

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JESUS FIDEL SALDIVAR TORRES :

Petitioner, :

V. :

KRISTI NOEM, IN HER OFFICIAL :
CAPACITY, SECRETARY, U.S. :
DEPARTMENT OF HOMELAND :
SECURITY :

PAMELA BONDI, IN HER OFFICIAL :
CAPACITY, :
U.S. ATTORNEY GENERAL :

TODD LYONS, IN HIS OFFICIAL :
CAPACITY, ACTING DIRECTOR, :
IMMIGRATION AND CUSTOMS :
ENFORCEMENT :

Case No: 1:25-cv-00263

CARLOS CISNEROS, ASOD IN HIS :
OFFICIAL CAPACITY, PORT ISABEL :
DETENTION CENTER :

MIGUEL VERGARA, IN HIS OFFICIAL :
CAPACITY ICE FIELD OFFICE :
DIRECTOR DETENTION AND :
REMOVAL :

Respondents,

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER JESUS FIDEL
SALDIVAR TORRES 'S PETITION FOR WRIT OF HABEAS CORPUS AND
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

TABLE OF CONTENTS

INTRODUCTION...	6
FACTS OF THE CASE...	6
LEGAL ARGUMENT...	8
A. Motion for Temporary Restraining Order and Preliminary Injunctive Relief	8
I. Mr. Saldivar Torres Will Likely Succeed on the Merits	9
II. Mr. Saldivar Torres Will Suffer Irreparable Harm	11
III. Balance of the Equities and Public Interest Tip in Petitioner's Favor	11
IV. The Court Has Authority to Grant Mr. Saldivar Torres's Immediate Release Pending the Adjudication of His Habeas Petition	12
CONCLUSION...	13

TABLE OF AUTHORITIES

Cases	Pages
<u><i>Boumediene v. Bush</i></u> , 553 U.S. 723 (2008)	11
<u><i>Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.</i></u> , 710 F.3d 579 (5th Cir. 2013).	9
<u><i>Davis v. Mich. Dep't of Treasury</i></u> , 489 U.S. 803, 809 (1989).	8
<u><i>Elrod v. Burns</i></u> , 427 U.S. 347 (1976)	10
<u><i>Jennings v. Rodriguez</i></u> , 583 U.S. 281 (2018)	8, 9
<u><i>Kostak v. Trump</i></u> , No. 3:25-cv-01093 (W.D. La. Aug. 27, 2025)	9
<u><i>League of Women Voters of U.S. v. Newby</i></u> , 838 F.3d 1 (D.C. Cir. 2016)	10
<u><i>Lopez-Campos v. Raycraft</i></u> , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)	9
<u><i>Martinez v. Hyde</i></u> ,	

2025 WL 2084238 (D. Mass. July 24, 2025)	9
<u>Matter of Yajure Hurtado,</u> 29 I. & N. Dec. 216 (B.I.A. 2025)	5,6
<u>New Prime Inc. v. Oliveira,</u> 586 U.S. 105 (2019)	8
<u>Opulent Life Church v. City of Holly Springs,</u> 697 F.3d 279 (5th Cir. 2012)	10
<u>Piedmont Heights Civic Club, Inc. v. Moreland,</u> 637 F.2d 430 (5th Cir. 1981)	7
<u>Perrin v. U.S.,</u> 444 U.S. 37, 42 (1979).	8
<u>Roberts v. Sea-Land Servs., Inc.,</u> 566 U.S. 93 (2012)	8
<u>Robinson v. Shell Oil Co.,</u> 519 U.S. 337 (1997)	8
<u>Rodriguez v. Bostock,</u> 779 F. Supp. 3d 1239 (W.D. Wash. 2025)	9
<u>Torres-Jurado v. Biden,</u> No. 19-cv-3595, 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023)	10

