

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Jorge Armando Portilla Hernandez,  
  
Petitioner,  
  
v.  
Kristi Noem, in her Official Capacity,  
Secretary of the U.S. Department of  
Homeland Security;  
  
Pamela Bondi, in her Official Capacity,  
Attorney General of the United States  
  
Kenneth Genalo, in his Official Capacity as  
New York Field Office Director for  
Enforcement and Removal Operations, U.S.  
Immigration and Customs Enforcement.  
  
Heriberto Tellez, , in his Official Capacity as  
Warden, Metropolitan Detention Center –  
Brooklyn.  
Respondents.

Case No. 7:25-cv-10393 (PMH)


Judge: Philip M. Halpern  
Magistrate Judge:  
No request for jury trial

PETITIONER’S MEMORANDUM OF LAW  
IN SUPPORT OF PROPOSED ORDER TO  
SHOW CAUSE

**INTRODUCTION**

Petitioner, Mr. Jorge Armando Portilla Hernandez (“Mr. Portilla Hernandez”), is a citizen and national of Mexico. He is a forty-seven-year-old male who resides in Suffern, New York and was unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2). Mr. Portilla Hernandez has lived in the United States since 2001, more than twenty-four years, and currently has a pending Application for Cancellation of Removal, Asylum and for Withholding of Removal. Petitioner challenges the legality of his detention and requests a Temporary Restraining Order to pause his administrative removal proceeding in the immigration court on February 4, 2026, while the habeas portion of his case is decided.

**FACTS OF THE CASE**

Petitioner, born on , is a citizen of Mexico who fled his country due to extreme poverty, social instability, and persistent threats from criminal groups. He entered the United States on or about 2001. During his time residing in the United States, Petitioner has established significant equities, including an eleven-year-old U.S. citizen child who depends on him both emotionally and financially. Since his detention, the Child has suffered significant psychological trauma with noted attempts at self-harm due to the extreme nature of her separation and the circumstances under which the Respondent remains detained.

Upon information and belief, on December 13, 2025, the Respondent was apprehended by an ICE Officer while boarding a public bus in Rockland County, New York. Petitioner was detained without a warrant of arrest and was not advised under what authority he was being detained under. Petitioner Remains detained at Brooklyn MDC Detention Facility located at 80 29th Street Brooklyn, NY 11232.

ICE failed to comply with 8 C.F.R. § 287.8(c)(2)(ii), which requires an officer to identify the legal authority for an arrest and provide documentation upon request. Neither ICE nor USCIS supervisors articulated the specific statutory basis, whether § 1225(b), §1226(a), or another authority, under which he was being taken into custody.

Petitioner's arrest and detention are unlawful. ICE detained him without a warrant, without probable cause, and without articulating any statutory authority for the seizure, in violation of the Fourth Amendment, the Due Process Clause, and 8 C.F.R. § 287.8. His detention also lacks any reasonable relation to the execution of a removal order. His continued detention violates the Constitution and the Immigration and Nationality Act. Due to his unlawful detention, Petitioner has been placed in an expedited administrative removal proceeding docket in the Immigration Court and must appear to seek immigration relief on February 4, 2026. His detention has made it extremely difficult to adequately prepare for his administrative proceeding, which, but for his unlawful detention,

would not have been going forward.

Petitioner suffers from diabetes, a chronic medical condition that requires daily medication and consistent medical supervision. The lack of adequate medical care in custody underscores the urgent need for his release so that he may properly manage his condition and avoid life-threatening complications.

The Petitioner has no criminal record that would warrant continued detention. The Petitioner does not have a final order of removal. The Petitioner's administrative removal proceedings are pending. Petitioner remains in ICE custody despite his eligibility to pursue applications for relief from removal and the substantial equities that warrant release. His continued detention violates his constitutional rights and imposes unnecessary hardship, particularly in light of his intent to seek humanitarian protection and the strong support available to him.

### **LEGAL ARGUMENT**

Mr. Portilla Hernandez has not been issued a removal order in this instance. He continues to await adjudication of his pending application for cancellation of removal, as well as his applications for asylum and withholding of removal. A decision on these forms of relief would determine whether he is permitted to remain lawfully in the United States or whether removal proceedings may proceed to conclusion. Until those applications are fully adjudicated, his case remains active before the Immigration Court, and he retains a statutory right to pursue all available forms of protection and relief. Petitioner is simultaneously challenging the constitutionality of the statutory framework by which the Respondents unlawfully arrested and have detained him without a meaningful opportunity for a bond determination. Given the fact that he was unlawfully arrested and detained and placed on an expedited removal proceeding docket, Respondents should be restrained from continuing his removal proceeding until the Court decides the merits of his habeas claims.

#### **I. Application for Order to Show Cause seeking 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 disturbingly 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 two years, was unlawfully detained in the interior by the Department of Homeland Security under §§ 1225(a)(1), (b)(2) and sought immediate release.

In a similar case where the Petitioner had been present in the United States for a lengthy period of time, this Court found that detaining her under 8 U.S.C. § 1225(b)(2) was unlawful and inapplicable, holding that § 1225(b)(2) did not authorize her interior arrest and detention. *See Rivera Zumba v. Bondi*, Civ. No. 25-cv-14626 (KSH), D.N.J. (Sept. 26, 2025) (Hayden, U.S.D.J.). Another recent decision by this Court held that detention under 1225(b)(2)(A) amounts to detention in violation of the laws of the U.S. *Mugliza Castillo v. Lyons*, No. 2:25-cv- 16219 (D.N.J. filed Oct. 3, 2025) (Farbiarz, J.). The elements are easily satisfied here. Petitioner’s detention is unlawful and a textbook violation of his Due Process rights.

***A. Mr. Portilla Hernandez 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).

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.” See quoting *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-four 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).

At Petitioner’s arrest on December 13, 2025, he was not apprehended while seeking admission at the port of entry. Instead, he was apprehended while boarding a public bus on his way to work in Suffern, New York and was not given an adequate time to challenge his detention. Therefore, Mr. Portilla Hernandez should not have been detained under §1225(b)(2).

***B. Mr. Portilla Hernandez will Suffer Irreparable Harm***

The harms that flow from the violation of Mr. Portilla Hernandez’s constitutional rights are 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.”) Moreover, Mr. Portilla Hernandez's common-law wife and his U.S. Citizen child rely on him and his support.

***i. 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 Mr. Portilla Hernandez 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, Petitioner’s continued detention without a bond hearing is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

***ii. 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”). Petitioner argues that release from detention is the appropriate relief in this case so that he may return home to Suffern, New York.

**CONCLUSION**

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

WHEREFORE, Petitioner respectfully prays that the Court:

- (a) grant Petitioner’s Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction;
- (b) Temporarily restrain Respondents, their officers, agents, servants, employees, and all persons acting in concert with them from proceeding with Petitioner’s Immigration Court Individual

Hearing currently scheduled for February 4, 2026 at 1:00 p.m.; and

(c) Temporarily restraining Respondents from removing Petitioner from the United States, or transferring Petitioner in a manner that would interfere with this Court's jurisdiction, pending resolution of the Petition for Writ of Habeas Corpus.

Dated: White Plains, New York  
February 2, 2026

Respectfully submitted,

*/s/ Andrea C. Soto*

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