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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF NEVADA**  
13

14 Kevin Ariel SALGUERO Y SALGUERO, and,  
15 Juan Manuel GARCIA-HERNANDEZ

Case No. 2:25-cv-02328-RFB-NJK

16 Petitioners,

**PETITIONERS' MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

17 v.

18 Kristi NOEM, Secretary, U.S. Department of  
19 Homeland Security, in her official capacity;  
20 U.S. DEPARTMENT OF HOMELAND  
21 SECURITY; et al.,

22 Respondents.  
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1 Petitioners Kevin Ariel Salguero y Salguero (“Mr. Salguero”) and Juan Manuel Garcia-  
2 Hernandez (“Mr. Garcia-Hernandez”) respectfully move this Court, pursuant to Fed. R. Civ. P. 65,  
3 28 U.S.C. § 2241, and the Court’s inherent equitable powers, for a Temporary Restraining Order  
4 and Preliminary Injunction directing their immediate release or, in the alternative, ordering prompt  
5 individualized custody redetermination hearings under 8 U.S.C. § 1226(a) before an Immigration  
6 Judge, and enjoining Respondents from continuing to detain Petitioners under 8 U.S.C. §  
7 1225(b)(2) and from using EOIR’s automatic-stay mechanism to block their release.

8 This motion is based on the concurrently filed Petition for Writ of Habeas Corpus, all  
9 exhibits, the decisions of this Court in *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL  
10 2676082 (D. Nev. Sept. 17, 2025), and *Escobar-Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY,  
11 2025 WL 3205356 (D. Nev. Nov. 17, 2025), and any evidence and argument presented at hearing.

## 12 I. INTRODUCTION

13 This is not a case of first impression. This Court has already addressed and rejected the  
14 precise legal theory DHS invokes to justify Petitioners’ mandatory, no-bond detention.

15 In *Vazquez* and *Escobar-Salgado*, the Court held that:

- 16 1. 8 U.S.C. § 1226(a) is the default detention statute for long-settled noncitizens  
17 arrested in the interior and placed into § 1229a proceedings;
- 18 2. 8 U.S.C. § 1225(b)(2) is limited to detention incident to inspection at or near the  
19 border and cannot be used years later to detain long-term residents in the interior;  
20 and
- 21 3. EOIR’s automatic-stay regulation, 8 C.F.R. § 1003.19(i)(2) (via Form EOIR-43),  
22 is unconstitutional and contrary to the INA when used to nullify Immigration  
23 Judges’ custody determinations for such individuals.

1 Petitioners stand in the same posture as the habeas petitioners in *Escobar-Salgado*. Both  
2 Mr. Salguero and Mr. Garcia-Hernandez:

- 3 • entered without inspection years ago;
- 4 • were arrested in the interior of Nevada;
- 5 • were placed into § 1229a removal proceedings; and
- 6 • have been denied bond jurisdiction or bond hearings based solely on DHS’s claim  
7 that they are detained under § 1225(b)(2) pursuant to its July 8, 2025 “Interim  
8 Guidance” and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

9 In addition, Mr. Garcia-Hernandez is prima facie eligible to adjust status under INA §  
10 245(i), and DHS has told the Immigration Judge that it would simply re-lodge a new Notice to  
11 Appear where he would remain detained even if proceedings are terminated under Matter of  
12 Coronado Acevedo, 28 I&N Dec. 648 (A.G. 2022)—using detention as leverage to block a Latino  
13 respondent’s access to relief Congress expressly authorized.

14 Under *Winter v. NRDC*, 555 U.S. 7 (2008), Petitioners easily satisfy the standard for  
15 emergency injunctive relief. They are likely to succeed on the merits (indeed, this Court has  
16 already ruled for similarly situated petitioners on these same issues); they are suffering severe and  
17 ongoing irreparable harm from unlawful detention; the balance of equities tips sharply in their  
18 favor; and the public interest is served by ensuring the government follows the INA and the  
19 Constitution.

## 20 II. FACTUAL AND PROCEDURAL BACKGROUND

21 Petitioners incorporate by reference the factual and procedural background set forth in their  
22 Petition for Writ of Habeas Corpus.

23 Briefly:

- 1 • Mr. Salguero is a 29-year-old Guatemalan national who entered without  
2 inspection in or about August 2015 and has lived in the United States for over  
3 ten years. He lives in Las Vegas and is the father of a five-year-old U.S.-citizen  
4 daughter, L.E.S. He has no significant criminal record and strong family and  
5 community ties. He is detained at the Henderson Detention Center, and his IJ  
6 denied bond jurisdiction solely on the basis that he is an “applicant for  
7 admission” mandatorily detained under § 1225(b)(2) pursuant to *Yajure*  
8 *Hurtado*.
- 9 • Mr. Garcia-Hernandez is a 49-year-old Mexican national who entered without  
10 inspection in 1999 and has lived and worked in Nevada ever since, most  
11 recently in Pahrump. He is the father of two U.S.-citizen daughters, was the  
12 beneficiary of a timely April 2001 labor certification, and now has a pending I-  
13 130 from his U.S.-citizen daughter. He is grandfathered under § 245(i) and is  
14 *prima facie* eligible to adjust to lawful permanent resident status. He is detained  
15 at Nevada Southern Detention Center. His IJ denied bond for lack of jurisdiction  
16 based solely on *Yajure Hurtado*. At a master hearing, the government  
17 acknowledged his § 245(i) eligibility but opposed termination, stating that even  
18 if proceedings were terminated to allow USCIS adjudication, DHS would re-  
19 lodge a new NTA so he remains detained.

