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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Jefferson DOMINGUEZ-LARA; Jose RAMIREZ, on behalf of themselves as individuals and on behalf of others similarly situated,	
Plaintiffs,	CIVIL NO. 2:25-CV-1553
vs.	PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAM BONDI, United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; BRYAN WILCOX, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; John Mattos, Warden, Nevada Southern Detention Center; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR); Sirce OWEN, Acting Director, EOIR; LAS VEGAS IMMIGRATION COURT	
Defendants.	

INTRODUCTION

Named Plaintiffs seek a preliminary injunction that requires Defendants to accept their bond payment, that enjoins Defendants from applying stays on bond grants under 8 C.F.R. 1003.6, and that requires the BIA to adjudicate bond appeals within 30 days.

Although Plaintiffs have lived in the United States for several years, Defendants are attempting to have Plaintiffs treated as applicants for admission to the U.S., requiring mandatory detention under 8 U.S.C. §1225(b)(2). But §1226(a)'s discretionary detention scheme—and not §1225(b)(2)'s detention authority—governs Plaintiffs' detention as held by the Las Vegas Immigration Court.

Section 1226's plain language makes this clear. Under that statute, the Department of Homeland Security (DHS) may detain a noncitizen pending a hearing on that person's admissibility. In fact, the statute explicitly extends to people who are inadmissible because they entered unlawfully.

The statutory language is unambiguous; §1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Indeed, in contrast to §1226(a), the whole purpose of §1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. Section 1225(b)(2) thus does not apply to people like Plaintiffs, who are "already in the country" and are detained "pending the outcome of removal proceedings." *Id*. at 289.

The Court should not require administrative exhaustion.

Appeals to the Board of Immigration Appeals (BIA or the Board) inflict the very harm Plaintiffs seek to avoid, where appeals take six months or more to resolve.

STATEMENT OF FACTS

I. ICE's adopted a policy of filing frivolous appeals

This case concerns the detention authority for people who entered the United States without inspection, are not apprehended upon arrival, and are not subject to some other detention authority, like the detention authority for people in expedited removal, 8 U.S.C. §1225(b)(1), or withholding-only proceedings, see id. §1231(a)(6). For decades, people who have been residing in the United States, often for years had bond determinations based on the merits of their cases.

Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found at 8 U.S.C. §1252(a). That statute provided for a noncitizen's detention during deportation proceedings, as well as authority to release the noncitizen on bond. Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. IIRIRA maintained the same basic detention authority in the new §1226(a). Indeed, when passing IIRIRA, Congress explained that the new §1226(a) merely "restates the current provisions in [8 U.S.C. §1252(a)] 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 (1996); see also H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). Separately, Congress enacted new detention authorities for people arriving in or who recently entered the United States, including a new expedited removal scheme for those arriving or who recently entered. See 8 U.S.C. §1225(b)(1)–(2). In implementing this new detention authority, the former Immigration and Naturalization Service clarified that people who entered the United States without inspection and who were not in expedited removal would continue to be detained. Separately, "exclusion" proceedings covered those who arrived at U.S. ports of entries and had never entered the United States. See 8 U.S.C. §1225 (1994) (providing for inspection and detention of noncitizens "arriving at ports of the United States"); id. §1226 (1994) (providing for exclusion proceedings of "arriving" noncitizens detained for further inquiry).

The distinction between §1226(a) detention and §1225(b) detention is important.

Detention under §1226(a) includes the right to a bond hearing before a neutral decisionmaker— specifically, an IJ. See 8 C.F.R. §1236.1(d). At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors that show they are not a flight risk or danger to the community. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people determined to be detained under §1225(b) are subject to mandatory detention and receive no bond hearing. 8 U.S.C. §1225(b)(1)(B)(ii), (iii)(IV), (b)(2). They may only be released at the discretion of the arresting agency via humanitarian parole. *Jennings*, 583 U.S. at 288; see also 8 U.S.C. §1182(d)(5)(A).

For the first 25 years after IIRIRA was enacted, immigration courts across the country applied §1226(a) to the detention of people who were apprehended within the United States after having entered without inspection.

ICE has made a drastic policy shift that contradicts the plain language of the law, affecting those detained at NSDC. Hundreds of people have been denied the opportunity to post their bond, forcing them to litigate their cases from detention or to give up altogether. Many, if not most, of these individuals have resided in the United States for years, or even decades.

Meanwhile, BIA appeals do not provide any meaningful relief where nearly all cases are mooted out.

ARGUMENT

To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Plaintiffs raise only "serious questions going to the merits," the Court can nevertheless grant relief if the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied.

Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

I. Plaintiffs satisfy all the factors required for a preliminary injunction.

A. Plaintiffs are likely to succeed on the merits of their argument that ICE and EOIR are violating their Due Process by invoking automatic stays via frivolous appeals.

1. The text of §1226 and §1225 demonstrate that Plaintiffs are not subject to mandatory detention and ICE's appeals are frivolous.

First, the plain text of §1226 demonstrates that its subsection (a) applies to Plaintiffs. By its own terms, §1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. §1226(a).

