UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:25-cv- 25103-KMW

LOPEZ, JUAN CARLOS,
Petitioner,

v

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KRISTI NOEM, Secretary of the United States Department of Homeland Security, in her official capacity; **U.S. Department of Homeland Security**; **TODD LYONS**, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. Immigration and Customs Enforcement**; **GARRETT RIPA**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Miami, Florida Field Office, in his official capacity; **SIRCE OWEN**, Acting Director of EOIR, in her official capacity; **Executive Office for Immigration Review**,
Respondents.

Immigration Case No. (A-Number)
[redacted]

PETITIONER'S MOTION FOR EXPEDITED ORDER TO SHOW CAUSE AND IMMEDIATE RELEASE PURSUANT TO 28 U.S.C. § 2241, OR, IN THE ALTERNATIVE, FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

COMES NOW, Petitioner **JUAN CARLOS LOPEZ** respectfully moves this Court for an Expedited Order to Show Cause directing Respondents to show cause within three (3) days why such relief should not be granted and Immediate Release pursuant to 28 U.S.C. § 2241, or, in the alternative, Temporary Restraining Order (TRO) and a Preliminary Injunction (PI) directing Respondents to immediately release him from unlawful ICE custody and detention.

I. FACTUAL BACKGROUND

On September 25, 2025, Petitioner was arrested during a worksite raid at an onsite landscaping job and has since been detained at the Krome Service Processing Center located at 18201 SW 12th Street, Miami, FL 33194. The Notice to Appear charges inadmissibility under INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I).[1] Petitioner has no criminal charges. Despite his deep community ties, long residence, and ongoing family-based immigration process, DHS insists he is an "applicant for admission" and has refused an individualized bond hearing on the theory that 8 U.S.C. § 1225(b)(2)(A) mandates detention.

As more completely set forth in the Petition for Writ of Habeas Corpus filed simultaneously herewith, Petitioner is a Mexican national who entered the United States in 2002 and has never departed. He is married to a U.S. citizen and is the father/step-father of five U.S.-based children (ages 18, 16, 14, 9, and 5). A bona fide I-130 immediate-relative petition was filed approximately three months ago.

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[1] *See,* Exhibit 1 - Notice To Appear

These practices violate the Fifth Amendment's Due Process Clause and are ultra vires under the INA. Petitioner seeks a TRO ordering immediate release (or, alternatively, a prompt § 1226(a) bond hearing) and an OSC under 28 U.S.C. § 2243.

II. LEGAL STANDARD

Temporary restraining orders and preliminary injunctions are governed by Fed. R. Civ. P. 65 and require demonstration of (1) likelihood of success on the merits, (2) irreparable harm, (3) that the balance of equities tips in the movant's favor, and (4) that an injunction is in the public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

As recently summarized by the 11th Circuit Court of Appeals:

> The substantive considerations informing a district court's decision whether to issue injunctive relief come from "historic federal equity practice." 11A Charles A. Wright & Arthur Miller, *Federal Practice and Procedure* §§ 2947, 2942 (3d ed. 2020). For the entry of preliminary injunctive relief, the four traditional considerations in equity are: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the plaintiff will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs the harm an injunction may cause to the defendant; and (4) a grant of preliminary injunction would not disserve the public interest. *Nnadi v. Richter*, 976 F.2d 682, 690 (11th Cir. 1992).

Georgia Advocacy Office v. Jackson, 4 F. 4th 1200, 1209 (11th Cir. 2021).

III. ARGUMENT

A. Petitioner Is Likely To Succeed On The Merits Because § 1226(a)—Not § 1225(b)(2)—Governs His Detention.

Petitioner Juan Carlos Lopez has lived in the United States continuously for more than eight years. He is married to a U.S. citizen, has four U.S.-born children—ages 9, 5, 16, and 14—and step-parented an eighteen-year-old. He has no criminal record. A bona fide I-130 immediate-

relative petition was filed approximately three months ago, supported by documentary evidence and sworn statements.

