

MOTION FOR TEMPORARY RESTRAINING ORDER (TRO)

United States Courts
Southern District of Texas
FILED

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

DAVID ROJAS MELLADO,

Petitioner,

v. _____

Warden at Port Isabel Detention Center

Respondents.

**PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

Petitioner David Rojas Mellado, through undersigned counsel, respectfully moves this Court for an Emergency Temporary Restraining Order preventing his continued unlawful detention and ordering immediate release or, at minimum, a constitutionally adequate bond hearing.

I. INTRODUCTION

Petitioner is a long-term resident of the United States (here over 10 years), married to a U.S. citizen and father of three U.S.-citizen children, with zero criminal history.

He was arrested during a routine traffic stop—not at the border—yet DHS improperly classified him under **INA § 235(b)(2)** and denied him access to a bond hearing. The Immigration Judge declined jurisdiction, misapplying **Matter of Q. Li**, which applies only to recent arrivals detained at the border.

Petitioner is now suffering irreparable harm due to prolonged detention at the Port Isabel Detention Center (PIDC), despite overwhelming evidence of eligibility for release under **INA § 236(a)**.

Relief is urgently required.

II. LEGAL STANDARD FOR TRO

A TRO is warranted when the movant shows:

1. Substantial likelihood of success on the merits;
2. Substantial threat of irreparable harm;

- 3. Balance of equities favors movant;
 - 4. TRO serves the public interest.
- See *Winter v. NRDC*, 555 U.S. 7 (2008).

All four requirements are met.

III. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

1. Section 236(a) governs interior arrests

Every federal court to address DHS's 2025 interpretation has rejected it:

- **Kostak v. Trump** (W.D. La. Aug. 27, 2025)
- **Martinez v. Hyde** (D. Mass. July 24, 2025)
- **Lopez Benitez v. Francis** (S.D.N.Y. Aug. 13, 2025)
- **Maldonado v. Olson** (D. Minn. Aug. 15, 2025)

Each court held **§ 235(b)(2)** applies only to people seeking admission at the border, not long-term residents detained in the interior.

2. Matter of Q. Li does not apply to Petitioner

Q. Li concerned a noncitizen detained at the port of entry without inspection. Petitioner was detained 10 years after entry, during a traffic stop.

The BIA confirmed, in **Matter of Akhmedov**, 29 I&N Dec. 166 (BIA 2025), that *Q. Li* is limited to recent entrants.

3. Due process requires an individualized bond hearing

Prolonged detention without an individualized assessment violates:

- Fifth Amendment Due Process;
- *Zadvydas v. Davis*, 533 U.S. 678 (2001);
- Multiple circuits requiring the government to justify civil detention by clear and convincing evidence.

Petitioner has never received such a hearing.

B. Petitioner Faces Immediate and Irreparable Harm

- Prolonged civil confinement at PIDC
- Threat to mental health and family stability
- Inability to support U.S.-citizen wife and children
- Ongoing harm cannot be remedied by monetary damages

Courts consistently hold that unlawful detention itself is irreparable harm.

C. Balance of Equities Favors Petitioner

Petitioner has no criminal record, strong community support, a U.S.-citizen family, and pending immigration applications.

DHS will suffer no harm from a lawful hearing or release.

D. The Public Interest Supports Granting the TRO

The public has an interest in:

- lawful and constitutional detention practices;
- family unity;
- ensuring long-term residents are not wrongfully detained.

IV. REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. Enjoin Respondents from continuing to detain Petitioner without a lawful basis;
2. Order his immediate release, OR
3. Order Respondents to provide an individualized bond hearing within 7 days where:
 - o Government bears burden of proof;
 - o Standard is clear and convincing evidence;
4. must consider ability to pay and alternatives to detention;

4. Prohibit transfer outside this District during pendency,

5. Grant any further relief the Court deems just and proper.