Section 1226 goes on to explicitly confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible. While §1226(a) provides the right to seek release, §1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., id. §1226(c)(1)(A), (C). Clearly, if §1226(a) did not cover inadmissible noncitizens there would be no reason to specify that §1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses.

Generally speaking, grounds of deportability (found in 8 U.S.C. §1227) apply to people who have previously been admitted, such as lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in §1182) apply to those who have not been admitted to the United States. See, e.g., *Barton v. Barr*, 590 U.S. 222, 234 (2020).

Notably, recent amendments to §1226 dramatically reinforce that this section covers people such as Plaintiffs, whom DHS alleges to have entered without inspection. The Laken Riley Act added language to §1226 that directly references people who have entered without inspection or who are present without authorization. See Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to §1182(a)(6) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. §1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that, by default, §1226(a) covers persons charged under §1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under §1182(a)(6) or (a)(7) and the additional crime-related provisions of §1226(c)(1)(E) do not apply, then §1226(a) governs that person's detention. *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). In sum §1226's plain text demonstrates that §1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted," 8 U.S.C. §1225(a)(1).

Section 1226(a) covers those who are not now seeking admission but instead are already residing in the United States—including those who are charged with inadmissibility—while §1225(b)(2) covers only those "seeking admission," i.e., those who are apprehended upon arrival in the United States (and who are not subject to the procedures of §1225(b)(1)). A contrary interpretation would ignore §

1226(a)'s plain text and structure and render meaningless §1226's language that specifically addresses individuals who have entered without inspection.

The text of §1225 reinforces this interpretation. As the Supreme Court has recognized, §1225 is concerned "primarily [with those] seeking entry," Jennings, 583 U.S. at 297, i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," id. at 287. Paragraphs (b)(1) and (b)(2) in §1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or §1182(a)(7)." 8 U.S.C. §1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States.

Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here.

Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. Id. §1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals such as Plaintiffs, who have already entered and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc).

Indeed, in Torres, the en banc Court of Appeals rejected the idea that §1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." Id. (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within §1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key rule of statutory construction. *Shulman*, 58 F.4th at 410–11.

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

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

2. The legislative history further supports the application of §1226(a) to Plaintiffs.

The legislative history of IIRIRA also supports a limited construction of §1225 and instead concluding that §1226(a) applies to Plaintiffs. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who do 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 Plaintiffs were not subject to mandatory detention. See 8 U.S.C. §1252(a)(1)

(1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons 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 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 practice reflect that §1226 governs Plaintiffs' detention.

DHS's long practice of considering people like Plaintiffs as detained under §1226(a) prior to July of 2025 further supports this reading of the statute. Typically, in cases like that of Plaintiffs, DHS issues a Form I-286, Notice of Custody Determination or Form I-200 stating that the person is detained under §1226(a) or has been arrested under that statute. This decision to invoke §1226(a) is consistent with longstanding practice. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the

United States unlawfully, but who were later apprehended within the borders of the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); see also *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject the government's new proposed interpretation of the law at issue).

Indeed, agency regulations have long recognized that people like Plaintiffs are subject to detention under § 1226(a). Nothing in 8 C.F.R. §1003.19(h)—the regulatory basis for the immigration court's jurisdiction—provides otherwise. In fact, the Executive Office for Immigration Review (EOIR) confirmed that §1226(a) applies to Plaintiffs and proposed class members' cases when it promulgated the regulations governing immigration courts implementing §1226 decades ago. Specifically, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323.3

In sum, §1226 governs this case. Section 1225 applies only to individuals arriving in the United States as specified in the statute, while §1226 applies to those who have previously entered without admission and are now residing in the United States.

B. Plaintiffs will suffer irreparable harm absent an injunction.

Parties seeking preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, ICE's policy of filing frivolous appeals has resulted in continued detention. This detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II), aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); see also *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Plaintiffs' detention constitutes such a harm, as "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects.

Zadvydas v. Davis, 533 U.S. 678, 690 (2001). For this reason, the Supreme Court has repeatedly made clear that prolonged deprivations of liberty—like those that noncitizens regularly experience—require a timely hearing to test the legality of detention before a "neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); see also *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55–56 (1991) (similar); *Gonzalez v. United States Immigr. & Customs Enft*, 975 F.3d 788, 823–26 (9th Cir. 2020) (holding that Gerstein applies to the detention of noncitizens on a detainer); *Zadvydas*, 533 U.S. at 690 (detention requires a hearing before an independent decisionmaker to assess whether the detention "bear[s] [a] reasonable relation" to a valid government purpose, such as preventing flight or protecting the community against dangerous individuals (alterations in original) (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding Bail Reform Act's pre-trial civil detention scheme precisely because it required the government to justify detention in a "full-blown adversary hearing" before a "neutral decisionmaker"—a federal judge).

Plaintiffs' claims raise constitutional concerns, for civil detention "violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted). These constitutional concerns reflect irreparable harm, with a strong likelihood of success on his claim that he is being held under § 1226(a) and not § 1225(b)(2). *See Baird* *v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").

