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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 JORGE ARRAZOLA-GONZALEZ,
18 Oswaldo GONZALEZ;

19 Petitioners,

20 v.

21 Kristi NOEM, et al.

22 Respondents.
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Case No. 5:25-cv-01789-ODW
(DFM)

PETITIONERS' *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

1 For the reasons explained in the accompanying Memorandum of
2 Points and Authorities, Petitioners hereby make this Ex Parte Application for
3 a Temporary Restraining Order and Order to Show Cause Re: Preliminary
4 Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. §
5 705. Petitioners have resided in the United States for more than 25 years and
6 were arrested as a part of a largescale immigration action in Los Angeles.
7 Both were charged in removal proceedings with having entered the United
8 States without inspection and appeared for bond hearings at the Adelanto
9 detention center. In both cases, immigration judges found that that they
10 lacked jurisdiction to consider bond redetermination hearings based on a
11 new directive issued by the Department of Homeland Security. The refusal
12 to hold a bond hearing violates the Immigration and Nationality Act and due
13 process. They now seek a temporary restraining order requiring that the
14 immigration judge hold a bond hearing. Expedited relief is necessary to
15 prevent irreparable injury before a hearing on a preliminary injunction may
16 be held.

17 Petitioners request that the Court issue a temporary restraining
18 order and order to show case re: preliminary injunction in the form of the
19 proposed order submitted concurrently with this Application. This
20 Application is based on the First Amended Petition for Writ of Habeas
21 Corpus, Memorandum of Points and Authorities, and the declaration and
22 exhibits in support thereof.

23 Respondents were advised on August 11, 2025 that Petitioners
24 would be filing this ex parte application and of the contents of this
25 application. Tolchin Decl. ¶ 3. See Local Rule 17-19.1.

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4 Dated: August 12, 2025

/s/ Stacy Tolchin

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I. INTRODUCTION

Petitioners Jorge Arrazola-Gonzalez and Oswaldo Gonzalez seek a Temporary Restraining Order that requires Respondents to release them from custody or to provide them with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

Although Petitioners were present and residing in the United States for over 25 years at the time of their immigration arrests, they were subjected to a new DHS policy issued on July 8, 2025 which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

The new DHS policy was issued “in coordination with the Department of Justice (DOJ).” *See* Tolchin Dec. Exh. H, ICE Interim Guidance Regarding Detention Authority for Applicants for Admission. Each Petitioner is detained at the Adelanto ICE Processing Center and has been denied a bond hearing by an IJ based on this new policy. *See* Tolchin Dec. Exhs. C, G.

The denial of bond hearings to Petitioners and their ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* *See Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM, Dkt # 14 (C.D. Ca. Jul. 28, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025).

Despite the new DHS policy’s assertions to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioners who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on bond or

1 conditional parole. Section 1226(a) expressly applies to people who, like
2 Petitioners, are charged as removable for having entered the United States without
3 inspection and being present without admission.

4 Respondents' new legal interpretation set forth in the policy is plainly
5 contrary to the statutory framework and contrary to decades of agency practice
6 applying § 1226(a) to people like Petitioners who are present within the United
7 States. Respondents' new policy and the resulting ongoing detention of Petitioners
8 without a bond hearing is depriving Petitioners of statutory and constitutional
9 rights and unquestionably constitutes irreparable injury.

10 Petitioners therefore seek a Temporary Restraining Order enjoining
11 Respondents from continuing to detain him unless Petitioner are provided an
12 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §
13 1226(a) within seven days of the TRO.

14 Petitioners also seek an Order prohibiting Respondents from relocating
15 Petitioners outside of the Central District pending final resolution of this litigation.

