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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHAI URIEL BELTRAN VILLEGAS, *Petitioner*, v. RANDY TATE, Warden of Montgomery Processing Center; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States. *Respondents*.	:	Docket No. _____

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Petitioner has been unlawfully denied release on bond by the Government and now faces having to litigate his cancellation of removal application in immigration court behind detention walls unless this Court grants habeas relief and orders his release. Moreover, he is eligible to adjust status to that of legal permanent resident before U.S. Citizenship and Immigration Services ("USCIS"), but that opportunity would be taken away from him if he remains detained because the immigration court does not have jurisdiction to adjudicate the Form I-360 Violence Against Women Act ("VAWA") application.

The Government contends that Petitioner is lawfully detained under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). But that contention is refuted by the plain text of the governing detention statutes, the overall structure of the Immigration and Nationality Act ("INA"), and Congress's intent in enacting the detention statutes. As set forth below, Petitioner is clearly detained under the discretionary detention authority pursuant to 8 U.S.C. § 1226(a). The vast majority of courts—including several in the Fifth Circuit—have already found that 8 U.S.C. § 1226(a) governs the detention of noncitizens similarly situated to Petitioner.

For the reasons set forth below, Petitioner satisfies the criteria for injunctive relief. This Court should join the chorus of cases around the country finding that habeas relief is warranted. With respect to the type of relief, the Court should order Petitioner's immediate release from detention. Alternatively, the Court should direct that a constitutionally adequate bond hearing take place.

STANDARD OF REVIEW

To obtain preliminary injunctive relief under Federal Rule of Civil Procedure 65, Petitioner has the burden of establishing that:

> (1) there is a substantial likelihood that she will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury [to him] outweighs the threatened harm to [Respondents]; and (4) the granting of the preliminary injunction will not disserve the public interest.
>
> *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006).

STATEMENT OF FACTS

Petitioner was born in Mexico and entered the United States without inspection in approximately 2007. *See* Petition for Writ of Habeas Corpus ("Pet'n") ¶ 18. On September 15, 2023, Petitioner filed a Form I-360, Petition for Amerasian, Widower, or Special Immigrant and Form I-485, Application for Adjustment of Status under the Violence Against Women Act ("VAWA") as a self-petitioning husband of a U.S. citizen. *See id.* ¶ 19. On May 25, 2025, USCIS issued a "Prima Facie Determination" indicating that the I-360 petition "has been reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women Act." That application remains pending. *See id.* ¶ 20. However, on October 10, 2025, Immigration and Customs Enforcement ("ICE") detained Petitioner. On or about the same date, ICE served Petitioner with a Notice to Appear ("NTA"), which designated him as "an alien present in the United States who has not been admitted or paroled." *See id.* ¶ 21. Petitioner is awaiting final hearing date in immigration court. *See id.* ¶ 23.

ARGUMENTS

I. THE PETITIONER HAS DEMONSTRATED A LIKELIHOOD OF SUCCESS BECAUSE THE GOVERNMENT'S INTERPRETATION OF 8 U.S.C. § 1225(b)(2) AND 8 U.S.C. § 1226(a) IS BASELESS

The crux of this matter comes down to whether Petitioner is detained under section 1226(a) or 1225(b)(2). For nearly 30 years, DHS and the BIA considered noncitizens like Petitioner subject to detention under 1226(a), and therefore eligible for bond. But starting on July

8, 2025, DHS radically changed its position regarding the statutory interpretation of these two statutes and now considers all noncitizens—except those who were admitted to the United States—to be ineligible for bond. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). This has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention. For the reasons set forth below, this Court should again grant habeas relief.

A. 8 U.S.C. § 1225(b)(2) Does Not Govern Petitioner's Detention

In examining the relevant provisions of sections 1225 and 1226, the Court should consider "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). But crucially, 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)). Here, the context is clear that "detention authority in § 1225 is exercised at or near the port of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the United States." *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *19 (D.N.J. Sep. 26, 2025). Indeed, "[t]he line historically drawn between these two sections, making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at *18 (D. Mass. July 24, 2025). In other words, the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to enter, or who have recently entered the U.S. It does not

include noncitizens "who entered long ago, are not taking affirmative steps that could be characterized as 'seeking admission,' and have been residing in the U.S. for years." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at *39 (D. Nev. Sep. 17, 2025).

