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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 Jose Guadalupe SIXTOS CHAVEZ;
11 Juan Manuel HERNANDEZ DIAZ;
12 and Jesus HERRERA TORRES;

13 Petitioners,

14 v.

15
16 Kristi NOEM, Secretary, Department
17 of Homeland Security; Pam BONDI,
18 Attorney General; EXECUTIVE
19 OFFICE FOR IMMIGRATION
20 REVIEW; Todd LYONS, Executive
21 Associate Director of ICE Enforcement
22 and Removal Operations (ERO);
23 Gregory J. ARCHAMBEAULT,
24 Director, San Diego Filed Office,
25 Immigration and Customs
26 Enforcement; Christopher J. LAROSE,
27 Warden, Otay Mesa Detention Center.

28 Respondents.

No. 3:25-cv-02325-CAB-SBC

PETITIONERS SIXTOS
CHAVEZ AND HERRERA
TORRES' MOTION FOR
PRELIMINARY INJUNCTION

Date: November 3, 2025

Honorable Cathy Ann Bencivengo
United States District Judge

***PER CHAMBERS RULES, NO
ORAL ARGUMENT UNLESS
SEPARATELY ORDERED BY
THE COURT***

1 PLEASE TAKE NOTICE that on November 3, 2025, or as soon
2 thereafter as the matter may be heard, in Courtroom 15A of the above-entitled
3 court located at the United States District Courthouse, 333 West Broadway, San
4 Diego, CA 92101, before the Honorable Cathy Ann Bencivengo, Petitioners'
5 Sixtos Chavez and Herrera Torres, will, and hereby doe, move this Court for a
6 preliminary injunction requesting an order that they be entitled to a bond
7 redetermination hearing before an immigration judge.

8 This motion is based on this Notice of Motion and Motion, the attached
9 Memorandum of Points and Authorities, the Declaration of Stacy Tolchin, the
10 pleadings, records and files in this action, and such other evidence and
11 argument as may be presented at the time of hearing.

12
13 Dated: September 29, 2025

Respectfully submitted,

14 s/Stacy Tolchin

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I. INTRODUCTION

Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres seek a preliminary injunction that requires Respondents to provide them with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a).

Although Petitioners were present and residing in the United States, they were subjected to a September 5, 2025 Board of Immigration Appeals precedent decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that noncitizens who entered the United States without inspection were ineligible for bond redetermination hearings because they were seeking admission, and fell within 8 U.S.C. § 1225(b)(2)(A). Petitioner Jose Guadalupe Sixtos Chavez was initially granted bond by the immigration judge, and then a new decision was issued denying bond due to lack of jurisdiction. Tolchin Dec. Exh. B. Petitioner Jesus Herrera Torres's bond request was denied based on *Matter of YAJURE HURTADO*. Tolchin Dec. Exh. B.

This Court denied Petitioners' application for a temporary restraining order requesting this same relief on September 24, 2025. Dkt # 8. Almost every other court to address this legal issue has held that the denial of bond hearings to Petitioners who are charged with having entered the United States without inspection violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at

1 *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at
2 *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025
3 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-
4 3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v.*
5 *Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025);
6 *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025). As the
7 Court's decision denying the temporary restraining order is not an appealable
8 order, Petitioners may not appeal that decision to the Court of Appeals, absent an
9 order on a preliminary injunction.

10 Further, the Board's decision in *Matter of YAJURE HURTADO* is plainly
11 contrary to the statutory framework and contrary to decades of agency practice
12 applying § 1226(a) to people like Petitioners who are present within the United
13 States. The ongoing detention of Petitioners without a bond hearing is depriving
14 Petitioners of statutory and constitutional rights and unquestionably constitutes
15 irreparable injury.