16 **II. STATEMENT OF FACTS**

17 Petitioner Jorge Arrazola-Gonzalez has resided in the United States for
18 over 25 years. On June 6, 2025, he was arrested by immigration authorities as
19 part of a widescale immigration enforcement action in Los Angeles. Tolchin
20 Dec. Exh. A, D. Petitioner Oswaldo Gonzalez has also resided in the United
21 States for over 25 years. He was arrested on June 18, 2025. Tolchin Dec. Exh. E.
22 Within this action, individuals were mistreated and taken for no other reason
23 than their racial presentation, as addressed by the temporary restraining order in
24 *Vasquez Perdomo v. Noem*, No. 2:25-CV-05605-MEMF-SP, 2025 WL 1915964
25 (C.D. Cal. July 11, 2025). There, the Court found that there was evidence that
26 impermissible factors such as race, language, employment, and location, were
27 being used to to detain individuals in a during a largescale immigration action in
28

1 Los Angeles. This finding was affirmed by the Ninth Circuit. *Vasquez Perdomo*
2 *et al., v. Noem*, ___ F. 4th ___ No. 25-4312, 2025 WL 2181709 (9th Cir. Aug. 1,
3 2025) *application for administrative stay pending before the Supreme Court* No.
4 25A169 (filed Aug. 7, 2025).

5 Petitioners are now detained at the Adelanto ICE Processing Center in
6 Adelanto, California and have been placed into removal proceedings. Tolchin
7 Dec. Exhs. B, F. Both were charged with having entered the United States
8 without inspection. 8 U.S.C. § 1182(a)(6)(A)(i). Tolchin Dec. Exhs. B, F.
9 Petitioners requested bond hearing before an immigration judge.

10 The immigration judges denied both Petitioners' request for bond hearings
11 based on lack of jurisdiction. Petitioner Jorge Arrazola-Gonzalez was denied
12 bond on July 12, 2025, and Petitioner Oswaldo Gonzalez was denied bond on
13 August 7, 2025.

14 Petitioners have now been detained in immigration custody without a right
15 to bond for approximately two months.

16 **III. ARGUMENT**

17 The requirements for granting a Temporary Restraining Order are
18 "substantially identical" to those for granting a preliminary injunction. *Stuhlbarg*
19 *Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

20 Petitioners must demonstrate that (1) they are likely to succeed on the merits
21 of their claims; (2) they are likely to suffer irreparable harm in the absence of
22 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
23 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
24 (2008). A sliding scale test may be applied and an injunction should be issued
25 when there is a stronger showing on the balance of hardships, even if there are
26 "serious questions on the merits ... so long as the plaintiff also shows a likelihood
27 of irreparable harm and that the injunction is in the public interest." *All. for the*
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1 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
2 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
3 2024).

4 Petitioners satisfy the criteria and a TRO should be granted.

5
6 A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF
7 THEIR CLAIMS.

8 Petitioners are likely to succeed on their claims that their ongoing detention
9 by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before
10 an immigration judge is unlawful.

11 The text, context, and legislative and statutory history of the Immigration
12 and Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs their
13 detention.

14 1. The Text Of § 1226(a) and § 1225(b)(2) Demonstrate That
15 Petitioners Are Not Subject To Mandatory Detention.

16 First, the plain text of § 1226 demonstrates that subsection (a) applies to
17 Petitioners. By its own terms, § 1226(a) applies to anyone who is detained
18 “pending a decision on whether the [noncitizen] is to be removed from the United
19 States.” 8 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority
20 includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a),
21 but also noncitizens, such as Petitioners, who are inadmissible pursuant to 8 U.S.C.
22 § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out
23 specific categories of noncitizens from being released— including certain
24 categories of inadmissible noncitizens—and subjects them instead to mandatory
25 detention. See, e.g., § 1226(c)(1)(A), (C).

26 If Respondents’ position that § 1226(a) did not apply to inadmissible
27 noncitizens such as Petitioners who are present without admission in the United
28 States were correct, there would be no reason to specify that § 1226(c) governs

