

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Ali Ateye CUMAR,)
)
Petitioner,) Case No. 0:25-cv-04615-JMB-LIB
v.)
)
David ISAIS, *in his official capacity* as Jail)
Commander, Sherburne County Jail;)
)
Sam OLSON, *in his official capacity* as)
Field Office Director, Fort Snelling (St)
Paul) Field Office Field Office, U.S.)
Immigration and Customs Enforcement;)
)
TODD M. LYONS, *in his official capacity*)
as Acting Director, Immigration and)
Customs Enforcement,)
)
KRISTI NOEM, *in her official capacity* as)
Secretary, U.S. Department of Homeland)
Security; and)
)
PAMELA JO BONDI, *in her official*)
capacity as Attorney General of the United)
States;)
)
Respondents.)
_____)

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

INTRODUCTION

Petitioner, Ali Ateye CUMAR, is a citizen and national of Somalia, unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A)¹ and remains in Respondents' custody.

Mr. Cumar was initially detained upon entry to the United States in 2022, and issued his "first" Form I-862, Notice to Appear ("NTA"), and released on recognizance pursuant to 8 U.S.C. § 1226(a). The Petition for Guardianship of At-Risk Juvenile for Mr. Cumar was granted on January 18, 2023. Subsequently, Mr. Cumar filed Form I-360 for Special Immigrant Juvenile Status ("SIJS"), which was approved with Deferred Action on June 22, 2023. Nonetheless, on December 1, 2025, U.S. Immigration and Customs Enforcement ("ICE") stopped and detained Mr. Cumar while he was driving to work and issued a "second" NTA upon his detention. Petitioner challenges the legality of his detention and seeks a Temporary Restraining Order (1) requiring his release from Respondents' custody, and (2) prohibiting his transfer outside the State of Minnesota.

FACTS OF THE CASE

Mr. Cumar is a twenty-three-year-old citizen and national of Somalia, and a resident of Minnesota. He initially entered the United States at or near San Ysidro, California, on or about August 17, 2022, and has remained in the United States since. **[See Exhibit 1 - Notice to Appear alleges an August 17, 2022, entry date]**. Upon his entry in 2022, Mr. Cumar was issued an NTA in the Immigration Court in Fort Snelling, Minnesota; however, the Department of Homeland Security ("DHS") failed to prosecute. **[See Exhibit 1]**. Following his detention, Mr. Cumar was issued a new NTA. **[See Exhibit 2 - Notice to Appear dated Dec. 2, 2025]**. The most recent NTA alleges that Mr. Cumar is present in the United States without being admitted or paroled and is not in possession of a valid unexpired immigrant visa under Immigration and

¹ "[...] in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

Nationality Act (“INA”) § 212(a)(6)(A)(i) and § 212(a)(7)(A)(I).

After Mr. Cumar was released on recognizance in August 2022, he came to Minnesota, where his uncle filed a third-party custody petition for him on November 2, 2022. Mr. Cumar’s Guardianship of at Risk Juvenile was granted on January 18, 2023. After the determination, Mr. Cumar submitted his I-360 for SIJS on January 26, 2023. Accordingly, Mr. Cumar’s I-360 Petition for Special Immigrant with Deferred Action was granted on June 22, 2023. [**See Exhibit 3 - SIJ I-360 Approval Notice**].

Since receiving a grant of deferred action based on his approved SIJS petition, Mr. Cumar has remained in the United States in compliance with that status while awaiting eligibility to file his application for lawful permanent residence. He has no criminal history aside from minor traffic violations and has consistently maintained his deferred action in accordance with all required conditions. Nonetheless, without notice of revocation of his approved SIJS petition, ICE unlawfully detained Mr. Cumar. Mr. Cumar remains in Respondents’ detention at Sherburne County Facility in Minnesota. [**See Exhibit 4 - ICE Detainee Locator Printout**]. Notably, Mr. Cumar does not have a final removal order, and his removal case remains before the Immigration Court in Fort Snelling, Minnesota.

LEGAL ARGUMENT

Mr. Cumar challenges the constitutionality of the statutory framework under which Respondents are detaining him without bond pursuant to 8 U.S.C. § 1225(b)(2). He further asserts that because his detention is interior, any lawful detention must proceed under 8 U.S.C. § 1226(a), which provides for bond eligibility.

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

To obtain a temporary restraining order, Petitioner must show:

1. a substantial likelihood of success on the merits;
2. immediate and irreparable harm in the absence of preliminary relief;

3. that the temporary restraining order is in the public interest.

See Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

Courts within this Circuit have granted petitions for a writ of habeas corpus pursuant 28 U.S.C. § 2241 in similar circumstances, where, as here, the petitioner has been present in the United States for more than three years, and unlawfully detained in the interior under §§ 1225(a)(1), (b)(2). Similarly, the District of Minnesota has consistently granted habeas relief where ICE detained noncitizens without lawful statutory authority. In *Roble v. Bondi et al.*, No. 25-cv-03196 (D. Minn. 2025), this Court ordered the petitioner's release, holding that immigration detention unsupported by a valid statutory and regulatory basis violates the laws of the United States and due process. Likewise, in *Otero Escalante v. Bondi*, No. 25-cv-03051 (D. Minn. 2025), this Court again granted habeas relief and ordered a bond hearing after concluding that the governing statute did not authorize Respondents' theory for detention.

