

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

Nicolas Lopez Arzate, §
§
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-2008

Respondents.

PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

I. PRELIMINARY STATEMENT

1. Petitioner Nicolas Lopez Arzate, a Mexican citizen who has resided in the United States since 1989 with his spouse and six children, four of whom are U.S. citizens and two of whom have DACA, is unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") at the T. Don Hutto Detention Center in Taylor, Texas, since November 22, 2025.

2. Under the current BIA legal framework in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Petitioner is ineligible to seek a bond redetermination hearing before the IJ or BIA because they claim that all EWIs are applicants for admission and subject to mandatory detention. 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, federal court orders, and the Fifth Amendment's Due Process Clause.

3. Petitioner has been detained for over 13 days, causing irreparable harm through family separation and loss of liberty. As detailed in the Petition (incorporated by reference), federal courts nationwide, including in Texas, have rejected this novel interpretation in similar cases. Petitioner seeks a TRO and PI to enjoin his continued detention and order his immediate release.

II. FACTUAL BACKGROUND

4. The facts are fully set forth in the Petition and incorporated herein. In summary: Petitioner entered the U.S. without inspection on or about 1989, and has lived in Austin, Texas, with strong family and community ties and no criminal convictions. On or about November 22, 2025, ICE detained him after a traffic stop by the Texas State Troopers. On September 5, 2025, the BIA adopted *Matter of Yajure Hurtado*, reversing decades of practice treating

interior-apprehended long-term EWIs (entries without inspection) as eligible for bond under § 1226(a). Under this novel legal framework, the Petitioner is ineligible to seek a bond redetermination hearing before the IJ or the BIA.

5. The DOJ and DHS have failed to comply with the federal court order in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), where the Court extended the partial summary judgment declaring DOJ and DHS practice unlawful, to the Bond Eligible Class as a whole. And the Petitioner is a class member in *Maldonado Bautista*. He is a noncitizen without lawful status detained at the T. Don Hutto Detention Center who (1) entered the United States without inspection, (2) was not apprehended upon arrival, and (3) is not subject to mandatory detention pursuant to 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

III. LEGAL STANDARD

6. A TRO and 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). Western District Federal Courts have routinely granted relief in immigration habeas cases to prevent unlawful detention. See *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE (W.D. Tex. Nov. 5, 2025); *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct 15, 2025)

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, federal court orders, 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 ¶¶ 41-46. 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 (Jennings oral argument). See Petition 33.

9. Multiple federal courts, including in Texas, have agreed that this novel interpretation is illegal. See *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE (W.D. Tex. Nov. 5, 2025); *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct 15, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025).

10. 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 ¶¶ 57-60.

11. Third, the DOJ and DHS have failed to comply with the federal court order issued in *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), in other cases. See Petition 51.

12. Fourth, the indefinite detention without bond violates due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petition ¶¶ 63-66.

13. Therefore, the Petition is likely to succeed on the merits based on these multiple federal court precedents holding the government's interpretation illegal and granting relief to the Petitioners in similar cases. And on the fact that there is a class-wide partial summary judgment that the DOJ and DHS are unwilling to follow.

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT RELIEF

14. Respondents are unlawfully interpreting the INA, which would undoubtedly result in the Petitioner's release because he is not a danger to the community or a flight risk. He has established irreparable harm absent injunctive relief.

15. Furthermore, Petitioner's ongoing detention causes irreparable harm through loss of liberty, family separation from his spouse and six children, and inability to pursue relief out of the detained EOIR docket. He has a viable path to lawful status through a 42B Application before the Immigration Court in the non-detained docket. Courts recognize such harms as irreparable in immigration contexts. See cases cited in Petition ¶¶ 36-40.

16. Without a TRO and 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

17. The government has no legitimate interest in detaining a non-criminal with strong equities, and where he is not a flight risk or a danger to the community. 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. And a clear defiance of federal court orders.

18. In contrast, Petitioner faces severe harm from his continued unlawful detention, separation of family, including spouse and six children, mental health issues, and making it harder to access legal representation to defend against removal. Furthermore, Petitioner has a viable 42B Application before the Immigration Court. On the other hand, if the Petitioner is out on bond, he would be transferred to the non-detained docket, where he may seek 42B Cancellation of Removal.

D. THE PUBLIC INTEREST FAVORS RELIEF

19. 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 cases cited in Petition ¶¶ 36-40.

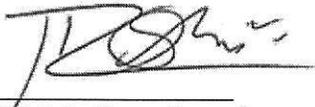
E. NO BOND IS REQUIRED

20. Under Fed. R. Civ. P. 65(c), the Court has discretion to waive security for indigent detainees. Petitioner, detained and without means, requests that no bond be required.

F. CONCLUSION

21. For the foregoing reasons, the Court should grant the Petitioner's TRO and PI. Petitioner requests immediate release on a reasonable bond and conditions.

Respectfully submitted, December 8, 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 December 8, 2025



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