1 certain persons who are inadmissible; instead, the statute would only have needed
2 to address people who are deportable for certain offenses. Notably, recent
3 amendments to § 1226 dramatically reinforce that this section covers people like
4 Petitioners who DHS alleges to be present without admission. The Laken Riley
5 Act added language to § 1226 that directly references people who have entered
6 without inspection, those who are inadmissible because they are present without
7 admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).
8 Specifically, pursuant to the LRA amendments, people charged as inadmissible
9 pursuant to § 1182(a)(6) (the inadmissibility ground for presence without
10 admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid
11 documentation to enter the United States) *and* who have been arrested, charged
12 with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention
13 provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under §
14 1226(c), Congress further clarified that § 1226(a) covers persons charged under §
15 1182(a)(6) or (a)(7). In other words, if someone is *only* charged as inadmissible
16 under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of §
17 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See*
18 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at
19 *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide
20 that § 1226(a) covers people like Petitioners because the "'specific exceptions' [in
21 the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted
22 of the enumerated crimes logically leaves those inadmissible noncitizens not
23 criminally implicated under Section 1226(a)'s default rule for discretionary
24 detention."'); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24,
25 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were
26 alone already sufficient to mandate detention under section 1225(b)(2)(A), then the
27 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v.*
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Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Despite the clear statutory language, DHS issued a new policy on July 8, 2025 instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an “applicant for admission” and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See Tolchin Dec. Exh. H, “Interim Guidance Regarding Detention Authority for Applicants for Admission”, ICE, July 8, 2025.* The new policy was implemented “in coordination with” the Department of Justice. *Id.* And on May 22, 2025, in an unpublished decision from the Board of Immigration Appeals, EOIR adopted this same position. *See Tolchin Dec. Exh. I, BIA Decision, Case No. XXX-XXX-269, May 22, 2025.* Petitioners have each been denied a bond hearing before an IJ pursuant to this new policy. *See Tolchin Dec. Exhs. C, G.*

The new policy is also inconsistent with the canon against superfluities. Under this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.’” (citation omitted)). But by concluding that the mandatory detention provision of § 1225(b)(2) applies to Petitioners, DHS and EOIR violate this rule.

1 In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read
2 to apply to everyone who is in the United States "who has not been admitted."
3 Section 1226(a) covers those who are present within and residing within the
4 United States and who are not at the border seeking admission. The text of § 1225
5 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
6 concerned "primarily [with those] seeking entry," *Jennings v. Rodriguez*, 583 U.S.
7 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the
8 Government must determine whether a[] [noncitizen] seeking to enter the country
9 is admissible," *id.* at 287.

10 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
11 paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving
12 [noncitizens]"—encompasses only the "inspection" of certain "arriving"
13 noncitizens and other recent entrants the Attorney General designates, and only
14 those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8
15 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who
16 misrepresent information to an examining immigration officer or do not have
17 adequate documents to enter the United States. Thus, subsection (b)(1)'s text
18 demonstrates that it is focused only on people arriving at a port of entry or who
19 have recently entered the United States and not those already residing here.
20 Paragraph (b)(2) is similarly limited to people applying for admission when they
21 arrive in the United States. The title explains that this paragraph addresses the
22 "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking
23 admission," but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By
24 limiting (b)(2) to those "seeking admission," Congress confirmed that it did not
25 intend to sweep into this section individuals like Petitioners, who have already
26 entered and are now residing in the United States. An individual submits an
27 "application for admission" only at "the moment in time when the immigrant
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1 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d
2 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of
3 Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in
4 the United States without admission or parole is someone “deemed to have made
5 an actual application for admission.” *Id.* (emphasis omitted). That holding is
6 instructive here too, as only those who take affirmative acts, like submitting an
7 “application for admission,” are those who can be said to be “seeking admission”
8 within § 1225(b)(2)(A). Otherwise, that language would serve no purpose,
9 violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

10 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
11 [noncitizens] arriving from contiguous territory,” i.e. those who are “arriving on
12 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
13 underscores Congress’s focus in § 1225 on those who are arriving into the United
14 States—not those already residing here. Similarly, the title of § 1225 refers to the
15 “inspection” of “inadmissible arriving” noncitizens. *See Dubin v. United States*,
16 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
17 construe statute).

18 Finally, the entire statute is premised on the idea that an inspection occurs
19 near the border and shortly after arrival, as the statute repeatedly refers to
20 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
21 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
22 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
23 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
24 meaning”).

