that the public interest factor weighs in his favor because classifying Petitioner under § 1225(b)(2) deprives him of due process and is in violation of federal laws. *Awad v. Ziriax*, 670 F.3d 1111, 1116 (10th Cir. 2012) ("It is always in the public interest to prevent the violation of a party's constitutional rights."). Because the policy

preventing Petitioners from obtaining bond "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); *See also Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in Moreno and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted).

Here, Petitioner's continued detention without bond is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

V. The Court Has Authority to Grant Petitioner's Immediate Release Pending the Adjudication of His Habeas Petition.

As a general matter, writs of habeas corpus are used to request release from custody. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at "common-law habeas corpus was, above all, an adaptable remedy").

Release in this case is appropriate. Here, DHS initially arrested Petitioner and an Immigration Judge granted him released on bond. The Petitioner has been detained since June 27, 2025. His daughters, mother, and siblings all reside in Miami, FL. He spent 14 years as a political prisoner in Cuba without any due process. Further detention after an Immigration Judge determined that he was not a flight risk or a danger is unlawful. Therefore, Petitioner argues that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court prevent

his transfer while the instant Habeas pends.

VI. Waiver of the prudential exhaustion requirement is appropriate here

Although prudential exhaustion may apply to habeas claims brought under 28 U.S.C. § 2241, a court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Hernandez*, 872 F.3d at 988 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

Waiver of the prudential exhaustion requirement is appropriate here because 1) an appeal to the BIA would be futile and 2) because of the irreparable harm that would result in waiting for an appeal before the BIA. Futility is an exception to the prudential exhaustion requirement. Here, Petitioner's bond has already been heard and revoked on the merits by an IJ based on the view that § 1225 applies and not § 1226. Further, a recent BIA decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) stated that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

Under these facts, an appeal to the BIA would be futile. In *Bautista*, 2025 U.S. Dist. LEXIS 171364, at *24 the Court stated it "was unconvinced that the administrative process would self-correct in light of the DHS Guidance Notice." The Court also took note of "DHS's unequivocal commitment to the contested legal authority in [the] matter", meaning that DHS was unlikely to correct itself.

Here, it is appropriate for this Court to interpret the appropriate statute that applies to Petitioner. The task of resolving this question of statutory interpretation belongs to the independent judgment of the courts. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024) ("When the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of Congress, in order to ascertain the rights of the parties.").

Next, irreparable harm is also present here and is an exception to the prudential exhaustion requirement. The Ninth Circuit has previously held that irreparable harm is demonstrated when "at least some individuals who would be detained if not provided a bond hearing will be granted conditional release under [the proposed] injunction." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Here, Petitioner was already granted a bond because he does not pose a threat to the United States or a flight risk. Like the plaintiffs in *Rodriguez v. Robbins*, the only thing preventing Petitioner from conditional release pending the outcome of the removal proceedings is the statutory violation. *See also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (waiving exhaustion where detainee "suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention").

Numerous district courts have waived prudential exhaustion requirements for noncitizens like Petitioner facing prolonged detention while awaiting administrative appeals. *See Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827, at *5–8 (D. Mass. Aug. 19, 2025) (waiving exhaustion because further BIA proceedings would be futile in light of the BIA's position in *Matter of Q. Li*); *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1252–53 (W.D. Wash. 2025) (declining to require exhaustion where it would result in the irreparable injury of prolonged detention without a bond hearing); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2396379, at *5 (E.D. Mich. Aug. 29, 2025) (holding exhaustion unnecessary for a due process challenge because the BIA lacks authority to review constitutional claims).

In sum, waiver of the prudential exhaustion requirement is appropriate, and Petitioner respectfully requests that the Court grant the requested relief.

CONCLUSION

For the foregoing reasons, the Court should grant the instant writ and order his immediate release from ICE custody.

Respectfully submitted,

/s/Brenda M. Villalpando
Brenda M. Villalpando, Esq.
Villalpando Law Firm, PLLC
1119 N. Virginia St.
El Paso, Texas 79902
bvillalpando@villalpandolaw.com
T: 915-307-3496
F: 915-975-8320

Counsel for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2025, I electronically filed the foregoing using CM/ECF system, which will send notification of the filing to all registered parties. Furthermore, I certify that I served Assistant United States Attorney Angelica A. Saenz, Assistant United States Attorney via e-mail at Angelica.Saenz@usdoj.gov.

Respectfully submitted,

/s/ Brenda M. Villalpando
Brenda M. Villalpando, Esq.
Villalpando Law Firm, PLLC
1119 N. Virginia St.
El Paso, Texas 79902
bvillalpando@villalpandolaw.com
T: 915-307-3496
F: 915-975-8320

Counsel for the Petitioner