UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LENIN ALEXANDER **FUNEZ MURILLO**

Plaintiff/Petitioner

v.

Case No.: 3:26-cv-00065-WWB-MCR

KRISTI NOEM, *et al.*,

Defendants/Respondents

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff/Petitioner, hereby respectfully moves the Court to issue a temporary restraining order and/or preliminary injunction. **IN SUPPORT OF THIS MOTION**, Plaintiff/Petitioner states the following:

INTRODUCTION

Mr. Lenin Alexander Funez Murillo ("Mr. Murillo" or "Petitioner"), is a citizen and national of Honduras. He is a twenty-seven-year-old male who resides in Jacksonville, Florida and was unlawfully detained by the Defendants/Respondents. He entered the United States without inspection on or around August 2012, at age 13. Since his entry, he has lived in the United States. Nonetheless, on October 26, 2025, ICE issued an order to detain him,

under a recent policy that categorically denies bond hearings to certain noncitizens. Petitioner challenges the legality of his detention and requests a Temporary Restraining Order for his immediate release from ICE custody, and to prohibit his transfer outside of Baker County, Florida.

FACTS OF THE CASE

Mr. Murillo is a twenty-seven-year-old citizen and national of Honduras who resides in Jacksonville, Florida. He entered the United States without inspection on or around August 2012, at age 13 and has remained in the country since then. On or around October 26, 2025, Mr. Murillo was detained after a traffic stop conducted by the St. John's County police, in Florida. *See* **Document No. 1, Exhibit No. 3**. The Department of Homeland Security ("DHS") issued a hold and a warrant for his arrest under section 236 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226. After his arrest, DHS issued a Notice to Appear ("NTA") placing Mr. Murillo in removal proceedings. *See* **Document No. 1, Exhibits No. 4, 5, and 9**. The NTA charges Mr. Murillo with removability as an alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General 8 U.S.C. §§1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I).

A recent policy change to detain all persons present in the United States without status, was recently declared unlawful by a federal district court in a

nationwide class action judgement. *See Maldonado Bautista v. Santacruz*, No. 5:25- cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). However, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Executive Officer for Immigration Review ("EOIR") has been denying motions for bond to noncitizens who entered the U.S. without inspection. To that effect, on January 13, 2026, an email sent by the Chief Immigration Judge, the Honorable Teresa L. Riley, states that *Matter of Yajure Hurtado* remains binding despite the class action decision issued in *Maldonado Bautista. See* **Exhibit No. 1, email from Chief Judge.**

Although Mr. Murillo has multiple traffic citations, all of them are resolved. Moreover, none of them involve serious crimes, but misdemeanors in connection with traffic citations. He does not have a final order of removal. His son, Dominick Funez Avilez, is a 1.5 year old baby, a United States citizen ("USC"). Recently, his USC baby was hospitalized and Mr. Murillo could not assist him in a moment of need. *See* **Exhibit No. 2, medical records of USC son.**

Mr. Murillo's removal case is before the Orlando Immigration Court and his case is set before Immigration Judge Pedro Espinal. Mr. Murillo does not have any active warrants or negative criminal history that would otherwise require his detention without bond.

LEGAL ARGUMENT

Mr. Murillo does not have a removal order. He is challenging the constitutionality of the statutory framework by which the Defendants/Respondents are detaining him without bond under 8 U.S.C. § 1225(b)(2). Petitioner asserts that because he was detained inside the United States if any detention is appropriate, it must be under 8 U.S.C. § 1226(a).

I. 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). A district court may grant injunctive relief only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *See McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir.1998) (citing *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.*, 887 F.2d 1535, 1537 (11th Cir.1989)).