20 Both men have already sought bond; both were denied solely because IJs deemed  
21 themselves bound by *Yajure Hurtado* and DHS’s new § 1225(b)(2) interpretation; neither received  
22 an individualized finding of dangerousness or flight risk. Appeals to the BIA would be futile  
23 because the BIA authored *Yajure Hurtado* and is already applying it.

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### III. LEGAL STANDARD

A party seeking a temporary restraining order or preliminary injunction must show:

1. A likelihood of success on the merits;
2. A likelihood of irreparable harm in the absence of relief;
3. That the balance of equities tips in the movant’s favor; and
4. That an injunction is in the public interest.

*Winter v. NRDC*, 555 U.S. 7, 20 (2008).

In the Ninth Circuit, a preliminary injunction may also issue when the plaintiff raises serious questions going to the merits, the balance of hardships tips sharply in his favor, and the other Winter factors are satisfied. See *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). Because Petitioners seek relief that is mandatory in effect (release or ordered bond hearings), they recognize that they must make a strong showing of likely success and that the court should exercise “extreme caution.” Here, that showing is easily met in light of *Escobar-Salgado* and *Vazquez*.

### IV. ARGUMENT

A. Petitioners Are Likely to Succeed on the Merits — This Court Has Already Rejected Respondents’ Legal Theory in *Escobar-Salgado* and *Vazquez*

Petitioners’ claims are the same core claims this Court already accepted in the injunction in *Vazquez* and on the merits in *Escobar-Salgado*: that long-settled noncitizens arrested in the interior and placed in § 1229a proceedings are detained under § 1226(a), not § 1225(b)(2), and that EOIR’s automatic stay regulation is unlawful as applied in this context.

In *Escobar-Salgado*, this Court held that:

- 1 • The text, structure, and history of the INA confirm that § 1226(a) is the baseline
- 2 detention authority in § 1229a proceedings;
- 3 • § 1225(b) is limited to detention incident to border inspection, not a roving authority to
- 4 detain long-time residents arrested in the interior years after entry; and
- 5 • DHS’s attempt to reclassify interior arrestees as § 1225(b)(2) detainees based solely on
- 6 entry without inspection is inconsistent with the statutory scheme, undermines §
- 7 1226(c), and raises serious constitutional concerns.

8 Nothing material distinguishes Petitioners’ posture from that of the petitioners in *Escobar-*  
9 *Salgado*. Petitioners are:

- 10 • Long-settled residents;
- 11 • Arrested in the interior of Nevada;
- 12 • Charged in § 1229a removal proceedings; and
- 13 • Denied bond jurisdiction solely because DHS has labeled them “applicants for
- 14 admission” detained under § 1225(b)(2) pursuant to its July 8, 2025 “Interim
- 15 Guidance” and *Yajure Hurtado*.

16 Under the reasoning of *Escobar-Salgado* and *Vazquez*, Petitioners are very likely to prevail  
17 on their claim that § 1226(a), not § 1225(b)(2), governs their detention and that Respondents’  
18 contrary approach violates the INA and the APA.

19 Moreover, after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Court  
20 owes no *Chevron* deference to DHS or EOIR’s new interpretation. At most, *Yajure Hurtado* could  
21 receive *Skidmore* weight, which is not warranted where the interpretation conflicts with statutory  
22 text, structure, and decades of consistent prior practice. The Major Questions Doctrine and  
23

1 constitutional avoidance principles further confirm that the Court should reject Respondents’  
2 reading of § 1225(b)(2), for the reasons detailed in the Petition.

3 Because this Court has already rejected DHS’s position on the merits in *Escobar-Salgado*,  
4 Petitioners’ likelihood of success is not speculative—it is strongly supported by binding precedent  
5 within this District addressing the identical statutory and regulatory framework.

