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**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
MINNEAPOLIS DIVISION**

Jose Maria Lozano Hernandez,)	
)	Case No. 26-893
Petitioner,)	
)	
v.)	
)	
David Easterwood , 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.)	
_____)	

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

INTRODUCTION

Petitioner, Mr. Jose Lozano Hernandez, is a citizen and national of El Salvador. He is a 28-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, without a warrant, while fixing his car on January 30, 2026. 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 prohibits his transfer outside of Minnesota.

FACTS OF THE CASE

Mr. Jose Lozano Hernandez, a 28-year-old citizen and national of El Salvador resides in Minnesota with his partner and one U.S. citizen child. He initially entered the United States in 2016 and has remained in the country since then. He was previously in removal proceedings with a pending asylum case that DHS dismissed under an exercise of prosecutorial discretion. On January 30, 2026, Petitioner was arrested by federal agents while at work in Minnesota. He, on information and belief, 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 partner and child.

LEGAL ARGUMENT

Mr. Lozano Hernandez does not have a removal order. Mr. Lozano Hernandez 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, 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. Lozano Hernandez is likely to succeed on the merits, especially given that ICE had been processing non-citizens in Mr. Lozano Hernandez's same circumstance under § 1226(a) for decades. Mr. Lozano Hernandez's detention is unlawful under § 1225(b)(2) and a textbook violation of his Due Process rights.

II. *Mr. Jose Lozano Hernandez will likely succeed on the merits.*

Mr. Lozano Hernandez 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. Lozano Hernandez who has been 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 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 section 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. Lozano Hernandez’s arrest on January 30, 2026, he was not apprehended while seeking admission at the port of entry. Instead, he was in Worthington, Minnesota and apprehended by federal officers. Therefore, Mr. Lozano Hernandez should not have been detained under §1225(b)(2).

III. Mr. Jose Lozano Hernandez will Suffer Irreparable Harm

The harm that flows from the violation of Mr. Lozano Hernandez’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. Lozano 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, Mr. Lozano Hernandez’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. Furthermore, he has a partner and one U.S. citizen child. He provides financially for his family. 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. Jose Lozano Hernandez '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”).

The Petitioner has been detained since January 30, 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 pendes.

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 30, 2026

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