This is true for several reasons. First, "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 LX 284582, at *6. However, the Government makes no distinction between an applicant for admission and "seeking admission." *See id.* at *11 (noting that the Government is "apparently treating it as mere surplusage of the 'applicant' requirement."). The phrase "seeking admission" is undefined but "necessarily implies some sort of present-tense action." *Id.* Here, there is no present action. "To be sure, the line between when a person is 'seeking admission' as opposed to being 'already in the country' is not necessarily obvious. For instance, someone who has just crossed the border may technically be 'in' the country but is still treated as 'an alien seeking initial entry.'" *Benitez v. Francis*, 2025 LX 337407, at *10 (S.D.N.Y. Aug. 8, 2025). So therefore, it is important to look to how Petitioner was treated upon entry in the United States. As set forth in the Petition, Petitioner entered the country years ago without having been inspected or admitted. The NTA itself designated Petitioner as "an alien present in the United States who has not been admitted or paroled." Therefore, "it is indisputable that Respondents have consistently treated [Petitioner] as subject to § 1226." *Benitez*, 2025 LX 337407, at *13. "These facts, taken together, can support only one conclusion—that [Petitioner] was not mandatorily detained as a noncitizen 'seeking admission' under § 1225(b), but rather as someone 'already in the country,' *Jennings*, 583 U.S. at 288-89, pursuant to Respondents' discretionary authority under § 1226(a) . . . ." *Id.* Therefore, "[i]t is

inconsistent with the plain, ordinary meaning of the phrase 'seeking admission' to apply this section to all noncitizens already present and residing in the U.S., regardless of whether they are taking any affirmative acts that constitute 'seeking admission.'" *Vazquez v. Feeley,* No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at *37 (D. Nev. Sep. 17, 2025). There was also no examination by an immigration officer, as required by the statute. The Government's opposition makes no meaningful attempt to address this requirement and concedes that Petitioner entered the United States without inspection or parole.[1]

Second, "the titles and headings of § 1225 repeatedly cabin its application to 'Inspections,' which, as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border." *Zumba*, 2025 LX 482036, at *23. While not binding, [titles and headings of a statute] are instructive and provide the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance." *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at *15 (E.D. Mich. Aug. 29, 2025). Therefore, "1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country." *Id.* at *18.

B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner

Section 1226(a) concerns all noncitizens who are not subject to section 1225 and 1231 (which concerns those with final orders of removal). *See Benitez v. Francis,* 2025 LX 337407, *3 (S.D.N.Y. Aug. 8, 2025) (holding that § 1225 did not apply because the "plain text, overall structure, and uniform case law interpreting" the statutory provision compels the conclusion). "Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either seeking entry to

[1] The recent issuance of the NTA is not an examination by an immigration officer, *See Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *24 (D.N.J. Sep. 26, 2025) (noting that this argument "is an awkward fit and unpersuasive" and that the government fails to "provide textual or legal support for this contention).

the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States." *Zumba*, 2025 LX 482036, at *26. Nothing in the Supreme Court's decision in *Jennings* compels a different outcome. *Id.* ("Although the *Jennings* Court characterizes § 1225(b)(2) as the 'catchall' detention provision for noncitizens who are 'seeking admission,' it identifies § 1226(a) as the 'default rule' for the arrest, detention, and release of non-criminal aliens who are already present in the United States.").

"As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congress' intent, and § 1226(a)'s application for the past three decades' support finding that § 1226 applies to these circumstances." *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 LX 438445, at *6 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at *14 (W.D. Tex. Sep. 21, 2025).

II. PETITIONER WILL SUFFER IRREPARABLE HARM UNLESS THE COURT ISSUES A TEMPORARY RESTRAINING ORDER

Irreparable harm to Petitioner is clearly demonstrated. As the court in *Marcelo* held, "[t]he loss of liberty resulting from continued custody after denial of a bond hearing constitutes irreparable harm." *Marcelo*, 2025 LX 466469, *28; *see also Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (recognizing "a loss of liberty" is "perhaps the best example of irreparable harm")). Here, irreparable harm is already occurring as Petitioner is being forced to present his cancellation of removal claim for relief before the immigration court behind detention walls. Moreover, by being subject to mandatory detention, cannot simply seek to terminate his proceedings and have USCIS adjudicate the merits of his I-360 VAWA application. Therefore, he loses the ability to have that collateral pathway to legal residence while detained.

