T. Laura Lui, NV Bar #: 5535
Fillmore Spencer LLC
5902 Simons Dr
Reno, NV 89523
Tel: (435) 429-1096
Email: llui@fslaw.com
Pro-hac Vice Counsel

Matthew K. Toyn, UT Bar #: 15271
Prospera Legal, PC
2975 W Executive Pkwy, Suite 159
Lehi, UT 84043
Telephone: (801) 733-1114
Email: mtoyn@prosperalegal.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FLORENCIO PADILLA PEREZ, Petitioner, v. **KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security (DHS);** **TODD LYONS; in his official capacity as Acting Director of Immigration and Customs Enforcement (ICE);** **FIELD OFFICE DIRECTOR, for Immigration and Customs Enforcement (ICE) for Southern Nevada;** **JOHN MATTOS, in his official capacity as Warden of the Nevada Southern Detention Center;** **PAMALA BONDI, in her official capacity as the United States Attorney General;** **The Executive office for Immigration Review;** **United States Immigration and Customs Enforcement (ICE).** Respondents.	**EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** **CASE NO: 2:25-cv-02399-CDS-DJA**

Petitioner Florencio Padilla Perez ("Petitioner"), by and through undersigned counsel, respectfully moves this Court for an Emergency Preliminary Injunction pursuant to Fed. R. Civ. P. 65, ordering his

immediate release from ICE custody without conditions pending his current proceedings and petitions for relief previously filed with this honorable Court. As grounds for this Motion, and in support thereof, Petitioner avers the following: .

FACTS OF THE CASE

Petitioner, Florencio Padilla Perez, is a 49-year-old native and citizen of Mexico who has lived continuously in the United States since approximately 1992. He has no criminal history whatsoever, and DHS has never alleged that he is a danger to the community. Prior to his detention, Mr. Padilla lived in Salt Lake City, Utah with his wife and five U.S. citizen children, all of whom depend on him financially and emotionally.

On August 4, 2025, ICE apprehended Mr. Padilla in Utah during a traffic stop that occurred while DHS officers were conducting surveillance in his neighborhood for an unrelated individual. He was not the target of the operation. ICE nevertheless detained him and issued a Notice to Appear charging removability under INA § 212(a)(6)(A)(i).

On September 4, 2025, after a full evidentiary bond hearing, Immigration Judge Glen Baker determined that Mr. Padilla was properly detained under INA § 236(a) (8 U.S.C. § 1226(a)), and ordered his release on a $2,500 bond, expressly finding that he was neither a flight risk nor a danger. (Ex. A). Despite this lawful order, ICE refused to release him and immediately and reflexively filed a Notice of Appeal—not because it had any evidence contradicting the IJ's findings, but solely to trigger the automatic stay of release under 8 C.F.R. § 1003.19(i)(2), thereby barring Petitioner's release.

Shortly thereafter, DHS filed a Motion to Reconsider, invoking *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) and asserting that the IJ had no custody jurisdiction at all. On September 18, 2025, the IJ—stating he was bound by *Yajure Hurtado*—vacated his prior bond order. (Ex. B). The IJ did not make any new findings regarding risk or danger; the vacatur was solely based on DHS's jurisdictional argument.

Despite DHS's custody posture, Petitioner' removal case proceeded. On October 20, 2025, the Court conducted his Individual Merits Hearing on his Cancellation of Removal (42-B) application. On October 22, 2025, the IJ issued an Order granting that application in full. (Ex. C). DHS "reserved appeal" and again refused to release him based solely on the grounds of their supposed intent to appeal.

Under 8 C.F.R. § 1003.38(b), the DHS was required to file any Notice of Appeal within 30-days following the Order. Therefore, DHS's deadline to appeal the IJ's Order granting Petitioner's 42-B was November 20, 2025. DHS did not file any Notice of Appeal by that date. Instead, DHS submitted a Notice of Appeal on November 24, 2025—four days late. To try to obscure the untimeliness issue, DHS's filing includes a wholly unsupported and arbitrary statement asserting that the BIA "acknowledged receipt" on November 18, 2025. (Ex. D). This assertion is entirely unsupported by any BIA time-stamp, ECAS record, filing receipt, or other official documentation, and does not appear anywhere in the underlying records of proceeding (ROP) generated by EOIR.