On September 25, 2025, Petitioner was arrested in a worksite raid at a landscaping job and has since been detained at the Krome Service Processing Center. The Notice to Appear charges him under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I)—grounds for inadmissibility relating to entry without inspection and lack of valid entry documents. Yet DHS now asserts that he is an "applicant for admission" subject to mandatory detention under § 1225(b)(2)—even though he has lived in the United States for nearly a decade, is in § 240 removal proceedings, and was apprehended in the interior, not at a port of entry.

This reading collapses the INA's carefully drawn distinction between arriving noncitizens and those already present within the country. Section 1226(a) governs detention of persons "pending a decision on whether the [noncitizen] is to be removed," and by its terms applies to both deportable and inadmissible noncitizens. Section 1226(c) then enumerates narrow, offense-based mandatory-detention categories. Reading § 1225(b)(2)—a border-inspection statute—to encompass long-resident interior arrestees would render § 1226(a) superfluous. *Jennings v. Rodriguez*, 583 U.S. 122 (2018); *Leng May Ma v. Barbe*r, 357 U.S. 185 (1958).

The Ninth Circuit, sitting en banc, confirmed that an "application for admission" is a moment-in-time act, not a continuing status. *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020). A contrary reading would ignore context, produce surplusage, and distort Congress's border-inspection framework. See *Dubin v. United States*, 599 U.S. 110, 120–21 (2023).

Congress recently reaffirmed that understanding in the Laken Riley Act, adding § 1226(c)(1)(E) to expressly reference §§ 1182(a)(6) and (a)(7)—the very provisions charged here. By situating those grounds within § 1226, Congress confirmed that, by default, detention for

these charges proceeds under § 1226(a) (bond-eligible) unless a discrete § 1226(c) category applies. See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,* 559 U.S. 393, 400 (2010) (statutes should be read to avoid rendering provisions meaningless).

Accordingly, Petitioner's detention is unlawful because § 1226(a)—not § 1225(b)—controls.

B. The Record and Longstanding Agency Practice Confirm That § 1226 Governs Petitioner's Detention.

For decades, DHS and its predecessor agencies have uniformly applied § 1226(a) to individuals arrested within the United States long after entry. Routine use of Form I-286 (Notice of Custody Determination) and Form I-200 (Warrant for Arrest of Alien) citing § 1226(a) reflects that practice. Across administrations, interior arrestees charged under §§ 1182(a)(6) or (a)(7) have been treated as bond-eligible and entitled to IJ review.

Following IIRIRA, both EOIR and the former INS codified this understanding. Their 1997 interim rule stated:

"Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (1997) (emphasis added).

This contemporaneous, consistent, and cross-administration 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 on long-standing government practice to reject novel statutory construction).

Petitioner fits squarely within this historical practice. His detention under § 1225(b) is a recent, unprecedented expansion of agency power and therefore unlawful.

C. Respondents' Detention Policy Is Ultra Vires and Has Been Rejected Nationwide.

Respondents' reliance on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), to justify categorical no-bond detention under § 1225(b)(2) is ultra vires. Congress never authorized DHS to reclassify long-term residents as perpetual "applicants for admission."

In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court overruled Chevron and reaffirmed that federal courts—not agencies—determine the "best reading" of statutes. Courts therefore owe no deference to Hurtado's agency interpretation. The INA's text, context, and history compel the conclusion that § 1226(a) governs detention for persons like Mr. Lopez, who reside in the interior and face § 240 proceedings. The Government's contrary view violates both statutory limits and the constitutional rule that civil detention must bear a reasonable relation to its purpose.

(1) Federal Courts Across the Nation Have Already Rejected the Government's Position.

District courts throughout the country have granted injunctive relief against the same DHS theory advanced here:

- *Romero v. Hyde* (D. Mass. Aug. 19, 2025) – 26-page memorandum rejecting DHS's reinterpretation as "contrary to the plain text of the statute and the overall statutory scheme."
- *Francisco T. v. Bondi*, No. 0:25-cv-03219-JMB-DTS (D. Minn. Aug. 29, 2025) – Held petitioner "more clearly falls under § 1226(a)" and enjoined identical respondents from denying a bond hearing.

