

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

Benjamin Garcia Hernandez, §

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-1621

PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION

I. PRELIMINARY STATEMENT

1. Petitioner Benjamin Garcia Hernandez, a Mexican citizen who has resided in the United States for over 25 years with his U.S. citizen spouse and U.S. citizen stepchildren, is unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") at the T. Don Hutto Detention Center in Taylor, Texas. On July 10, 2025, an IJ determined he had jurisdiction to hear the bond request but denied bond, finding that Petitioner had not demonstrated he does not present a danger to persons or property due to his limited criminal history. Petitioner appealed to the BIA on July 16, 2025, and the appeal remains pending. However, following the BIA's issuance of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025, the BIA is expected to vacate the IJ's decision for lack of jurisdiction and impose mandatory detention without bond. 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 120 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, order a new bond hearing under § 1226(a), and vacate any adverse BIA decision for lack of jurisdiction 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 2000 and has resided continuously in the United States since then. He married U.S. citizen Juanita Duenez on March 5, 2023, and his stepfamily

includes his spouse and her four U.S. citizen stepchildren: [REDACTED]

[REDACTED] An I-130 petition has been filed by his spouse on his behalf. Petitioner has a limited criminal history consisting of a misdemeanor assault in North Carolina (probation completed) and a pending DWI in Hays County, Texas—both minor offenses that do not bar relief. He has filed taxes consistently from 2016 to 2024, demonstrating steady employment and financial responsibility. His qualifying relatives suffer from chronic medical conditions requiring ongoing care: his wife has Type 2 diabetes mellitus with hyperglycemia, plantar fasciitis, sciatica, obesity, and depression; his stepdaughter [REDACTED] has occipital neuralgia, spondylolisthesis, chronic back pain, mild intermittent asthma, and vitamin D deficiency; his stepson [REDACTED] has asthma; and his stepson [REDACTED] has ADHD, predominantly hyperactive type. Petitioner provides essential emotional, financial, and practical support to his family.

4. On May 31, 2025, Petitioner was arrested in Hays County, Texas, and transferred to ICE custody on June 2, 2025. The IJ denied bond on July 10, 2025, but Petitioner appealed, leading to the pending BIA review. 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). Following the BIA's issuance of *Matter of Yajure Hurtado* on September 5, 2025, the BIA is expected to vacate the IJ's decision for lack of jurisdiction and impose mandatory detention without bond.

5. Petitioner's removal proceedings are pending, with an individual hearing on his 42B Application for Cancellation of Removal continued to November 24, 2025.

III. LEGAL STANDARD

6. 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

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

8. 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 ¶¶ 34-38. 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 ¶ 31.

9. 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.

10. Third, the indefinite detention without bond, despite his entitlement to a hearing under § 1226(a), violates due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petition ¶¶ 53-56.

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT RELIEF

11. Petitioner was denied bond by an IJ after determining that he was detained under § 1226(a), but due to the imminent application of *Matter of Yajure Hurtado*, he faces mandatory detention without a hearing. Because Respondents are unlawfully interpreting the INA, which would result in his continued detention, he has established irreparable harm absent injunctive relief. *Rodriguez Vazquez v. Bostock*.

12. Furthermore, Petitioner's ongoing detention—now exceeding 120 days—causes irreparable harm through loss of liberty, family separation from his U.S. citizen spouse and stepchildren, and inability to pursue relief like cancellation of removal. Petition ¶¶ 45. 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

13. The government has no legitimate interest in detaining a person with limited criminal history and strong equities, where EOIR or an IJ would likely grant bond under a proper hearing. 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*.

14. In contrast, Petitioner faces severe harm from his continued unlawful detention, separation from family, including four U.S. citizen stepchildren, mental health issues, and making it harder to access legal representation to defend against removal. *Rodriguez Vazquez v. Bostock*. Furthermore, Petitioner has a pending I-130 petition filed by his U.S. citizen spouse. According to USCIS, such petitions can take 12-24 months or more to adjudicate. 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 I-130. 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

15. 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.

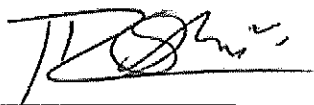
V. NO BOND IS REQUIRED

16. 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.

VI. CONCLUSION

17. For the foregoing reasons, the Court should grant the PI after notice and hearing. Petitioner requests immediate release or a new bond hearing under § 1226(a), vacate any adverse BIA decision, and enjoinder of further detention under § 1225(b).

Respectfully submitted, October 7, 2025.

A handwritten signature in black ink, appearing to read 'Patricio Garza Izaguirre', written over a horizontal line.

Patricio Garza Izaguirre
Attorney for the Petitioner

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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 7, 2025


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