Paschal O. Nwokocha (MN 269797)
Attorney for Petitioner
105 5th Ave. S.
Ste. 550
Minneapolis, MN 55401
612-465-0060
paschal@paschal-law.com

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
MINNEAPOLIS DIVISION

Francisco Escalon Ortega, Petitioner, v. **Samuel Olson**, Director of St. Paul Field Office, U.S. Immigration and Customs Enforcement; **Kristi Noem,** Secretary of the U.S. Department of Homeland Security; **and Pamela Bondi,** Attorney General of the United States, in their official capacities, Respondents.	Case No. 26-80

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner, Mr. Francisco Escalon Ortega, is a citizen and national of El Salvador. He is a forty-one-year-old male who resides in Minnesota and was unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2), when he was apprehended and arrested by federal agents while going to work on January 6, 2026. Mr. Escalon Ortega was initially detained upon entry into the U.S. in 2018, and released on his own recognizance pursuant

to 8 U.S.C. § 1226(a). Nonetheless, on January 6, 2026, ICE detained Mr. Escalon Ortega. Under current DHS and EOIR policy, Petitioner has been misclassified as subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Petitioner challenges the legality of his mandatory detention and requests a Temporary Restraining Order for his release from ICE custody, and to prohibit his transfer outside of Minnesota.

FACTS OF THE CASE

Mr. Escalon Ortega, a forty-one-year-old citizen and national of El Salvador resides in Minnesota with his family. He initially entered the United States in 2018, and has remained in the country since then. At his initial entry in 2018, the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), processed Mr. Escalon Ortega, detained him, and ultimately released him on his own recognizance. He was then placed in removal proceedings. Mr. Escalon Ortega filed an asylum application with the immigration court based on the harm he experienced in El Salvador and the fear he has returning to his home country. However, the immigration court dismissed his removal proceedings on May 19, 2022.

On January 6, 2025, Petitioner was on his way to work when he was arrested by federal agents. On information and belief, he is now being held at the Fort Snelling Federal Building in Fort Snelling, Minnesota in ICE custody. The Petitioner has no criminal record. He lives with his family and holds stable employment.

Removal Proceedings have not yet been re-initiated against Mr. Escalon Ortega at this time. Mr. Escalon Ortega does not have any active warrants or negative criminal history that would change the circumstances from his initial custody determination made in December

2018, when he was released.

LEGAL ARGUMENT

Mr. Escalon Ortega does not have a removal order. Mr. Escalon Ortega is challenging the constitutionality of the statutory framework by which the Respondents are detaining him without bond under 8 U.S.C. § 1225(b)(2). Petitioner asserts that because he was 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 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.).

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

II. *Mr. Escalon Ortega will likely succeed on the merits.*

Mr. Escalon Ortega 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). A plain reading of the statute makes clear that Mr. Escalon Ortega who had been initially detained and ordered released in December 2018 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). However, the Petitioner asserts that no arrest was lawful in this case because there was no violation of the conditions initially placed upon release in December 2018.

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, 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).

At Mr. Escalon Ortega's arrest on January 6, 2026, he was not apprehended while seeking admission at the port of entry. Instead, he was going to work and apprehended by federal officers in Minnesota. Therefore, Mr. Escalon Ortega should not have been detained under §1225(b)(2).

III. Mr. Escalon Ortega will Suffer Irreparable Harm

The harm that flows from the violation of Mr. Escalon Ortega'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). ("[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 Mr. Escalon Ortega 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. Escalon Ortega's continued detention without bond is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer. He faces unlawful detention and the risk of removal without due process, which would include exposure to harm in his home country. These are harms that cannot be remedied after the fact. By contrast, the government asserts only generalized interests in enforcement and administrative efficiency, which do not outweigh the concrete, individualized harms at stake, especially as here where the challenged action appears unlawful. The public interest is served by ensuring constitutional compliance, preventing wrongful removal, and maintaining family unity. Courts have repeatedly held that protecting individuals from unlawful or procedurally defective immigration actions aligns squarely with the public interest.

V. The Court Has Authority to Grant Mr. Escalon Ortega'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").

Release in this case is appropriate. Here, DHS initially arrested and processed Mr. Escalon Ortega for release in December 2018. Mr. Escalon Ortega did not violate the terms of his release. The only thing that changed between his release in December 2018 and his re-arrest on January 6, 2026, was a policy departure regarding the interpretation of §1225.

The Petitioner has been detained since January 6, 2026. His family is waiting for his return home. Therefore, Petitioner argues that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court prevent his transfer while the instant Habeas pends.

B. CONCLUSION

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

Respectfully submitted,

Dated: January 7, 2025

/s/ Paschal O. Nwokocha
PASCHAL O. NWOKOCHA, ESQ.
Counsel for Petitioner
MN 269797

NWOKOCHA & OPERANA LAW OFFICES LLC
105 5th Ave. S., Ste. 550
Minneapolis, MN 55401
612-465-0060
paschal@paschal-law.com