25 The new DHS and EOIR policy and the IJ orders denying bond to Petitioner
26 on this basis ignore all this and instead focus on the definition of “applicant for
27 admission” at § 1225(a)(1) (*see Tolchin Dec. Exh. H, “Interim Guidance*
28

1 Regarding Detention Authority for Applicants for Admission”, ICE, July 8, 2025;
2 Tolchin Dec. Exhs. C and G, IJ Bond Orders for Petitioners) which defines an
3 “applicant for admission” as a person who is “present in the United States who has
4 not been admitted or who arrives in the United States,” 8 U.S.C. § 1225(a)(1). But
5 as the Ninth Circuit has explained, “when deciding whether language is plain,
6 [courts] must read the words in their context and with a view to their place in the
7 overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236,
8 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that context
9 underscores that the definition in (a)(1) is limited by other aspects of the statute to
10 those who undergo an initial inspection at or near a port of entry shortly after
11 arrival—and that it does not apply to those who are arrested in the interior of the
12 United States months or years or decades later.

13 Significantly, in deeming that all noncitizens who entered without inspection
14 are necessarily encompassed by the mandatory detention provision at § 1225(b)(2),
15 the DHS and EOIR policy ignores that the provision does not simply address
16 applicants for admission. Instead, the language “applicant for admission” in
17 (b)(2)(A) is further qualified by clarifying the subparagraph applies only to those
18 “seeking admission”—in other words, those who have applied to be admitted or
19 paroled. The new policy and the IJs’ implementation of the policy ignores this text,
20 just as it ignores the statutory language in § 1226 that expressly encompasses
21 persons who have entered the United States and are present without admission.
22 Thus, Petitioners’ prevail regardless of the scope of § 1225(a)(1)’s definition of
23 “applicant for admission.” This is because classification as an “applicant for
24 admission,” is not sufficient to render someone subject to mandatory detention
25 under § 1225(b)(2). The “applicant for admission” must *also* be “seeking
26 admission,” and that is clearly not the case for Petitioners.
27
28

2. The Legislative History Further Supports The Application Of § 1226(a) To Petitioners' Detention.

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies to Petitioners. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioners were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States*.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

3. The Record And Longstanding Agency Practice Reflect That § 1226 Governs Petitioners' Detention.

DHS's long practice of considering people like the Petitioners as detained under §1226(a) further supports this reading of the statute. Typically, in cases like

1 that of the Petitioners, DHS issues a Form I-286, Notice of Custody Determination,
2 or Form I-200 stating that the person is detained under § 1226(a) or has been
3 arrested under that statute. This decision to invoke § 1226(a) is consistent
4 with longstanding practice. For decades, and across administrations, DHS has
5 acknowledged that § 1226(a) applies to individuals who are present without
6 admission after entering the United States unlawfully, but who were later
7 apprehended within the United States long after their entry. Such a longstanding
8 and consistent interpretation “is powerful evidence that interpreting the Act in
9 [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203
10 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462
11 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
12 interpretation and practice to reject government’s new proposed interpretation of
13 the law at issue).

14 Indeed, agency regulations have long recognized that people like Petitioners
15 are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
16 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
17 fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the
18 regulations governing immigration courts and implementing § 1226 decades ago.
19 Specifically, EOIR explained that “[d]espite being applicants for admission,
20 [noncitizens] who are present without having been admitted or paroled (formerly
21 referred to as [noncitizens] who entered without inspection) will be eligible for
22 bond and bond redetermination.” 62 Fed. Reg. at 10323.3

23 In sum, § 1226 governs this case. Section 1225 and its mandatory detention
24 provision applies only to individuals arriving in the United States as specified in
25 the statute, while § 1226 applies to those who have previously entered without
26 admission and are now present and residing in the United States.
27
28

1 B. PETITIONERS WILL SUFFER IRREPARABLE HARM IN THE
2 ABSENCE OF A TRO.

3 In the absence of a TRO, Petitioners will continue to be unlawfully detained
4 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.
5 Petitioners have now been without a bond hearing for two months.

