

T. Laura Lui (NV Bar 5535)
FILLMORE SPENCER LLC
5902 Simons Drive
Reno, NV 89523
Telephone: (801) 590-9263
llui@fslaw.com
Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Julian Flores Marquez,
Israel Garcia Plancarte.

Petitioners,

v.

Jason Knight, Acting Las Vegas/Salt Lake
City Field Office Director, Enforcement
and Removal Operations, United States
Immigration and Customs Enforcement
(ICE); John Mattos, Warden, Nevada
Southern Detention Center; Todd Lyons,
Acting Director, United States
Enforcement and Removal Operations;
Kristi NOEM, Secretary, United States
Department of Homeland Security;
Pamela BONDI, Attorney General of the
United States; Executive Office for
Immigration Review

Respondents.

**EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION**

Case No. 2:25-CV-02203 RFB-NJK

FACTS OF THE CASE

Petitioner Julian Flores Marquez is a 45-year-old national and citizen of Mexico who has been in immigration detention since August, 2025. Petitioner has resided continuously in the U.S. since 2001. He did not enter the United States through a port of entry or official border crossing, and he has never been legally admitted to the United States. He is married and has three US citizen children ages 15, 14 and 9. Mr. Marquez has a conviction for DUI from 2006, but he resolved that case and completed all the terms and conditions of probation. Recently, Mr. Marquez was arrested for assault, but those charges have been dismissed. On November 3, 2025, the Immigration Judge in Las Vegas, Nevada denied bond finding that the Immigration Court did not have jurisdiction to hear the bond redetermination request.

Petitioner Israel Garcia Plancarte is a 47-year-old national and citizen of Mexico who has been in immigration detention since October, 2025. Mr. Plancarte has resided in the United States since 2006. After arresting Petitioner in Salt Lake City, ICE did not set bond. Mr. Plancarte has not requested a bond redetermination before the Immigration Judge because it would be futile based on the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025).

The NTA charges Petitioners 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.*

Petitioner Flores Marques has a conviction for DUI in 2006 and dismissed charges. Petitioner Garcia Plancarte has a pending charge for Public Intoxication. Petitioners do not have a final order of removal. Both Petitioners have United States children who are qualifying

relatives for purposes of Cancellation of Removal for Certain NonLawful Permanent Residents.

Petitioners' removal cases are now before the Immigration Court in Las Vegas, Nevada since ICE transferred the Petitioners outside of Utah. New Jersey. Petitioners do not have any active warrants.

LEGAL ARGUMENT

Petitioners do not have a removal order. Petitioners are challenging the constitutionality of the statutory framework by which the Respondents are detaining them without bond under 8 U.S.C. § 1225(b)(2). Petitioners assert that because they were 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 has been present in the United States for more than three years, was unlawfully detained in the interior by the Department of Homeland Security under §§ 1225(a)(1), (b)(2) and sought immediate release.

This Court has already granted petitioners relief—both preliminary and on the merits—in similar challenges.¹

¹ See *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY 2025 WL 3205356 (D. Nev. Nov. 17, 2025); see also *Herrera v. Knight*, No. 2:25-CV-01366-

Thus, Petitioners will likely succeed on the merits, especially given that ICE had been processing non-citizens in Petitioners' same circumstance under § 1226(a) for decades. Petitioners' detention is unlawful under § 1225(b)(2) and a textbook violation of their Due Process rights.

II. Petitioners will likely succeed on the merits.

Petitioners seeks immediate release because they are unlawfully and unconstitutionally deemed ineligible for bond based on an erroneous finding that they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). A plain reading of the statute makes clear that Petitioners who had entered the United States over 20 and 19 years ago, respectively, and subsequently 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

RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); Vazquez v. Feeley, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); Roman v. Noem, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); Carlos v. Noem, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); E.C. v. Noem, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); Perez Sanchez v. Bernacke, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); Aparicio v. Noem, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098 (D. Nev. Oct. 23, 2025); Dominguez-Lara v. Noem, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D. Nev. Oct. 24, 2025); Bautista-Avalos v. Bernacke, 2:25-CV-01987-RFB-BNW (D. Nev. Oct 27, 2025); Arce-Cervera v. Noem, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); Alvarado Gonzalez v. Mattos, No. 2:25-CV-01599-RFB-NJKU.S.D.J.). (D. Nev. Oct. 30, 2025); Rodriguez Cabrera v. Mattos, No. 2:25-cv-01551-RFB-EJY, 2025 WL 3072687 (D. Nev. Nov. 3, 2025); Berto Mendez v. Noem, No. 2:25-cv-02602-RFB-MDC, 2025 WL 3124285 (D. Nev. Nov. 7, 2025); Cornejo-Mejia v. Bernacke, No. 2:25-cv-02139-RFB-BNW, 2025 WL 3222482 (D. Nev. Nov. 18, 2025); Lucero Ortiz v. Bernacke, No. 2:25-cv-01833-RFB-NJK, 2025 WL 3237291 (D. Nev. Nov. 19, 2025); Perez Sales v. Mattos, No. 2:25-cv-01819-RFB-BNW, 2025 WL 3237366 (D. Nev. Nov. 19, 2025); Hernandez Duran v. Bernacke, No. 2:25-cv-02105-RFB-EJY, 2025 WL 3237451 (D. Nev. Nov. 19, 2025); Cabrera-Cortes v. Knight, No. 2:25-cv-01976-RFB-MDC, 2025 WL 3240971 (D. Nev. Nov. 20, 2025); Jacobo Ramirez v. Noem, No. 2:25-cv-02136-RFB-MDC, 2025 WL 3270137 (D. Nev. Nov. 24, 2025); Garcia-Arauz v. Noem, No. 2:25-cv-02117-RFB-EJY, 2025 WL 3470902 (D. Nev. Dec. 3, 2025); Silva Hernandez v. Noem, No. 2:25-cv-02304-RFB-EJY (D. Nev. Dec. 3, 2025); Reyes Cristobal v. Bernacke, No. 2:25-cv-02231-RFB-EJY (D. Nev. Dec. 4, 2025).

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 has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border.”); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

Furthermore, Judge Sunshine S. Sykes of the U.S. District Court for the Central District of California recently certified a class consisting of:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Bautista, 2025 WL 3288403, at *9. The court also “extend[ed] the same declaratory relief granted” in its recent order on summary judgment to all members of the class.

Id. This relief is a declaratory judgment holding that class members are detained under Section 1226(a) rather than Section 1225(b)(2). *See Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, --- F.Supp.3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025).

At Petitioners detention by ICE, they were not apprehended while seeking admission at the port of entry in 2001 or 2006, respectively. Therefore, Petitioners should not have been detained under §1225(b)(2).

III. Petitioners will Suffer Irreparable Harm

The harm that flows from the violation of Petitioners' 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.”).

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 Petitioners 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).

Here, Petitioners' 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 Petitioners Immediate Release Pending the Adjudication of Their 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. Petitioner Flores Marquez has been detained since August, 2025. His wife and U.S. citizen children are in Utah. Petitioner Garcia Plancarte has been detained since October, 2025. His U.S. citizen children also reside in Utah. Therefore, Petitioners argue that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court order an immediate bond hearing within 3 days of this Order.

B. CONCLUSION

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

RESPECTFULLY SUBMITTED this 8th day of December, 2025.

FILLMORE SPENCER LLC

/s/ T Laura Lui
Attorney for Petitioners