Because DHS failed to invoke appellate jurisdiction by the 30-day deadline, the IJ's 42-B grant became final by operation of law on November 21, 2025. Nevertheless, ICE continues to detain him at Nevada Southern Detention Center in Pahrump, Nevada—hundreds of miles from his home and his family and counsel. Petitioner's prolonged and unjustified detention has: (i) patently violated Petitioner's constitutional due process rights; (ii) caused extreme and severe undue hardship on Petitioner and his family; and (iii) has severely restricted his ability to meaningfully participate in his defense and to access legal resources.

For these reasons, Mr. Padilla seeks immediate judicial intervention to end his unlawful confinement.

LEGAL AUTHORITY

Petitioner challenges his unconstitutional and unlawful prolonged detention under 8 U.S.C. § 1225(b)(2)—a statute that does not apply to him—and seeks immediate release. Petitioner has lived in the

United States since 1992, was arrested inside the interior, and, under the plain statutory framework, his custody falls squarely under 8 U.S.C. § 1226(a), not § 1225(b). Indeed, ICE processed similarly situated noncitizens under § 1226(a) for decades. Only after the issuance of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), did DHS begin asserting that virtually all individuals who entered without inspection—regardless of decades-long residence—must be detained as "arriving aliens" under § 1225(b). This interpretation is contrary to the statute, contrary to binding federal precedent, and unconstitutional as applied to Petitioner.

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 many other 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- 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

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. Petitioner Will Likely Succeed on the Merits.

Petitioner seeks immediate release because he is unlawfully and unconstitutionally deemed ineligible for bond based on DHS's erroneous assertion 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 has resided continuously in the United States for over 33 years, and who was apprehended in the interior of the United States during a traffic stop in Utah — cannot be detained under § 1225(b)(2)(A). Rather, any detention authority must arise under 8 U.S.C. § 1226(a), which is the longstanding statutory framework governing interior arrests and which expressly authorizes release on bond.

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"). Of course, the words of a statute "cannot be construed in a vacuum. It is a fundamental canon of statutory construction

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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).

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 Court explained that Section 1225(b) applies primarily to "aliens seeking entry into the United States." *Jennings*, 583 U.S. at 297. The statutory text repeatedly refers to individuals who are "arriving" or "seeking" admission — i.e., persons encountered at a port of entry or at the border, where admissibility must be determined. *Kostak v. Trump*, No. 3:25-cv-01093, slip op. at 6 (W.D. La. Aug. 27, 2025) (citing *Jennings*, 583 U.S. at 288–89).

For noncitizens already present inside the United States, "Section 1226(a) creates a default rule… permitting the Attorney General to release them on bond, 'except as provided in subsection (c).'" *Jennings*, 583 U.S. at 303. A clear and longstanding distinction exists between these two statutory provisions:

- § 1225 governs detention of noncitizens encountered at or near the border while seeking admission;
- § 1226 governs detention of noncitizens already living within the interior of the United States.

See Martinez v. Hyde, – F. Supp. 3d –, 2025 WL 2084238 at *4 (D. Mass. July 24, 2025) (Section 1225 applies to noncitizens "seeking admission," whereas Section 1226 applies to noncitizens "already in the country."); *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 apprehended in the interior during a traffic stop."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who resided in the U.S. for 15 years).

Similarly, Judge Sunshine S. Sykes of the U.S. District Court for the Central District of California recently certified a class 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).

Here, Petitioner was not apprehended while seeking admission at any port of entry. He has lived continuously in the United States since 1992, and ICE detained him in Utah during a traffic stop unrelated to any border enforcement activity. Under the plain language of the INA and decades of consistent agency interpretation prior to *Yajure Hurtado*, Petitioner cannot be detained under § 1225(b)(2). His detention must be governed by § 1226(a) — the same statute under which the Immigration Judge correctly granted him bond on September 4, 2025.

Accordingly, Petitioner is overwhelmingly likely to succeed on the merits of his statutory and constitutional claims.