6 “Freedom from imprisonment—from government custody, detention, or
7 other forms of physical restraint—lies at the heart of the liberty” that the Due
8 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
9 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
10 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
11 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
12 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
13 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
14 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
15 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
16 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
17 government's current policies [which fail to consider financial ability to pay
18 immigration bonds] are likely unconstitutional—and thus that members of the
19 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
20 the absence of the injunction—that Plaintiffs have also carried their burden as to
21 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
22 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
23 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
24 Petitioners’ continued detention without an initial bond hearing would cause
25 immediate and irreparable injury, as this violates statutory rights afforded under §
26 1226(a).”)

27 C. THE BALANCE OF EQUITIES TIPS IN PETITIONERS’ FAVOR
28 AND A TRO IS IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered

1 together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established
2 that the public interest factor weighs in their favor because their claims assert that
3 the new policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732
4 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioners from
5 obtaining bond “is inconsistent with federal law, . . . the balance of hardships and
6 public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez*
7 *v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also*
8 *Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent
9 injunction issued in *Moreno II* and quoting approvingly district judge’s declaration
10 that “it is clear that neither equity nor the public’s interest are furthered by
11 allowing violations of federal law to continue”). This is because “it would not be
12 equitable or in the public’s interest to allow the [government] . . . to violate the
13 requirements of federal law, especially when there are no adequate remedies
14 available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)
15 (second alteration in original) (citation omitted). Indeed, Respondent “cannot
16 suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*
17 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

18
19 **D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.**

20 Prudential exhaustion does not require Petitioners to be forced to endure the
21 very harm they are seeking to avoid by appealing the IJ bond orders to the Board
22 of Immigration Appeals and waiting many months for a decision from the BIA.
23 “[T]here are a number of exceptions to the general rule requiring exhaustion,
24 covering situations such as where administrative remedies are inadequate or not
25 efficacious, . . . [or] irreparable injury will result . . .” *Laing v. Ashcroft*, 370 F.3d
26 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court may waive an
27 exhaustion requirement when “requiring resort to the administrative remedy may
28 occasion undue prejudice to subsequent assertion of a court action.” *McCarthy v.*

1 *Madigan*, 503 U.S. 140, 146–47 (1992), *superseded by statute on other grounds as*
2 *stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001). “Such prejudice may
3 result . . . from an unreasonable or indefinite time frame for administrative action.”
4 *Id.* at 147 (citing cases). Here, the exceptions regarding irreparable injury and
5 agency delay apply and warrant waiving any prudential exhaustion requirement.

6 7 **1. Futility**

8 Futility is an exception to the prudential exhaustion requirement. Petitioners
9 have been subjected to the new DHS policy issued on July 8, 2025 instructing all
10 ICE employees to consider anyone arrested within the United States and charged
11 with being inadmissible under § 1182(a)(6)(A)(i) to be an “applicant for
12 admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory
13 detention. The DHS policy states it was issued “in coordination with the
14 Department of Justice (DOJ).” *See* Tolchin Dec. Exh. H. IJs function within the
15 Executive Office for Immigration Review which is a component of the Department
16 of Justice. Petitioners have been denied a bond hearing by an IJ based on this new
17 policy. *See* Tolchin Dec. Exhs. C, G.

18 Further, the most recent unpublished BIA decision on this issue held that
19 persons like Petitioners are subject to mandatory detention as applicants for
20 admission. *See* Tolchin Dec. Exh. I, BIA Decision, Case No. XXX-XXX-269,
21 May 22, 2025. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the
22 Attorney General are defendants, DOJ has affirmed its position that individuals
23 like Petitioners are applicants for admission and subject to detention under §
24 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-
25 05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31. *See also* *Maldonado*
26 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July
27 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 11 (in a case
28 with identical facts and legal arguments, the Court stated it “was unconvinced that

1 the administrative process would self-correct in light of the DHS Guidance
2 Notice.” The Court also noted “DHS’s unequivocal commitment to the contested
3 legal authority in [the] matter[.]”) Under these facts, appeals to the BIA would be
4 futile.