Wilkinson v. Dotson,

544 U.S. 74 (2005)

11

Winter v. Natural Res. Def. Council, Inc.,

555 U.S. 7 (2008)

7

Statutes

8 U.S.C. § 1225(a)(1)

5,7

8 U.S.C. § 1225(b)(2)

5,7,8,9

8 U.S.C. § 1226(a)

6,8,9

28 U.S.C. § 2241

7

STATEMENT OF FACTS

1. Petitioner, Jesus Fidel Saldivar Torres (“Mr. Saldivar”), is a citizen and national of Mexico.
2. On August 20, 2007, Petitioner Saldivar entered the United States at a port not designated by the United States Attorney General. He was not admitted or inspected by an immigration official.
3. Mr. Saldivar has resided continuously in the United States since his entry in 2007. He is currently eligible for relief from removal under 8 USC 1229b(b) to wit, Cancellation of Removal for certain non-permanent residents.
4. Mr. Saldivar is married to a U.S. citizen, Genesis Garza, and they reside together with their two U.S. citizen children, M [REDACTED] G [REDACTED], who was born on [REDACTED]; and, J [REDACTED] F [REDACTED] who was born on [REDACTED]. They reside at [REDACTED]
[REDACTED]
5. Mr. Saldivar has been gainfully employed for more than a decade as a framer and carpenter with J. Vera Framing & Remodeling in Alamo, Texas.
6. Mr. Saldivar has no criminal record.
7. On October 16, 2025, agents from the Department of Homeland Security (Hereinafter ICE) encountered Mr. Saldivar at a construction site on East San Andrea Street, Edinburg, Texas. The ICE agents, without a warrant, detained Petitioner Saldivar thereby taking him into Respondent’s custody. Petitioner Saldivar is now unlawfully detained at the Port Isabel Processing.
8. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in

coordination with the Department of Justice (Hereinafter “DOJ”), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” Memorandum, U.S. Immigration & Customs Enforcement, Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025), available at AILA Doc. No. 25071607, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

9. Through an Application for Cancellation of Removal for Certain Non-Permanent Residents under 8 U.S.C. § 1229b(b), Petitioner Saldivar will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.
10. Mr. Saldivar is detained at the Port Isabel Detention Center away from his family and counsel located in Edinburg, Texas.
11. On November 4, 2025, the immigration judge held a hearing on Petitioner Saldivar’s custody re-determination request. At the same hearing, the immigration judge wrongfully held that Petitioner Saldivar bear the burden of proof. DGS’s Counsel did not produce evidence at the hearing. Despite lack of evidence from the Government, the immigration judge found that he did not have jurisdiction to review his custody redetermination. See Gov.’s policy memo, *supra* and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
12. Petitioner’s detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the United

States should not be considered an “applicant for admission” who is “seeking admission.” Rather, he should be subject to the procedures delineated under 8 U.S.C. § 1226(a), which confers jurisdiction to immigration judges to grant release on bond.

13. Through this petition, Mr. Saldivar asks this Court to find that Respondents have unlawfully detained him under § 1225(b)(2)(A); that is subject to the proceedings mandated by § 1226(a); and order his immediate release from custody and in the alternative order the Government to conduct an adequate Constitutional hearing where the Government bears the burden to show that he presents a flight risk or constitutes a danger to the public. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

I. LEGAL ARGUMENT

Mr. Saldivar Torres is not subject to a final removal order, nor does he challenge the process of his removability. Mr. Saldivar Torres is challenging the constitutionality of the statutory framework by which the Respondents are detaining him without bond. 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 his 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 disturbingly 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 two years, was unlawfully detained in the interior by the Department of Homeland Security under §§ 1225(a)(1), (b)(2) and sought immediate release.

The elements are easily satisfied here. Mr. Saldivar Torres's detention is completely unnecessary and a textbook violation of his Due Process rights.

Mr. Saldivar Torres will likely succeed on the merits.

Mr. Saldivar Torres 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)(A). A plain reading of the statute makes clear that Mr. Saldivar Torres, 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). 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.” See quoting *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. Saldivar Torres’s arrest on October 16, 2025, agents from the Department of Homeland Security (Hereinafter ICE) encountered Mr. Saldivar at a construction site at an apartment on East San Andrea Street, Edinburg, Texas who detained him and transferred him into immigration custody at the Port Isabel Detention Center where he remains unlawfully detained, he was not apprehended while

seeking admission at the port of entry; instead, he was apprehended in the interior. Therefore, Mr. Saldivar Torres should not have been detained under §1225(b)(2).

