

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Fernando Gonzalez Guerrero, §

Petitioner, §

V. §

KRISTI NOEM, Secretary of the United States §

Department of Homeland Security; §

PAMELA BONDI, United States Attorney §

General; §

MIGUEL VERGARA, San Antonio Field Office §

Director for Enforcement and Removal, U.S. §

Immigration and Customs Enforcement, §

Department of Homeland Security; §

CHARLOTTE COLLINS, Warden, T. Don Hutto §

Detention Center, Taylor, Texas; §

UNITED STATES DEPARTMENT OF §

HOMELAND SECURITY; §

UNITED STATES IMMIGRATION AND §

CUSTOMS ENFORCEMENT; §

EXECUTIVE OFFICE FOR IMMIGRATION §

REVIEW; §

Respondents.

Civil Case No. 1:25-cv-1334

PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION

I. PRELIMINARY STATEMENT

1. Petitioner Fernando Gonzalez Guerrero, a Mexican citizen who has resided in the United States for over 20 years with his U.S. citizen children and VAWA-eligible wife, is unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") at the T. Don Hutto Detention Center in Taylor, Texas. On July 23, 2025, an IJ granted Petitioner a \$5,000 bond, finding that his detention is governed by 8 U.S.C. § 1226(a) (discretionary detention with bond eligibility), not § 1225(b) (mandatory detention for arriving aliens), and that Petitioner poses no danger to the community or flight risk. However, the Department of Homeland Security ("DHS") invoked an automatic stay and appealed to the BIA, which, on September 29, 2025, vacated the bond order and imposed mandatory detention without bond, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This interpretation erroneously applies § 1225(b) to long-term residents like Petitioner, who was apprehended in the interior, violating the Immigration and Nationality Act ("INA"), bond regulations, and the Fifth Amendment's Due Process Clause.

2. Petitioner has been detained for over 75 days, causing irreparable harm through family separation and loss of liberty. As detailed in the Petition (incorporated by reference), federal courts nationwide have rejected this novel interpretation in similar cases. Petitioner seeks a PI to enjoin his continued detention, enforce the IJ's bond order, and vacate the BIA's decision pending full adjudication of the Petition.

II. FACTUAL BACKGROUND

3. The facts are fully set forth in the Petition and incorporated herein. In summary: Petitioner entered the U.S. without inspection in 2005 and has lived in Austin, Texas, with strong

family and community ties and no criminal convictions. On July 17, 2025, ICE detained him after a dismissed assault charge. The IJ granted bond on July 23, 2025, but DHS appealed, leading to the BIA's September 29, 2025, decision mandating detention under § 1225(b). This policy shift, announced by ICE on July 8, 2025, and adopted by the BIA in *Matter of Yajure Hurtado*, reverses decades of practice treating interior-apprehended long-term EWIs (entries without inspection) as eligible for bond under § 1226(a).

III. LEGAL STANDARD

4. A PI requires: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury outweighs any harm to the non-movant; and (4) that the injunction serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see also *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). In immigration habeas cases, courts routinely grant such relief to prevent unlawful detention. See, e.g., *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (granting habeas and enjoining detention under similar facts).

IV. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

5. As detailed in the Second Amended Petition, Petitioner raises strong claims that his detention violates the INA, bond regulations, and due process.

6. First, the mandatory detention provision of § 1225(b)(2)(A) does not apply to long-term EWIs like Petitioner, who are governed by § 1226(a). The plain text of § 1226 applies to all noncitizens "pending a decision on whether the [noncitizen] is to be removed," including those charged as inadmissible under § 1182(a)(6)(A)(i). See Petition ¶¶ 35-37. By contrast, §

1225(b) targets "arriving" aliens at ports of entry or recent border crossers. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The BIA's reliance on *Matter of Yajure Hurtado* ignores legislative history, longstanding agency practice (62 Fed. Reg. 10312, 10323 (1997)), and DHS's prior positions (e.g., *Jennings* oral argument). Multiple federal courts have agreed in 2025 cases: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); and others cited in Petition ¶¶ 32, 44.

7. Second, the detention violates bond regulations (8 C.F.R. §§ 236.1, 1236.1, 1003.19), which historically afforded bond hearings to long-resident EWIs. Petition ¶¶ 49-52.

8. Third, the indefinite detention without bond, after the IJ found no risk, violates due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petition ¶¶ 53-56.

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT RELIEF

9. Petitioner was granted a \$5000 bond by an IJ after determining that the respondent was detained under § 1226(a), and that he was not a danger to the community or a flight risk. Because Respondents are unlawfully interpreting the INA, which would undoubtedly result in his release, he has established irreparable harm absent injunctive relief. *Rodriguez Vazquez v. Bostock*.

10. Furthermore, Petitioner's ongoing detention—now exceeding 75 days—causes irreparable harm through loss of liberty, family separation from his U.S. citizen children and VAWA-eligible wife, and inability to pursue relief like cancellation of removal. Petition 45. The Petitioner's young children are 14, 13, and 11 years old. Courts recognize such harms as irreparable in immigration contexts. See, e.g., *Gomes v. Hyde*, *supra* (granting release). Without a

PI, Petitioner faces prolonged detention pending full habeas review, violating the INA and the Petitioner's Due Process Rights.

C. THE BALANCE OF EQUITIES TIPS IN THE PETITIONER'S FAVOR

11. The government has no legitimate interest in detaining a non-criminal with strong equities and where an IJ determined he was not a flight risk or a danger to the community. Release on bond mitigates any concerns. Further, the practice the Petitioner seeks to enjoin is an outlier to the government's longstanding interpretation and enforcement of its immigration laws. *Rodriguez Vazquez v. Bostock*.

12. In contrast, Petitioner faces severe harm from his continued unlawful detention, separation of family, including three young U.S. citizen children who are 14, 13, and 11, mental health issues, and making it harder to access legal representation to defend against removal. *Rodriguez Vazquez v. Bostock*. Furthermore, Petitioner has a prima facie eligible VAWA Self-Petition pending with USCIS, as a battered step-parent of a U.S. citizen. According to USCIS official website¹, this type of petition usually takes more than three years. Cornering the Petitioner into the EOIR detained docket means his removal proceedings and appeal will be decided within 2 years, not giving USCIS enough time to adjudicate his pending VAWA petition. On the other hand, if the Petitioner is out on bond, he would be transferred to the non-detained docket, which, due to the high volume of cases, will be resolved in 4-5 years, and in which he could seek administrative closure or termination under 8 C.F.R. § 1003.18, to seek relief before USCIS and not EOIR.

D. THE PUBLIC INTEREST FAVORS RELIEF

¹ <https://egov.uscis.gov/processing-times/>

13. Enjoining unlawful detention promotes due process and adherence to the INA, especially amid judicial consensus rejecting *Matter of Yajure Hurtado*. There is no public interest in perpetuating erroneous agency actions. See Petition 33.

E. NO BOND IS REQUIRED

14. Under Fed. R. Civ. P. 65(c), the Court has discretion to waive security for indigent detainees. Petitioner, detained and without means, requests no bond be required.

F. CONCLUSION

15. For the foregoing reasons, the Court should grant the PI after notice and hearing. Petitioner requests immediate release on the \$5,000 bond ordered by the IJ, vacate the BIA decision, and enjoinder of further detention under § 1225(b).

Respectfully submitted, October 1, 2025.



Patricio Garza Izaguirre
Attorney for the Petitioner

Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752

TX SBN 24087568

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION**, and all the attached documents described in the index above, were served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On October 1, 2025



Patricio Garza Izaguirre
Attorney for the Petitioner

Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752

TX SBN 24087568