Under similar circumstances, District Courts all over the United States 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 several years, was unlawfully detained in the interior by DHS and sought immediate release. *See, e.g., Gutierrez Ortiz* v. Garland, Case No. 3:25-cv-1386, 2025 WL 7873120, at *2–3 (M.D. Fla. Dec. 17, 2025) (observing that for decades the government treated EWI detainees under § 1226(a) with bond eligibility, and finding the 2025 policy contrary to the INA's structure); *Cetino v. Hardin*, No. 2:25-CV-1037-JES-DNF, 2025 WL 3558138, at *3 (M.D. Fla. Dec. 12, 2025); *Robles v. U.S. Dep't of Homeland Security*, No. 1:25-CV-1578, 2025 WL 3558128, at *6 & n.3 (W.D. Mich. Dec. 12, 2025); *Martinez-Martinez v. Noem*, No. 25CV2975-GPC(VET), 2025 WL 3552746, at *6 (S.D. Cal. Dec. 11, 2025) ("Given the Government's longstanding interpretation of §§ 1225(b) and 1226(a), the [c]ourt is further persuaded that 'seeking admission' applies to arriving aliens and not aliens who have entered without inspection and lived in the United States for years."); *Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417, at *6 (W.D. Tex. Nov. 26, 2025) (concluding that "§ 1225(b)(2) applies to noncitizens 'seeking admission,' and § 1226 applies to noncitizens such as [the p]etitioner who are 'already in the country'"); *Belsai D.S. v. Bondi*, - - - F. Supp. 3d - - -, 2025 WL2802947, at *5 (D. Minn. Oct. 1, 2025) ("Overwhelmingly, courts have rejected the interpretation offered by

Respondents that § 1225(b)(2) requires the detention of all noncitizens living in the country who are 'inadmissible' because they entered the United States without inspection."); *Pizarro Reyes*, 2025 WL 2609425, at *7.

Independently, Petitioner's continued detention without any opportunity for an individualized hearing violates the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment lies at the heart of the liberty" the Due Process Clause protects, and prolonged civil detention of a person who has lived in the community for years implicates a fundamental interest in liberty. While the Government may detain noncitizens during removal proceedings, such detention must "bear a reasonable relation to the purpose for which the individual was committed" – namely, preventing flight or danger to the community during the removal process. Petitioner has never been afforded a hearing to determine whether he actually poses a flight risk or danger that would justify his confinement. Denying him any hearing at all is a gross departure from the traditional due process safeguard of "notice and an opportunity to be heard" before depriving an individual of liberty. In effect, Respondents have conclusively presumed Petitioner to be too dangerous or a flight risk to release, without allowing him to rebut that presumption – a practice that offends basic due process principles.

Petitioner is also likely to succeed on his APA claims. The DHS no-bond policy – as embodied in *Matter of Yajure-Hurtado* – has now been declared

unlawful and vacated by a federal court. *See Maldonado Bautista v. Santacruz, id.*.

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

II. Mr. Murillo will likely succeed on the merits

Mr. Murillo 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) or under *Matter of Yajure Hurtado, id.* A plain reading of the statute makes clear that Mr. Murillo, cannot be detained under 8 U.S.C. § 1225(b)(2), 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). 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. Murillo's arrest on or around October 26, 2025, he was not apprehended while seeking admission at the port of entry. Instead, he was arrested by DHS after being cited in a traffic citation. Therefore, Mr. Murillo should not have been detained under §1225(b)(2) without an opportunity to seek bond.

III. Mr. Murillo is suffering irreparable harm

The harm that flows from the violation of Mr. Murillo's constitutional rights is unquestionably irreparable. Absent immediate injunctive relief, Mr. Murillo will continue to suffer irreparable injury. The loss of personal liberty, even for a brief period, is the quintessential irreparable harm, as it cannot be

compensated after the fact. Every additional day that he is unlawfully confined is a serious harm that can never be restored to him. Courts have long recognized that unwarranted detention inflicts concrete and immeasurable injuries: loss of time with one's family, disruption of employment and community ties, and the profound psychological stress of confinement. Mr. Murillo here has already been separated from his infant USC son for nearly two months; in his absence, his USC child is being deprived of parental care and support. No *post hoc* remedy could ever make him whole for the time lost with his child during these formative months. This harm to familial relationships and to Petitioner's own mental and emotional well-being is inherently irreparable.

