

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; §

§

Civil Case No. 1:25-cv-01334-RP-ML

Respondents.

PETITIONER'S REPLY IN SUPPORT OF
MOTION FOR A PRELIMINARY INJUNCTIVE RELIEF

Petitioner Fernando Gonzalez Guerrero respectfully submits this reply in support of his Motion for Preliminary Injunction (ECF No. 13). Respondents' opposition (ECF No. 16) fails to undermine the four factors under *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), which strongly favor injunctive relief. Two recent decisions from the Southern District of Texas—directly analogous to this case, cited as persuasive authority within the Fifth Circuit—confirms that Petitioner is likely to succeed on the merits, that he faces irreparable harm from continued detention, and that the equities and public interest tip decisively in his favor. See *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL _____ (S.D. Tex. Oct. 8, 2025) (granting habeas relief and ordering bond hearing for long-term resident detained inland under § 1226(a), rejecting DHS's § 1225(b) argument); *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL _____ (S.D. Tex. Oct. 7, 2025) (granting habeas and ordering bond hearing within 14 days for similar inland detainee). This Court should grant the motion, enjoin Petitioner's detention under § 1225(b), enforce the IJ's bond order, and vacate the BIA's decision pending full adjudication.

I. UNDISPUTED FACTS

The facts of this case are undisputed. The petitioner entered the United States without inspection over twenty years ago. He has maintained a continuous presence and has been a physical resident of this country for that period of time. The Petitioner has four U.S. citizen children who live in the U.S. On June 24, 2025, he was arrested in Travis County, Texas, for a charge that was later dismissed, and he was transferred to ICE custody on July 16, 2025, pursuant to a warrant for arrest of alien and charged with a Notice to Appear as an alien present without admission or parole. He has been in ICE custody since then.

On July 23, 2025, an Immigration Judge granted the petitioner a \$5000 bond. That same date, DHS filed an automatic stay, and on August 5, 2025, they appealed to the BIA, preventing the petitioner from paying his bond. The sole argument from DHS on appeal was that the respondent is not entitled to a bond hearing because he is subject to mandatory detention. DHS did not argue that the petitioner is a flight risk or a danger to the community, despite the IJ's findings that he was not. On September 29, 2025, pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA sustained DHS's appeal, vacated the IJ's order, and ordered the respondent detained without bond.

II. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

Petitioner's detention is unlawful, and courts nationwide, including in this circuit, have squarely rejected respondent's arguments in cases mirroring Petitioner's. Both cases from the Southern District of Texas, cited below and very similar to this matter, succeeded on the merits, and the petitions for habeas corpus were granted.

In *Padron Covarrubias*, the Southern District of Texas granted habeas relief to a Mexican citizen who had resided in the U.S. for nearly 24 years before being apprehended inland in Florida and processed under a Warrant of Arrest/Notice to Appear. 2025 WL _____ at *1–2. The IJ denied bond, citing *Matter of Q. Li* and deeming the petitioner subject to § 1225(b)(2) as an “applicant for admission” arrested without a warrant. *Id.* at *2. The court held that § 1226(a) governs such interior detentions, emphasizing the statutory text, legislative history post-IIRIRA, and longstanding agency practice treating entries without inspection (EWIs) like Petitioner's under § 1226(a). *Id.* at *3–5. It rejected DHS's broad reading of § 1225(b), noting that the provision applies to “arriving aliens” at ports or recent border crossers, not long-term residents

detained inland. Id. at *4 (citing *Jennings v. Rodriguez*, 583 U.S. 281 (2018)). The court waived exhaustion as futile, consolidated the preliminary injunction with the merits under Fed. R. Civ. P. 65(a)(2), and ordered a bond hearing or release. Id. at *7–8.

