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

Petra Rosas Huerta, Petitioner, v. **Troy Schilling**, Administrator, Crow Wing County Jail, Brainerd, MN; **David Venturella**, Acting Director of U.S. Immigration and Customs Enforcement; **Markwayne Mullin,** Secretary of the U.S. Department of Homeland; Security **and Todd Blanche,** Attorney General Of the United States, in their official capacities, Respondents.	Case No. 26-3077

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner, Ms. Petra Rosas Huerta, is a citizen and national of Mexico. She is a 42-year-old woman who resides in Minnesota and was unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2), when she was apprehended and arrested by federal agents, without a warrant, after being released from criminal custody on June 22, 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). Further, Petitioner has been a

DACA recipient for over a decade, and her DACA renewal is currently pending at USCIS. Her status as a DACA recipient deems her "lawfully present" under 8 C.F.R. § 236.21(c)(3). Petitioner challenges the legality of her mandatory detention and requests a Temporary Restraining Order for her release from ICE custody, and prohibits her transfer outside of Minnesota.

FACTS OF THE CASE

Ms. Petra Rosas Huerta, a 42-year-old citizen and national of Mexico resides in Minnesota. She is a mother of two U.S. citizen children. She initially entered the United States in 1994 without inspection as a minor child and has remained in the country since then. Ms. Rosas Huerta was granted DACA as a young adult and has continued to renew her DACA every two years. Her DACA renewal is currently pending at USCIS. On June 22, 2026, Petitioner was arrested by federal agents after being released from criminal custody in Rice County, MN. She is now being held at Crow Wing County Jail in Brainerd, MN in ICE custody. The Petitioner is currently being prosecuted for an alleged domestic violence offense but has not received a final disposition or conviction on the case.

LEGAL ARGUMENT

Ms. Rosas Huerta does not have a removal order. Ms. Rosas Huerta is challenging the constitutionality of the statutory framework by which the Respondents are detaining her without bond under 8 U.S.C. § 1225(b)(2). Petitioner asserts that because she 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 her 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.).

Ms. Rosas Huerta is likely to succeed on the merits, especially given that ICE had been processing non-citizens in Ms. Rosas Huerta's same circumstance under § 1226(a) for decades. Ms. Rosas Huerta's detention is unlawful under § 1225(b)(2) and a textbook violation of her Due Process rights. She is also likely to succeed, as she has been "lawfully present" as a DACA recipient for many years under 8 C.F.R. § 236.21(c)(3). Thus, her detention is unlawful.

II. *Ms. Petra Rosas Huerta will likely succeed on the merits.*

Ms. Rosas Huerta seeks her immediate release because she is unlawfully and unconstitutionally deemed ineligible for bond based on an erroneous finding that she is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). A plain reading of the statute makes clear that Ms. Rosas Huerta 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). As a DACA recipient, he cannot be detained on the basis of being unlawfully present in the U.S.

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 Ms. Rosas Huerta's arrest on June 22, 2026, she was not apprehended while seeking admission at the port of entry. Instead, she was in Rice County, Minnesota and apprehended by federal officers. Therefore, Ms. Rosas Huerta should not have been detained under §1225(b)(2).

III. Ms. Petra Rosas Huerta will Suffer Irreparable Harm

The harm that flows from the violation of Ms. Rosas Huerta'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.").

A Temporary Restraining Order is necessary to prevent ICE from violating Petitioner's due

process rights during the pendency of this habeas action. The Fifth Amendment guarantees that no person may be deprived of liberty without fundamentally fair procedures. Procedural due process requires, at minimum, (1) notice, (2) a meaningful opportunity to be heard, and (3) a fair chance to present evidence and consult with counsel. Transfer or removal would impede access to counsel, prevent meaningful participation in the proceedings, and effectively moot the habeas petition before the Court can adjudicate the constitutional and statutory claims. Due process requires a real and fair opportunity to challenge unlawful detention

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 Ms. Rosas Huerta likely violated federal law and her due process rights. "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, Ms. Rosas Huerta's continued detention without bond is in violation of her Fifth Amendment rights and far outweighs any burden the Respondents would suffer. She faces unlawful detention and the risk of removal without due process, which would include exposure to harm in her home country. Furthermore, she has two U.S. citizen children. She provides financially for her family. She is a DACA recipient and has come to rely on the protections granted to her throughout the past decade. 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 Ms. Petra Rosas Huerta's Immediate Release Pending the Adjudication of Her 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 June 22, 2026. Her family is waiting for her return home. She has been lawfully present in the U.S. and has her DACA renewal currently pending. 8 C.F.R. § 236.21(c)(3). Therefore, Petitioner argues that release from detention is the appropriate relief in this case. Alternatively, Petitioner respectfully asks that this Court prevent her transfer while the instant Habeas pends.

B. CONCLUSION

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

Respectfully submitted, Dated: June 24, 2026

/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