But for the Respondents' unconstitutional actions, Petitioner would not have been deprived of these opportunities. Particularly troubling is the almost criminal like nature of

detained immigration proceedings. *See, e.g.*, Maureen A. Sweeney, Sirine Shebaya & Dree K. Collopy, *Detention as Deterrent: Denying Justice to Immigrants and Asylum Seekers*, 36 Geo. Immigr. L.J. 291, 299 (2021) ("Detention also exacts a toll on due process. It is difficult for detained immigrants to get legal representation and assist in preparing and presenting their own cases, making it substantially harder for them to win meritorious claims to relief from deportation."); Ingrid V. Eagly & Steven Shafer, *Detained Immigration Courts*, 110 Va. L. Rev. 691 (2024).

The Government is constitutionally obligated to provide due process. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) ("'It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993). Therefore, it is necessary to grant injunctive relief now to prevent these unconstitutional harm from occurring. *See A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (granting TRO to prevent expedited deportation potentially violative of due process). As another court has succinctly put it, "[t]his is not a circumstance, put differently, where the harms Petitioners face are so remote—or are simply monetary—as to fail in establishing they face irreparable harm in the Court's TRO analysis." *D.B.U. v. Trump*, 779 F. Supp. 3d 1264, 1283 (D. Colo. 2025).

III. THE BALANCE OF HARMS WEIGHS IN FAVOR OF PETITIONER

The merged "balancing-the-equities" and "public interest" factors favor Petitioner. The potential harm to Petitioner if injunctive relief is not granted is serious. If Petitioner is transferred out of this district without due process, he will be deprived of effective access to counsel and access to his friends and family. Similarly, if Petitioner is not released or promptly provided a bond hearing, he will be forced to continue litigating his cancellation of removal claim in

detention even though he is statutorily eligible for release on bond and has a pending I-360 VAWA application. "In comparison, the harm to Respondents is minimal." *Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 LX 383996, at *11-12 (D.N.M. Sep. 5, 2025). Indeed, "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 U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Practically speaking, injunctive relief would inflict little more on Respondents than ensure they adhere to the requirement of the Constitution.

IV. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION

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).Although the "comfortable majority position—both historically and in recent weeks—is to instead require a bond hearing before an IJ," several courts "have determined that the appropriate relief for an immigration detainee held in violation of due process is the petitioner's immediate release from custody." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at *34 (W.D. Tex. Sep. 21, 2025) (citing *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 LX 353995, at *44 (D. Or. Aug. 21, 2025); *see* also *Zumba*, 2025 LX 482036 at *32 (holding that "habeas does not provide meaningful relief with respect to some of the indignities petitioner has endured . . . . But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention. The Court finds that release from detention is the appropriate relief . . . ."); *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not

assert any other basis for petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release.").

Alternatively, if the Court is not inclined to order release, the Court should direct DHS to provide Petitioner with a bond hearing before an IJ, at which DHS shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk. This is appropriate as the court in *Lopez-Arevelo* concisely summarized:

> When ordering a bond hearing as a habeas remedy, some courts place the burden of proof on the noncitizen seeking release. *See, e.g., Martinez v. Hott*, 527 F. Supp. 3d 824, 838 (E.D. Va. 2021). This practice tracks the agency's own burden allocation at routine bond hearings. *See id.* (citing 8 C.F.R. § 236.1(c)(8)); 8 C.F.R. § 1003.19(h)(3). Yet, as of 2020, the "vast majority"—an "overwhelming consensus"—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk. *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted). Allocating the burden in this manner reflects the concern that "[b]ecause the alien's potential loss of liberty is so severe . . . he should not have to share the risk of error equally." *German Santos*, 965 F.3d at 214 (citing *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208, 224 & n.12 (3d Cir. 2018)).
>
> And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence.
>
> *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 LX 467042, at *35 (W.D. Tex. Sep. 21, 2025).

In addition, the Court should also enjoin Respondents from transferring Petitioner out of the district. *See Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 349750, at *5 (W.D. Tex. Sep. 9, 2025) ("[t]he Court finds persuasive the decisions enjoining removal and transfer of petitioners under the Court's inherent power to preserve its ability to hear the case" and that enjoining transfers was necessary "[t]o ensure the ability to meaningfully assess [Petitioner's] Petition.").

CONCLUSION

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted on 22nd day of November 2025

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