Detention has also taken an emotional and mental toll on Plaintiffs, who report significant emotional trauma and physical struggles. Such "emotional stress, depression and reduced sense of well-being" further support a finding of irreparable harm. *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988); see also *Moreno II*, 492 F. Supp. 3d at 1181–82 ("[S]tress, devastation, fear, and depression" arising from unlawful immigration policy are the type of "harms [that] will not be remedied by an award of damages.").

C. The balance of hardships and public interest weigh heavily in Plaintiffs' favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, plaintiffs face weighty hardships: loss of liberty, separation from family, significant stress and anxiety, and difficulty in obtaining an attorney.

The government, by contrast, faces minimal hardship: the administrative costs associated with three bond hearings. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

What is more, because the policy preventing Plaintiffs from posting their bond "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); see also *Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145. "The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal bond] process." *Hernandez*, 872 F.3d at 996.

Accordingly, the balance of hardships and the public interest overwhelmingly favor injunctive relief to ensure that Defendants comply with federal law and afford

Plaintiffs release on bond.

II. Prudential exhaustion is not required.

"[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result . . . ." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court may waive an exhaustion requirement when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action." *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731, 739–41 (2001). "Such prejudice may result . . . from an unreasonable or indefinite timeframe for administrative action." *Id.* at 147 (citing cases). Here, the exceptions regarding irreparable injury and agency delay apply and warrant waiving any prudential exhaustion requirement. As with the irreparable harm analysis, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048.

A. Irreparable Injury

The first exception to any prudential exhaustion requirement that applies here is that of irreparable injury. Each day Plaintiffs remain in detention is one in which their statutory rights have been violated and they could be free. Similarly situated district courts have repeatedly recognized this fact. As one court has explained, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, "if Petitioner is correct on the merits of his habeas petition, then Petitioner has already been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be repaired." *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and brackets omitted); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these points.

The district courts that have recognized that irreparable harm exists here are well-supported by Ninth Circuit case law. At issue in this case is civil detention, which "violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez*, 909 F.3d 5 See, e.g., *Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal.

2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-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. Apr. 17, 2020*); Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec. 24, 2018). at 257 (quoting *Zadvydas*, 533 U.S. at 690). Plaintiffs have a "fundamental" interest in such a hearing, as "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)). This point is "beyond dispute." Id.; see also *Marin*, 909 F.3d at 256–57. Moreover, the irreparable injury Plaintiffs 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," as well as the "collateral harms to children of detainees whose parents are detained." *Id.*

B. Agency Delay

Second, the BIA's delays in adjudicating bond appeals warrant excusing any exhaustion requirement. The 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. 2002).

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. Its own data demonstrates this fact.

Waiting several months, half a year, or even a year to review a custody determination is not reasonable; to the contrary, it exhibits significant disregard for the "fundamental" interests at stake. The Ninth Circuit has signaled that the protections afforded to criminal defendants in pre-trial civil detention should apply in the civil immigration context. In *Gonzales v. U.S. Immigration & Customs Enforcement*, the Court of Appeals held that the Fourth Amendment "requires a prompt probable cause determination by a neutral and detached magistrate to justify continued detention" of a noncitizen facing removal. 975 F.3d at 798; see also id. at 823–26. Similar principles demonstrate why the BIA's review here is so patently unreasonable. The protections and quick review of detention orders afforded criminal defendants are rooted in the Fifth Amendment's Due Process Clause, see *Salerno*, 481 U.S. at 746–47, and many of those principles unquestionably apply to noncitizens, see, e.g., *Zadvydas*, 533 U.S. at 690–91 (repeatedly citing *Salerno* and other Fifth Amendment civil detention caselaw). Thus, as with the rights at issue in *Gonzalez*, the rights of federal criminal defendants facing pretrial civil detention demonstrate that the BIA's months- or even years-long review of a noncitizen's civil detention is an "unreasonable . . . timeframe for administrative action." *McCarthy*, 503 U.S. at 147.

Finally, Plaintiffs note that under either basis for waiving exhaustion, the history of appeals related to this issue supports him. Defendants have unclean hands and should not benefit from their failure to abide by appellate authority. This reality only further underscores the need for immediate relief and the propriety of waving any exhaustion requirement.

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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant their motion for a preliminary injunction. Plaintiffs respectfully request that this Honorable Court orders that:

1) Defendants must accept Plaintiffs' bond payments and release them within 5 days of this order.

2) Defendants must record any hearing provided in connection with this Order.

3) The BIA must adjudicate any bond appeals pending for Plaintiffs or other Class Members within 30 days of this Order and any future bond appeals within 30 days of the filing of said appeal.

4) Defendants are enjoined from applying the automatic stays found in 8 C.F.R. 1003.6 to bond appeals to the BIA for bond grants for Plaintiffs or other Class Members.

DATED this 18th day of August, 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,199 words, in compliance with the Local Civil Rules.

s/ Jeremy Mondejar