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 liberty suffered by Petitioner — a man who has lived in the United States for more than thirty-three years, has no criminal history, and who has already been granted release on bond and Cancellation of Removal (42-B) by an Immigration Judge — is 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)).

Petitioner is being detained despite a final adjudication granting him relief, and despite DHS's failure to file a timely appeal. Every additional day of unlawful confinement separates him from his wife and five U.S. citizen children, prevents him from returning to work, and causes severe emotional, financial, and psychological harm to his family. Courts recognize that irreparable harm is virtually presumed in circumstances 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.").

Here, Petitioner has been detained for months without any lawful statutory authority, following the Immigration Judge's grant of relief and DHS's untimely, jurisdictionally void appeal. His continued detention serves no regulatory purpose, inflicts ongoing harm on his family and his ability to support them, and violates his constitutional rights in ways that cannot be remedied after the fact. Accordingly, the requirement of irreparable harm is satisfied beyond any doubt.

IV. Balance of Equities and Public Interest.

The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *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, Petitioner's abrupt and prolonged detention — despite a lawful bond grant, despite an IJ's grant of 42-B Cancellation of Removal, and despite DHS's failure to file a timely appeal — violates federal law, the INA's statutory structure, and the Due Process Clause of the Fifth Amendment.

"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). That principle applies with particular force here: DHS and ICE continue to detain Petitioner even though there is no longer a legally valid removal proceeding pending, and even though his detention lacks any statutory or regulatory basis following the IJ's grant of relief, given that Under 8 C.F.R. § 1003.6(a), a timely appeal is required to stay the IJ's decision. Because DHS did not timely appeal, there is no automatic stay of the merits decision.

Petitioner's continued detention — far from the community in which he has lived for over thirty-three years, and separated from his wife and five U.S. citizen children who rely on him — constitutes an ongoing constitutional and liberty deprivation. Any purported governmental interest in this unlawful detention is negligible at best, and certainly cannot outweigh Petitioner's fundamental interest in freedom from unconstitutional confinement.

Accordingly, the balance of equities and the public interest weigh decisively in Petitioner's favor. Immediate release not only remedies ongoing constitutional harm but also vindicates the public's interest in ensuring that DHS complies with statutory limits and that immigration detention is not exercised arbitrarily or in defiance of governing law.

V. The Court Has Authority to Grant Petitioner 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). The Supreme Court emphasized that at common law, "habeas corpus was, above all, an adaptable remedy," capable of addressing unlawful executive detention in whatever form it arose.

Here, immediate release is the appropriate and necessary remedy. Petitioner, Florencio Padilla Perez, has been detained since August 4, 2025, despite having lived in the United States for more than thirty-three years, despite having no criminal history, despite being granted release on bond, despite being

granted Cancellation of Removal (42-B) by an Immigration Judge on October 22, 2025, and despite DHS's untimely and jurisdictionally void appeal. His wife and five U.S. citizen children live in Utah, where he has longstanding family and community ties. Continued detention serves no legitimate governmental purpose and violates both the INA and the Constitution.

Petitioner therefore respectfully requests immediate release without conditions, as there is no lawful basis for continued custody. In the alternative—should the Court determine that additional review is necessary—Petitioner requests that the Court order an immediate bond hearing within 72 hours of the Court's order, consistent with due process and the traditional flexibility of habeas relief.

CONCLUSION

For the foregoing reasons—again, because DHS's appeal is jurisdictionally void, the underlying removal case is concluded and the immigration proceedings are terminated by operation of law—the Court should grant the instant writ and order his immediate release from ICE custody.

RESPECTFULLY SUBMITTED this 9th day of December 2025.

/s/ *T. Laura Lui*
T. Laura Lui, NV Bar #: 5535
Pro Hac Vice Counsel
Fillmore Spencer LLC
5902 Simons Dr
Reno, NV 89523

/s/ *Matthew K. Toyn*
Matthew K. Ton, UT Bar #: 15271
Attorney for Petitioner
Prospera Legal, PC
2975 W Executive Pkwy, Suite 159
Lehi, Utah 84043