Together, these decisions confirm that Respondents may not detain noncitizens absent clear statutory authorization; a principle that applies with equal force here, where 8 U.S.C. § 1225(b)(2) does not authorize the petitioner's interior arrest and detention.

a. Mr. Cumar Will Likely Succeed on the Merits of His Habeas.

Mr. Cumar is likely to succeed on the merits, especially given that ICE had been processing non-citizens in Mr. Cumar's same circumstance under § 1226(a) for decades. Mr. Cumar's detention is unlawful under § 1225(b)(2) and a textbook violation of his Due Process rights. Mr. Cumar seeks his immediate release because he is being unlawfully and unconstitutionally detained despite having an approved SIJ petition and Deferred Action, as ICE has erroneously determined that Mr. Cumar is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

A plain reading of the statute makes clear that § 1225(b)(2)(A) applies only to applicants for admission encountered at or near the border and does not authorize the interior arrest and

detention of individuals like Mr. Cumar, who was initially detained and ordered released in August 2022 and later apprehended in the interior of the United States. At most, any detention would fall under 8 U.S.C. § 1226(a), which provides for discretionary detention and eligibility for release on bond. Moreover, even detention under § 1226(a) is unlawful here because Mr. Cumar did not violate any conditions of his August 2022 release, and Respondents have identified no new facts justifying re-detention, rendering his arrest and continued detention arbitrary and in violation of due process.

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. Accordingly, the law only explicitly provides detention authority under § 1225, exercised at or near the port of entry for those seeking admission. In contrast, § 1226 must be applied 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)²; *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)³; *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025)⁴.

At the time of his re-detention on December 1, 2025, Mr. Cumar was not apprehended while seeking admission at a port of entry or during any immigration inspection or check-in. Instead, despite having no criminal record and no prior order of removal, and notwithstanding his approved SIJS petition with Deferred Action, Mr. Cumar was stopped, arrested, and detained by ICE agents while on his way to work after being followed by two ICE vehicles. ICE officers broke his vehicle window, forced him to the ground, kneeled on him, and transported him to immigration detention at the Sherburne County Jail in Elk River, Minnesota. Because Mr. Cumar was apprehended in the interior of the United States and not in the context of seeking admission, his detention is not authorized by 8 U.S.C. § 1225(b)(2), and most likely to succeed on the merits of his habeas.

² 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.”

³ “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.”

⁴ Holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years)

b. Mr. Cumar will Suffer Irreparable Harm Absent Injunctive Relief.

The harm that flows from the violation of Mr. Cumar'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)⁵.

c. Balance of the Equities and Public Interest Favors the Granting of a Temporary Restraining Order

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, 29 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without bond of Mr. Cumar 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, Mr. Cumar's continued detention without bond is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer. Thus, the granting of this temporary restraining order is in the public interest.

2. The Court Has Authority to Grant Mr. Cumar'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

⁵ “[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.”

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 because Respondents initially arrested and processed Mr. Cumar for release in August 2022. Mr. Cumar did not violate the terms of his release. The only thing that changed between his release in August 2022 and his re-arrest on December 1, 2025, was a policy departure regarding the interpretation of § 1225. Further, DHS failed to properly commence removal proceedings of Mr. Cumar’s first NTA by timely lodging the NTA with the Immigration Court. *See* 8 C.F.R. § 1003.14(a)⁶.

3. The Court Should Grant Immediate Release and Restrain Transfer Pending Adjudication

Mr. Cumar seeks his immediate release because he is being unlawfully and unconstitutionally detained despite having an approved SIJS petition and Deferred Action. Respondents have erroneously determined that Mr. Cumar is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). A plain reading of the statute makes clear that § 1225(b)(2)(A) applies only to applicants for admission encountered at a port of entry and does not authorize the interior arrest and detention of individuals like Mr. Cumar, who was initially detained and ordered released in August 2022 and later apprehended in the interior while traveling to work. At most, any detention would fall under 8 U.S.C. § 1226(a), which provides for discretionary detention and eligibility for release on bond. Even under § 1226(a), detention is unlawful here because Mr. Cumar did not violate any conditions of his August 2022 release, and Respondents have identified no new facts justifying re-detention.

Mr. Cumar has been detained since December 1, 2025, and has not been provided a departure date. Therefore, his release from the Respondents' detention is the appropriate relief in this case. Should Mr. Cumar remain in Respondents' custody, he respectfully asks that this Court prevent

⁶ “Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court.”)the .

Respondents from transferring him pending his motion for habeas relief. Transfers of petitioners during the pendency of habeas proceedings risk mooted the petition and substantially impede meaningful access to the Court, particularly given the logistical barriers faced by detainees held far from counsel and support networks. *See Roble v. Bondi et al.*, No. 25-cv-03196 (D. Minn. Oct. 2025); *Otero Escalante v. Bondi*, No. 25-cv-03051 (D. Minn. Sept. 2025).

CONCLUSION

For the foregoing reasons, this Honorable Court should grant Petitioner's instant writ and order his immediate release from Respondents' custody. Alternatively, to ensure the Court's ability to provide effective relief and prevent irreparable harm, Petitioner requests that Respondents be ordered not to transfer him outside Minnesota until this Court has resolved his petition or motion for emergency release.

Dated: 12/16/2025

s/ Mai Neng Moua

Minneapolis, Minnesota

Mai Neng Moua
Mai N. Moua Law Office
609 S. 10th St, Suite 120
Minneapolis, MN 55404
Attorney for Petitioner