- *Lazaro Maldonado Bautista v. Santacruz, Jr.* (C.D. Cal. July 28, 2025) – Issued a TRO enjoining DHS from categorically denying bond hearings under its July 8, 2025 guidance.
- *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025) – Granted preliminary injunction, holding § 1226(a), not § 1225(b), governs detention of interior arrestees.
- *Gil-Paulino, Jose Ramon v. Noem, et. al,,* No. 1:25-cv-24292-KMW (SDFL, October 10, 2025) -Granted Temporary Restraining Order entered 10/10/25 enjoining DHS from categorically denying bond.

See also **Exhibits 6–15 (Authority Appendix)**, comprising recent district court orders nationwide—including *Gamez Lira v. Noem* (D.N.M.), *Co Tupul v. Noem* (D. Ariz.), *Pizarro Reyes v. Raycraft* (E.D. Mich.), *Diaz Martinez v. Hyde* (D. Mass.), *Lazaro Maldonado Bautista v. Noem* (C.D. Cal.), *Francisco T. v. Bondi* (D. Minn.), *Guerrero Orellana v. Moniz*(D. Mass.), *Romero v. Hyde* (D. Mass.), and *Gil-Paulino v. Noem* (S.D. Fla.)—each granting TRO or preliminary injunction relief rejecting DHS's reinterpretation of § 1225(b) as applied to long-resident interior arrestees.

D. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.

The Supreme Court has long recognized that "the loss of liberty, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Mr. Lopez has been confined in jail-like conditions since September 25, 2025, separated from his spouse and children who depend on him emotionally and financially. He is the family's primary provider and caregiver; his absence has left his youngest children in distress and his wife without income.

No monetary remedy can compensate for lost parent-child bonding, educational instability, or the anxiety caused by prolonged civil confinement. *Winter v. NRDC*, 555 U.S. 7, 20 (2008). Each day of unlawful detention compounds psychological and familial harm. This factor weighs decisively in Petitioner's favor.

E. The Balance of Equities and the Public Interest Strongly Favor Relief.

When the Government is the opposing party, the balance of hardships and the public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Mr. Lopez faces ongoing deprivation of liberty, family separation, and limited access to counsel. The Government faces minimal administrative inconvenience in providing a lawful § 1226(a) bond hearing or effecting supervised release.

Courts consistently hold that ending an unlawful detention practice serves the public interest. *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019), aff'd in part, 52 F.4th 821 (9th Cir. 2022); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) ("It would not be equitable or in the public's interest to allow the [government] to violate federal law, especially when there are no adequate remedies available.").

Restoring Mr. Lopez's freedom honors Congress's statutory framework and the Fifth Amendment's guarantee of due process—interests that outweigh any speculative administrative burden.

In sum: The statutory text, agency history, Supreme Court precedent, and humanitarian equities all converge: DHS's detention of Juan Carlos Lopez under § 1225(b)(2) is unlawful, unconstitutional, and without statutory authority. Immediate injunctive relief is warranted to restore his liberty and uphold the rule of law.

IV. REQUESTED RELIEF

Petitioner respectfully requests that the Court:

1. Grant an ex parte TRO ordering Petitioner's immediate release on recognizance or reasonable conditions;

2. Enjoin transfer or removal outside this District pending further order;

3. Alternatively, order an individualized §1226(a) bond hearing within 7 days, placing the burden on DHS to justify continued detention by clear and convincing evidence;

4. Issue an Order to Show Cause under 28 U.S.C. § 2243, directing Respondents to file a return within three (3) days explaining why the writ should not be granted;

5. Alternatively, set prompt briefing on habeas petition under 28 U.S.C. § 2243; and

6. Grant any further relief the Court deems just and proper.

V. EX PARTE ISSUANCE AND NOTICE UNDER RULE 65(b)

Pursuant to Fed. R. Civ. P. 65(b)(1), Petitioner seeks immediate, ex parte relief because:

1. He is suffering ongoing and irreparable deprivation of liberty through unlawful civil detention;

2. The Government's enforcement posture—classifying him as an "applicant for admission" under 8 U.S.C. § 1225(b)(2)—is uniform and categorical, such that advance notice would not alter its position before this Court can intervene;

3. Petitioner's transfer or removal could occur without notice, mooting this Court's jurisdiction and rendering the habeas petition ineffective.