16 Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres
17 therefore seek a preliminary injunction enjoining Respondents from continuing to
18 detain them unless Petitioner are provided an individualized bond hearing before
19 an immigration judge pursuant to 8 U.S.C. § 1226(a), with instructions that the
20 immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

21 **II. STATEMENT OF FACTS**

22 Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres are two
23 individuals who were arrested on August 22, 2025 by immigration officials and are
24 now detained at the Otay Mesa ICE Processing Center in San Diego, California.
25 They were placed into removal proceedings. Tolchin Dec. Exhs. A, D. Both were
26 charged with having entered the United States without inspection. 8 U.S.C. §
27 1182(a)(6)(A)(i). Tolchin Dec. Exhs. A, D.
28

1 Both Petitioners have been residing in the United States long term and have
2 established family and community ties, including United States citizen children.
3 Tolchin Dec. Exhs. C and E.

4 Petitioners requested bond hearing before an immigration judge. The
5 immigration judge initially granted a bond of \$7500 to Petitioner Jose Guadalupe
6 Sixtos Chavez. Tolchin Dec. Exh. B. But after the decision was entered, the Board
7 issued *Matter of YAJURE HURTADO*. *Id.* As a result, the judge issued a written
8 decision denying Petitioner Sixtos Chavez bond due to lack of jurisdiction. Tolchin
9 Dec. Exh. B. Petitioner Jesus Herrera Torres's bond hearing was denied on
10 September 17, 2025 based on *Matter of YAJURE HURTADO*. Tolchin Dec. Exh.
11 D.

12 Petitioners filed a petition for writ of habeas corpus before this Court on
13 September 6, 2025. Dkt # 1. They also filed an Ex Parte Application for a
14 Temporary Restraining Order. Dkt # 2. On September 24, 2025, the Court denied
15 the application without a hearing, rendering the order unappealable. Dkt # 8.

16 **III. ARGUMENT**

17 In order for the Court to grant a preliminary injunction, Petitioners must
18 demonstrate that (1) they are likely to succeed on the merits of their claims; (2)
19 they are likely to suffer irreparable harm in the absence of preliminary relief; (3)
20 the balance of equities tips in their favor; and (4) an injunction is in the public
21 interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). A sliding scale
22 test may be applied and an injunction should be issued when there is a stronger
23 showing on the balance of hardships, even if there are "serious questions on the
24 merits ... so long as the plaintiff also shows a likelihood of irreparable harm and
25 that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*,
26 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-Lolo-Bitterroot Citizen*
27 *Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024).
28

1 Petitioners satisfy the criteria and a preliminary injunction should be
2 granted.

3
4 A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF
5 THEIR CLAIMS.

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

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

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

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

24 If the Board’s position that § 1226(a) did not apply to inadmissible
25 noncitizens such as Petitioners who are present without admission in the United
26 States were correct, there would be no reason to specify that § 1226(c) governs
27 certain persons who are inadmissible; instead, the statute would only have needed
28 to address people who are deportable for certain offenses. Notably, recent

1 amendments to § 1226 dramatically reinforce that this section covers people like
2 Petitioners who DHS alleges to be present without admission. The Laken Riley
3 Act added language to § 1226 that directly references people who have entered
4 without inspection, those who are inadmissible because they are present without
5 admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).
6 Specifically, pursuant to the LRA amendments, people charged as inadmissible
7 pursuant to § 1182(a)(6) (the inadmissibility ground for presence without
8 admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid
9 documentation to enter the United States) *and* who have been arrested, charged
10 with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention
11 provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under §
12 1226(c), Congress further clarified that § 1226(a) covers persons charged under §
13 1182(a)(6) or (a)(7). In other words, if someone is *only* charged as inadmissible
14 under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of §
15 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See*
16 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at
17 *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide
18 that § 1226(a) covers people like Petitioners because the "specific exceptions" [in
19 the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted
20 of the enumerated crimes logically leaves those inadmissible noncitizens not
21 criminally implicated under Section 1226(a)'s default rule for discretionary
22 detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24,
23 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were
24 alone already sufficient to mandate detention under section 1225(b)(2)(A), then the
25 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v.*
26 *Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)
27 (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559
28

1 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if
2 the statute at issue did not otherwise cover the excepted conduct).