5 6 **2. Irreparable injury**

7 Irreparable injury is an exception to any prudential exhaustion requirement.
8 Because Petitioners were denied bond and ordered mandatorily detained, each day
9 they remain in detention is one in which their statutory and constitutional rights
10 have been violated. Similarly situated district courts have repeatedly recognized
11 this fact. As one court has explained, “because of delays inherent in the
12 administrative process, BIA review would result in the very harm that the bond
13 hearing was designed to prevent: prolonged detention without due process.”
14 *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal
15 quotation marks omitted). Indeed, “if Petitioner is correct on the merits of his
16 habeas petition, then Petitioner has *already* been unlawfully deprived of a [lawful]
17 bond hearing[,], [and] . . . each additional day that Petitioner is detained without a
18 [lawful] bond hearing would cause him harm that cannot be repaired.” *Villalta v.*
19 *Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2,
20 2017) (internal quotation marks and brackets omitted); *see also Cortez v. Sessions*,
21 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have
22 echoed these points.¹

23
24 ¹ *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v.*
25 *Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F.
26 Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d
27 993, 1003–04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-
28 JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*,
No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020);
Birru v. Barr, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal.

Petitioner asserts both statutory and constitutional claims and have a “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

Moreover, the irreparable injury Petitioners face extends beyond a chance at physical liberty. There are several “irreparable harms imposed on anyone subject to immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar medical and psychiatric care in ICE detention facilities.” *Id.*

3. Agency delay

Third, the BIA’s delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A court’s ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the Ninth Circuit has explained, Supreme Court precedent “permits a court under certain prescribed circumstances to excuse exhaustion where ‘a claimant’s interest in having a particular issue resolved promptly is so great that deference to the agency’s judgment [of a lack of finality] is inappropriate.’” *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)). Of course, as noted above, Petitioners’ interest here in physical liberty is a “fundamental” one. *Hernandez*, 872 F.3d at 993. Moreover, the Supreme Court has explained that “[r]elief [when seeking review of detention] must be speedy if it is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this fundamental interest and the Supreme Court’s admonition that only speedy relief is meaningful, the BIA takes over half a year in most cases to adjudicate an appeal of a decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up in a detention facility with conditions

Apr. 17, 2020; *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec. 24, 2018).

1 “similar . . . to those in many prisons and jails” and separated from family.
2 *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g., Hernandez*, 872
3 F.3d at 996.

4 District courts facing situations similar to the one at issue here
5 acknowledged that the BIA’s months-long review is unreasonable and results in
6 ongoing injury to the detained individual. *See, e.g., Perez*, 445 F. Supp. 3d at 286.

7 Indeed, as one district judge observed, “the vast majority of . . . cases . . .
8 have ‘waived exhaustion . . . where several additional months may pass before the
9 BIA renders a decision on a pending appeal [of a custody order].” *Montoya*
10 *Echeverria*, 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL
11 1984301, at *5); *see also Hechavarria*, 358 F. Supp. 3d at 237–38 (citing
12 *McCarthy* and BIA delays as reason to waive prudential exhaustion requirement).

13 Additionally, the issues presented in this petition are questions of statutory
14 interpretation which are “unlikely to require agency consideration to generate a
15 proper record to reach a proper decision.” *Maldonado Bautista et al. v. Santacruz,*
16 *et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting
17 Temporary Restraining Order, Dkt. 14 at 11.

18
19 **E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF**

20 Finally, nothing in the Immigration and Nationality Act precludes this Court
21 from granting the TRO.

22 The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial
23 review of all questions of law . . . including interpretation and application of
24 constitutional and statutory provisions, arising from any action taken . . . to remove
25 an alien from the United States” to the appropriate federal court of appeals, does
26 not apply because that section applies only to review of removal orders, and
27 Petitioners do not seek review of orders of removal but of custody. *Maldonado*
28 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July