Counsel certifies **pursuant to Rule 65**(b)(1)(B) that no efforts to provide notice have been undertaken to ICE ERO Miami and the Office of the U.S. Attorney, as such actions would be futile due to the misapplication of the Rule; however, further delay could result in irreparable harm.

Upon entry of a TRO, Petitioner requests that the Court set this matter for a Preliminary Injunction hearing within fourteen (14) days pursuant to Rule 65(b)(2), and that the Government be ordered to show cause why a preliminary injunction should not issue maintaining Petitioner's release or a bond hearing under § 1226(a).

Dated: November 5, 2025

Respectfully submitted,

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Certificate of Compliance

I certify that I made a good-faith effort to confer with opposing counsel regarding the relief requested in this motion prior to filing. On November 5, 2025 at 12:48, I telephoned opposing counsel at (305) 961-9243 and conferred with him directly; I sent an email to carlos.raurell@usdoj.gov, memorializing the conference and counsel's position; As of the time of filing, opposing counsel has stated they oppose to the entry of the TRO

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Sara J. Saba, Esq. Florida
Bar No. 911011

CERTIFICATE OF SERVICE

I certify that on November 5, 2025, I electronically filed the foregoing document and its Exhibits that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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EXHIBIT LIST

(In Support of Petitioner's Motion for Expedited Order to Show Cause and Immediate Release Pursuant to 28 U.S.C. § 2241, or, in the Alternative, for Temporary Restraining Order and Preliminary Injunction)

Case Specific Exhibits:

Exhibit 1 – Notice to Appear (charging INA § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I))

Exhibit 2 – Letter from U.S.-Citizen Spouse (Daisy Diaz)

Exhibit 3 – Petitioner's Personal Statement/Letter

Federal Authority Appendix (Nationwide TRO/PI Orders and Related Authorities):

Exhibit 4 – Gamez Lira v. Noem, No. 25-cv-00855-WJ-KK (D.N.M. Sept. 24, 2025) – Order granting Temporary Restraining Order

Exhibit 5 – Co Tupul v. Noem, No. 25-AT-99908 (D. Ariz. Aug. 4, 2025) – Order granting Temporary Restraining Order

Exhibit 6 – Pizarro Reyes v. Raycraft, No. 25-12546 (E.D. Mich. Sept. 9, 2025) – Order granting Petition for Writ of Habeas Corpus

Exhibit 7 – Diaz Martinez v. Hyde, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025) – Order granting injunctive relief

Exhibit 8 – Lazaro Maldonado Bautista et al. v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) – Temporary Restraining Order

Exhibit 9 – Francisco T. v. Bondi et al., No. 0:25-cv-03219-JMB-DTS (D. Minn. Aug. 29, 2025) – Restraining Order granting Preliminary Injunction

Exhibit 10 – Guerrero Orellana v. Moniz, No. 25-12664-PBS (D. Mass. Oct. 3, 2025) – Preliminary Injunction Order

Exhibit 11 – Romero v. Hyde et al., No. 1:25-cv-11631-BEM (D. Mass. Aug. 19, 2025) – Order Granting Petition for Writ of Habeas Corpus

Exhibit 12 – Gil-Paulino v. Noem, No. 1:25-cv-24292-KMW (S.D. Fla. Oct. 10, 2025) – Temporary Restraining Order entered by Hon. Kathleen M. Williams

Exhibit 13 – Matter of Yajure-Hurtado, 29 I.&N. Dec. 216 (B.I.A. 2025) – Agency decision relied upon by Respondents

Declarations:

Exhibit 14 - Rule 65(b) Declaration of Attorney Nera Shefer