### 6 **B. Petitioners Face Ongoing, Severe Irreparable Harm**

7 Every additional day that Petitioners remain in unlawful civil detention is irreparable harm:

- 8 • Loss of liberty is “a serious deprivation” that cannot be remedied by money  
9 damages.
- 10 • Petitioners are separated from their U.S.-citizen children: Mr. Salguero from his  
11 five-year-old daughter L.E.S.; Mr. Garcia-Hernandez from his daughters Jennifer  
12 and Alexandra. The emotional trauma to these children and their families is  
13 immediate and ongoing.
- 14 • Mr. Garcia-Hernandez’s detention specifically threatens his ability to pursue §  
15 245(i) relief in a timely and meaningful way; DHS has openly threatened to re-  
16 lodge an NTA where he would remain in detention even if proceedings are  
17 terminated, using incarceration as leverage to obstruct a congressionally created  
18 pathway to lawful status.

19 Courts routinely recognize that prolonged civil immigration detention, especially when  
20 alleged to be unlawful, constitutes irreparable harm sufficient to support injunctive relief.

### 21 **C. The Balance of Equities Strongly Favors Petitioners**

22 The balance of hardships sharply favors Petitioners:  
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- 1 • Petitioners face continued deprivation of liberty, family separation, and disruption  
2 to their lives and immigration cases.
- 3 • Respondents, by contrast, face minimal burden from providing Petitioners either (a)  
4 release under reasonable conditions of supervision or (b) prompt, lawful § 1226(a)  
5 bond hearings at which the government may still argue dangerousness or flight risk  
6 if it has evidence.

7 If the government truly believes either Petitioner is a danger or a flight risk, it can present  
8 those arguments at a bond hearing under § 1226(a); an injunction would not bar that. It would  
9 simply ensure that detention is grounded in lawful statutory authority and individualized findings  
10 rather than on a categorical and recently invented § 1225(b)(2) theory this Court has already  
11 rejected.

12 D. The Public Interest Strongly Supports Injunctive Relief

13 The public has a compelling interest in:

- 14 • Ensuring that agencies act within the bounds of statutes enacted by Congress;
- 15 • Preventing unconstitutional and arbitrary detention; and
- 16 • Preserving family unity and community stability where no individualized findings  
17 support detention.

18 This Court recognized in *Vazquez* and *Escobar-Salgado* that the public interest is served  
19 by enforcing the INA as written and preventing DHS and EOIR from using § 1225(b)(2) and  
20 EOIR-43 to impose prolonged mandatory detention on long-settled residents in § 1229a  
21 proceedings. That same public interest is present here.

1 Granting injunctive relief will align Petitioners' cases with this Court's prior rulings and  
2 ensure consistent application of the law across similarly situated individuals in this District.Fifth  
3 Amendment.

4 **V. REQUESTED RELIEF**

5 For all the foregoing reasons, Petitioners respectfully request that the Court:

6 1. Issue a Temporary Restraining Order, followed by a Preliminary Injunction,  
7 providing that:

8 a. Respondents are temporarily restrained and preliminarily enjoined from continuing  
9 to detain Petitioners under 8 U.S.C. § 1225(b)(2) and from treating them as  
10 "applicants for admission" for purposes of mandatory detention;

11 b. Respondents are temporarily restrained and preliminarily enjoined from invoking  
12 8 C.F.R. § 1003.19(i)(2) (Form EOIR-43 automatic stay) to block Petitioners'  
13 release;

14 c. Respondents shall immediately release Petitioners from custody under reasonable  
15 conditions of supervision (including bond, recognizance, or alternatives to  
16 detention) OR, in the alternative, shall provide each Petitioner with a prompt  
17 individualized custody redetermination hearing under 8 U.S.C. § 1226(a) before an  
18 Immigration Judge, at which:

- 19 • The government bears the burden to demonstrate, by clear and convincing  
20 evidence, that continued detention is necessary to prevent flight or danger  
21 to the community;

- 1 • The Immigration Judge may not treat Petitioners as detained under §
- 2 1225(b)(2) or rely on Matter of Yajure Hurtado or the EOIR-43 automatic-
- 3 stay regulation to foreclose bond; and
- 4 • The Immigration Judge must consider Petitioners' family ties, work history,
- 5 community support, and less restrictive alternatives to detention.

6 2. As to Mr. Garcia-Hernandez, further order that:

7 a. If proceedings are terminated by the Immigration Judge, Respondents are

8 preliminarily enjoined from re-lodging serial Notices to Appear solely to preserve

9 his detention under their § 1225(b)(2) theory; and

10 b. Respondents shall either:

- 11 • Release Mr. Garcia-Hernandez so that he may pursue § 245(i) adjustment
- 12 before USCIS or the Immigration Court; or
- 13 • Terminate or administratively close proceedings to allow USCIS
- 14 adjudication consistent with Matter of Coronado Acevedo, supra. without
- 15 using detention as leverage to obstruct that relief.

16 3. Set this matter for an expedited hearing at the Court's earliest convenience and direct

17 Respondents to show cause forthwith why the requested relief should not be granted;

18 4. Grant such other and further relief as the Court deems just and proper.

19 Respectfully submitted this 23<sup>rd</sup> day of November, 2025.

20  
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