1 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

2 The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to
3 hear “any cause or claim by or on behalf of any alien arising from the decision or
4 action by the Attorney General to commence proceedings, adjudicate cases, or
5 execute removal orders against any alien under this chapter.” The Supreme Court
6 previously characterized § 1252(g) as a narrow provision, applying “only to three
7 discrete actions that the Attorney General may take: her ‘decision or action’ to
8 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v.*
9 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in
10 original). In doing so, the Supreme Court found it “implausible that the mention of
11 *three discrete events* along the road to deportation was a shorthand way to
12 referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis added).
13 Petitioners’ challenge to their detention does not fall within these discrete actions.
14 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
15 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

16 Finally, 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”
17 Section 1252(a)(2) contains four subsections, which outlines categories of claims
18 that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these
19 subsections precluding judicial review apply to this matter, as the specified
20 statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two
21 provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of
22 jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-
23 SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining
24 Order, Dkt. 14 at 6.

25 As such, the Court has jurisdiction over Petitioners’ challenge to their
26 detention.
27
28

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should grant Petitioners' Application
3 for a Temporary Restraining Order and Order to Show Cause.

4
5 Dated: August 12, 2025

Respectfully Submitted,

6 S/Stacy Tolchin

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Memo contains 5546 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin

Stacy Tolchin
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF STACY TOLCHIN; AND [PROPOSED] ORDER by email to the following individual:

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United States Attorney's Office | Central District of California
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15 **UNITED STATES DISTRICT COURT FOR THE**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 JORGE ARRAZOLA-GONZALEZ,
18 Oswaldo GONZALEZ;

19 Petitioners,
20 v.

21 Kristi NOEM, et al.

22 Respondents.
23
24
25
26
27
28

No. 5:25-cv-01789-ODW
(DFM)

DECLARATION OF STACY
TOLCHIN IN SUPPORT OF
PETITIONER'S *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

1 I, Stacy Tolchin, hereby declare and state the following:

2 1. My business address is Law Offices of Stacy Tolchin, 776 E. Green St.
3 Suite 210, Pasadena, CA 91101.

4 2. I have personal knowledge of the events described below.

5 3. On August 11, 2025 I emailed with Randy Hsieh, counsel for
6 Respondents. I informed him of Petitioners' intent to file an ex parte motion to seek
7 their release from custody and sent a copy of the complaint to his office. I also left
8 a message by phone. Mr. Hsieh is aware of the filing and has indicated that the
9 application is opposed.

10 4. Attached as **Exhibit A** is the Form I 213 issued by the Department of
11 Homeland Security to Petitioner Jorge Arrazola-Gonzalez.

12 5. Attached as **Exhibit B** is the Notice to Appear and lodging of additional
13 charges that the Department of Homeland Security issued to Petitioner Jorge
14 Arrazola-Gonzalez.

15 6. Attached as **Exhibit C** is the immigration judge's decision in Petitioner
16 Jorge Arrazola-Gonzalez's bond hearing, denying for lack of jurisdiction, dated
17 July 11, 2025.

18 7. Attached as **Exhibit D** is a declaration from Petitioner Jorge Arrazola-
19 Gonzalez.

20 8. Attached as **Exhibit E** is the Form I 213 issued by the Department of
21 Homeland Security to Petitioner Oswaldo Gonzalez.

22 9. Attached as **Exhibit F** is the Notice to Appear that the Department of
23 Homeland Security issued to Petitioner Oswaldo Gonzalez.

24 10. Attached as **Exhibit G** is the immigration judge's decision in Petitioner
25 Oswaldo Gonzalez's bond hearing, denying for lack of jurisdiction, dated August 7,
26 2025.

1 11. Attached as **Exhibit H** is ICE's Interim Guidance Regarding Detention
2 Authority for Applicants for Admission

3 12. Attached as **Exhibit I** is a redacted copy of the Board of Immigration
4 Appeals' May 22, 2025 BIA Decision Case No. XXX-XXX-269.

5
6 Pursuant to 28 C.F.R. § 24.201(f), I hereby verify that the information
7 provided in the application and all accompanying material is true and correct to the
8 best of my information and belief. Executed this 12th day of August 2025 at
9 Pasadena, CA.

10
11 S/Stacy Tolchin

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