Additionally, the violation of Petitioner's constitutional rights itself constitutes irreparable harm. Courts in the Eleventh Circuit consistently hold that when a constitutional right is being violated, irreparable injury is presumed because the deprivation of constitutional rights "cannot be adequately remedied through damages" and often triggers intangible harms. *See, e.g., KH Outdoor, L.L.C. v. Trussville*, 458 F.3d 1261, 1271–72 (11th Cir. 2006) (infringement of First Amendment rights is irreparable harm even for minimal periods of time) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976). Here, Petitioner's Fifth Amendment due process rights are at stake: he is being jailed with no bond hearing, in defiance

of the principle that the Government may not imprison a person without providing fundamental procedural protections. Every day this violation persists is a day in which Petitioner's constitutional rights are denied, which by itself satisfies the irreparable injury requirement.

IV. Balance of the Equities

The public interest is best served by ensuring the constitutional rights of persons within the United States are upheld and that unlawful detention is not permitted to continue. As discussed above, the detention without bond of Mr. Murillo likely violated federal law and his due process.

The balance of equities overwhelmingly favors Petitioner. Petitioner continues to suffer the most severe civil injury possible—loss of physical liberty—based on an unlawful detention scheme. Each additional day of detention inflicts irreparable harm, including prolonged separation from his U.S. citizen child and interference with his ability to prepare his removal defense.

By contrast, Respondents will suffer no cognizable harm if the Court orders Petitioner's release or requires a bond hearing. The Government has no legitimate interest in detaining individuals beyond what the INA authorizes, nor in enforcing a policy that has been vacated by a federal court. At most, Respondents would be required to do what the law already mandates: provide an individualized custody determination under 8 U.S.C. § 1226(a). Because the

hardship to Petitioner is profound and ongoing, while the burden on Respondents is minimal and purely administrative, this factor strongly supports injunctive relief.

Here, Mr. Murillo's detention without bond is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

V. Public Interest

The public interest is served by ensuring that federal agencies comply with the Constitution, the INA, and binding federal court judgments. Courts in the Eleventh Circuit consistently recognize that preventing unlawful detention and safeguarding due process rights are core public interests.

There is no public benefit in detaining long-term residents without individualized review, particularly where less restrictive alternatives exist and where detention separates families and imposes unnecessary costs on taxpayers. Granting injunctive relief promotes the rule of law, judicial uniformity, and public confidence in the immigration system.

Accordingly, the public interest strongly favors issuance of a temporary restraining order and preliminary injunction.

VI. The Court has authority to grant Mr. Murillo's immediate release pending the adjudication of this case

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 arrested and processed Mr. Murillo after he was cited in a traffic citation case in St. John's County. DHS has implemented a policy and precedent under *Matter of Yajure Hurtado* that prevents Mr. Murillo from obtaining bond from immigration detention.

The Petitioner has been detained since October 2025. His U.S. citizen child is suffering his absence. Therefore, Petitioner argues that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court order the Defendants/Respondents to schedule a bond hearing within seven days.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue a Temporary Restraining Order and Preliminary Injunction ordering Respondents to immediately release Petitioner from ICE

custody;

2. In the alternative, order Respondents to provide Petitioner with an individualized bond hearing before an Immigration Judge within seven (7) days, treating Petitioner as detained under 8 U.S.C. § 1226(a);

3. Enjoin Respondents from applying the DHS no-bond policy or *Matter of Yajure Hurtado* to Petitioner;

4. Waive the security requirement under Federal Rule of Civil Procedure 65(c), or set a nominal bond; and

5. Grant such other and further relief as the Court deems just and proper.

Local Rule 3.01(g) certification

Pursuant to Local Rule 3.01(g), the undersigned certifies that the requirement to confer with opposing counsel could not be satisfied because the Respondents/Defendants have not yet been served with process and no counsel has entered an appearance on their behalf in this action.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system, which will send a Notice of Electronic Filing this 21st day of January 2026, to all parties.

/s/ Vilerka S. Bilbao
Attorney