II. Mr. Saldivar Torres will Suffer Irreparable Harm

The harms that flow from the violation of Mr. Saldivar Torres's constitutional rights are unquestionably irreparable. See *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th 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.”). Moreover, Mr. Saldivar Torres's wife and children rely on him and his support.

III. 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 Mr. Saldivar Torres likely violated federal law and his due process. “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, Mr. Saldivar Torres's continued detention without a bond hearing and being held away from his family in Texas is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer. The Court Has Authority to Grant Mr. Saldivar Torres's Immediate Release Pending the Adjudication of His 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”).

Release in this case is appropriate.

Furthermore, Mr. Saldivar Torres has already requested a bond from an immigration judge, who denied his request on November 4th, 2025. The Petitioner has been detained since **October 16th, 2025**, away from his family and attorneys. Therefore, Petitioner argues that release from detention is the appropriate relief in this case so that he may return home.

CONSTITUTIONALLY ADEQUATE BOND HEARING

1. The Due Process Clause requires a constitutionally adequate bond hearing.
“Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).
2. At a minimum, due process requires “adequate procedural protections” to ensure that the Government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotation marks omitted).

3. In civil detention cases, the Supreme Court “repeatedly has recognized that civil commitment for *any* purpose constitutes a significant deprivation of liberty.” *Singh*, 638 F.3d 1196, 1204–05 (9th Cir. 2011) (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)) (emphasis in original).
4. Civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government’s justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750–51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).
5. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings at which *the Government* bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. *See, e.g., Singh*, 638 F.3d at 1204–05; *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018) (holding that due process requires the burden of proof be placed on the government in custody redetermination hearings for non-criminal aliens) (Saris, C.J.); *Alvarez Figueroa v. McDonald*, Civil Action No. 18-10097-PBS, 2018 U.S. Dist.

LEXIS 80781, at *15–16 (D. Mass. May 14, 2018) (“The *Zadvydas* Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement of the burden of proof on the government.”) (Saris, C.J.); *Doe v. Tompkins*, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb. 12, 2019) (holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on the government in § 1226(a) custody redetermination hearings) (Saris, C.J.); *Diaz-Ortiz v. Tompkins*, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3–4 (D. Mass. Jan. 29, 2019) (same) (Saris, C.J.); *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y. Oct. 17, 2018) (concluded that “due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a).”); *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y. 2018) (same; further, “the Court concludes that the government must bear the burden by clear and convincing evidence.”); *Haughton v. Crawford*, 221 F. Supp. 3d 712, 713–17 (E.D. Va. 2016) (“the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate to protect the community and ensure petitioner's appearance at future

proceedings.”); *Portillo v. Hott*, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming *Haughton* as “good authority”).

IV. CONCLUSION

For the foregoing reasons, the Court should grant Mr. Saldivar Torres’s Motion for a Temporary Restraining Order, and order his immediate release from ICE custody to allow him to his family.

Respectfully Submitted,

/s/ Alfonso Otero
ALFONSO OTERO
SD TX. Fed. No. 408694
Texas Bar. No. 24009189
ALFONSO OTERO ATTORNEY AT
LAW, P.C.
8620 N. New Braunfels
Suite 605
San Antonio, Texas 78217
210-587-4000
Alfonso.otero.briz@gmail.com

DAVID H. SQUARE, ESQ.
SD TX FED. NO. 1155619
TX S. CT. 24076013
LAW OFFICE OF DAVID H.
SQUARE, PLLC 225 PALM BLVD.
BROWNSVILLE, TX 78520
T: (956) 421-1010
E:
DAVID@LAWOFFICEOFDHS.COM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 12th, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by email to the following individual:

BALTAZAR SALAZAR

Assistant United States Attorney

S.D. Tex. ID. No. 3135288

Texas Bar No. 24106385 600 E. Harrison, Suite 201

Brownsville, Texas 78520

Telephone: (956) 983-6057

Facsimile: (956) 548-2775 E-mail: Baltazar.Salazar@usdoj.gov Counsel for Federal Respondent