

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

SOTERO SALMERON GONZALEZ,

'26CV2589 DMS AHG


Petitioner,

v.

MARKWAYNE MULLINS, Secretary, U.S. Department of Homeland Security, et al.,

Respondents.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

I. INTRODUCTION

Petitioner Sotero Salmeron Gonzalez, by and through counsel, respectfully moves this Honorable Court for the issuance of an **Emergency Temporary Restraining Order ("TRO")** and **Preliminary Injunction** pursuant to Rule 65 of the Federal Rules of Civil Procedure.

Petitioner seeks immediate injunctive relief to:

1. Prevent his continued unlawful detention at the Otay Mesa Detention Center;
2. Prevent transfer outside this Court's jurisdiction; and
3. Require Respondents to provide a constitutionally adequate bond hearing or immediate release.

Petitioner has been detained for more than **180 days**, and his continued detention—without a meaningful custody determination—violates the **Fifth Amendment Due Process Clause**.

II. LEGAL STANDARD

A Temporary Restraining Order may be granted where the movant establishes:

1. Likelihood of success on the merits;

2. Likelihood of irreparable harm;
3. Balance of equities tips in petitioner's favor;
4. Injunction is in the public interest.

See:

- *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008)

III. ARGUMENT

A. LIKELIHOOD OF SUCCESS ON THE MERITS

Petitioner is likely to succeed because his detention is **unlawful under the Constitution and federal law**.

1. Due Process Violation

The Fifth Amendment prohibits prolonged detention without an individualized hearing.

See:

- *Zadvydas v. Davis*, 533 U.S. 678 (2001)
- *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011)
- *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)

Petitioner has been denied bond **not based on danger or flight risk**, but solely on a jurisdictional interpretation.

2. Improper Application of INA § 235(b)

Respondents improperly classify Petitioner as an “applicant for admission,” despite his long-term presence in the United States since 2006.

See:

- *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024)
- *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020)

Petitioner should be subject to **INA § 236(a)**, which allows for bond.

3. Erroneous Denial of Bond Jurisdiction

The Immigration Court denied custody redetermination based solely on:

- **INA § 235(b)**

- *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)

However, this interpretation is legally flawed and currently contested in federal courts.

B. IRREPARABLE HARM

Petitioner is suffering ongoing irreparable harm:

- Loss of liberty;
- Separation from his U.S. citizen children;
- Emotional and psychological harm to his family;
- Continued detention without lawful basis.

The Ninth Circuit has held that **unlawful detention itself constitutes irreparable harm.**

C. BALANCE OF EQUITIES

The equities weigh heavily in Petitioner's favor:

- Petitioner poses **no danger**;
- Petitioner is **not a flight risk**;
- Petitioner has strong family ties and pending relief.

Respondents suffer **no harm** from release under supervision.

D. PUBLIC INTEREST

The public interest strongly favors:

- Upholding constitutional protections;
- Preventing unlawful detention;
- Ensuring due process in immigration proceedings.

IV. REQUEST FOR EMERGENCY RELIEF

Petitioner respectfully requests that this Court:

IMMEDIATE RELIEF (TRO):

1. Issue a **Temporary Restraining Order** prohibiting Respondents from:
 - Continuing Petitioner's unlawful detention;
 - Transferring Petitioner outside this jurisdiction;
2. Order Respondents to:
 - **Immediately release Petitioner, OR**
 - **Provide a bond hearing within 7 days;**

1 **PRELIMINARY INJUNCTION:**

- 2 3. Set a prompt hearing on a Preliminary Injunction;
3 4. Maintain jurisdiction and enforce compliance.

4 **V. EX PARTE RELIEF JUSTIFICATION**

5 Emergency relief is warranted without delay because:

- 6 • Petitioner has already been detained for more than 180 days;
7 • Administrative remedies are exhausted and futile;
8 • Continued detention causes immediate and ongoing harm.

9 **VI. CONCLUSION**

10 Petitioner's detention is unlawful, prolonged, and unconstitutional. Immediate intervention is
11 necessary to prevent further irreparable harm.

12 **DATED: 04/23/2026**

13 Respectfully submitted,

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16 **Jesse Blanco, Esq.**
17 Attorney for Petitioner
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