Similarly, in *Buenrostro-Mendez*, the court granted habeas relief to a Mexican citizen who had lived unlawfully in the U.S. for over a decade before inland detention in Texas. 2025 WL____ at *1. The IJ denied bond jurisdiction under § 1225(b)(2), and the BIA appeal was pending. Id. The court held that § 1226(a) applies, as the petitioner was not an “arriving alien” and his detention violated due process without a bond hearing. Id. at *2–4. It rejected the government’s exhaustion and prematurity arguments, noting that habeas review is available for as-applied constitutional challenges to detention statutes. Id. at *4 (citing 28 U.S.C. § 2241; *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025)). The court ordered a bond hearing within 14 days or release, underscoring that prolonged detention without process contravenes the Fifth Amendment. Id. at *6–7.

Additionally, in the habeas petition, the Petitioner cited similar cases in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska that have reached this same conclusion. See: *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); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025). None of these cases were addressed by the respondents.

These decisions are on all fours with Petitioner's case. Like *Padron* and *Buenrostro*, Petitioner has resided in the U.S. for over 20 years, was apprehended inland in Texas after a dismissed charge, and processed under a Warrant of Arrest/Notice to Appear charging inadmissibility under INA § 212(a)(6)(A)(i). Pet. ¶¶ 11. The IJ granted bond under § 1226(a), finding no danger or flight risk, but DHS invoked an automatic stay, and the BIA vacated the order under *Yajure Hurtado*—precisely the erroneous interpretation rejected in *Padron* and *Buenrostro*. Post-*Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), no Chevron deference applies, and the plain text of § 1226(a) governs “pending a decision on whether the [noncitizen] is to be removed,” including EWIs like Petitioner. See *Padron*, 2025 WL _____ at *4; *Buenrostro*, 2025 WL _____ at *3.

Respondents' claim that the governing statute is a “mixed question of law and fact” deferrable to circuit review post-final removal order ignores habeas's role in reviewing Executive detention. Opp. at 2; see 28 U.S.C. § 2241; *Padron*, 2025 WL _____ at *2 (citing *Rumsfeld v. Padilla*, 542 U.S. 426 (2004)). Exhaustion is not required for § 2241 claims and is excused as futile here, where the BIA has already ruled adversely based on its flawed precedent. See *Buenrostro*, 2025 WL _____ at *3; *Puri v. Gonzales*, 464 F.3d 1038 (9th Cir. 2006).

As in all the cases previously cited, the Petitioner is very likely to succeed on the merits because his detention violates the INA, bond regulations (8 C.F.R. §§ 236.1, 1236.1, 1003.19), and due process, entitling him to relief. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

III. PETITIONER FACES IRREPARABLE HARM

Respondents minimize the harm from over 83 days of detention as “ordinary litigation delays.” Opp. at 5. But *Padron* and *Buenrostro* recognize that indefinite no-bond detention inflicts irreparable injury through loss of liberty and family separation. Furthermore, the detention hinders adequate pursuit of relief like VAWA outside the detained docket. Petitioner’s young U.S. citizen children (ages 11–14) suffer without him, and the detained docket accelerates removal (resolving in ~2 years vs. 4–5 non-detained), risking deportation before USCIS adjudicates his VAWA petition (>3 years). Pet. ¶¶ 3, 18. This harm is constitutional in nature and irreparable absent injunction.

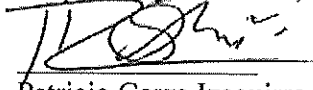
IV. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR RELIEF

The government has no interest in detaining a non-criminal, low-risk individual whom the IJ already deemed bond-eligible as not a danger to the community nor a flight risk. Release on the \$5,000 bond mitigates any concerns, while continued detention imposes severe hardship on Petitioner and his family. The public interest lies in upholding the INA, due process, and judicial consensus rejecting DHS’s policy shift. *Id.*

V. PRAYER

The Petitioner respectfully requests the Court grant the motion, enjoin detention under § 1225(b), enforce the IJ’s bond order, vacate the BIA’s decision, and award other appropriate relief.

Respectfully submitted, October 9, 2025.



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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 9, 2025



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