3 Despite the clear statutory language, the Board issued its precedent decision
4 on September 5, 2025 in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA
5 2025), finding that noncitizens who entered the United States without inspection
6 were ineligible for bond redetermination hearings because they were seeking
7 admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

8 The new decision is also inconsistent with the canon against superfluities.
9 Under this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed
10 so that effect is given to all of its provisions, so that no part will be inoperative or
11 superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314
12 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101
13 (2004)); see also *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)
14 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
15 making every effort not to interpret a provision in a manner that renders other
16 provisions of the same statute inconsistent, meaningless or superfluous.’” (citation
17 omitted)). But by concluding that the mandatory detention provision of §
18 1225(b)(2) applies to Petitioners, DHS and EOIR violate this rule.

19 The Court’s denial of the TRO found that the Laken Riley Act’s language
20 was not superfluous and could be read in harmony with *Matter of YAJURE*
21 *HURTADO*. Dkt # 8 at 9. This reading is contrary to the majority of courts of have
22 addressed the argument. See *Maldonado v. Olson*, No. 25-cv-3142, _ F.Supp.3d _,
23 _, 2025 WL 2374411, *12 (D. Minn. Aug. 15, 2025) (“[C]ourts ‘do not lightly’
24 find that Congress adopted ‘two separate clauses in the same law to perform the
25 same work.’ The Court will not find that Congress passed the Laken Riley Act to
26 ‘perform the same work’ that was already covered by § 1225(b)(2).”); *Giron Reyes*
27 *v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23,
28

1 2025) (“[u]nder the Government's expansive interpretation of § 1225, the
2 amendment would have no purpose. Section 1225(b)(2) would already provide for
3 mandatory detention of every unadmitted alien, regardless of whether the alien
4 falls within one of the new classes of non-bondable aliens established by the Laken
5 Riley Act.”) *Accord Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025
6 WL 2716910, at *7 (E.D. Cal. Sept. 23, 2025); *Valencia Zapata v. Kaiser*, No. 25-
7 CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025).

8 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be
9 read to apply to everyone who is in the United States “who has not been admitted.”
10 Section 1226(a) covers those who are present within and residing within the
11 United States and who are not at the border seeking admission. The text of § 1225
12 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
13 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
14 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
15 Government must determine whether a[] [noncitizen] seeking to enter the country
16 is admissible,” *id.* at 287.

17 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
18 paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving
19 [noncitizens]”—encompasses only the “inspection” of certain “arriving”
20 noncitizens and other recent entrants the Attorney General designates, and only
21 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8
22 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who
23 misrepresent information to an examining immigration officer or do not have
24 adequate documents to enter the United States. Thus, subsection (b)(1)’s text
25 demonstrates that it is focused only on people arriving at a port of entry or who
26 have recently entered the United States and not those already residing here.
27 Paragraph (b)(2) is similarly limited to people applying for admission when they
28

1 arrive in the United States. The title explains that this paragraph addresses the
2 “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking
3 admission,” but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By
4 limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not
5 intend to sweep into this section individuals like Petitioners, who have already
6 entered and are now residing in the United States. An individual submits an
7 “application for admission” only at “the moment in time when the immigrant
8 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d
9 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of
10 Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in
11 the United States without admission or parole is someone “deemed to have made
12 an actual application for admission.” *Id.* (emphasis omitted). That holding is
13 instructive here too, as only those who take affirmative acts, like submitting an
14 “application for admission,” are those who can be said to be “seeking admission”
15 within § 1225(b)(2)(A). Otherwise, that language would serve no purpose,
16 violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

17 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
18 [noncitizens] *arriving* from contiguous territory,” i.e. those who are “*arriving* on
19 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
20 underscores Congress’s focus in § 1225 on those who are arriving into the United
21 States—not those already residing here. Similarly, the title of § 1225 refers to the
22 “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*,
23 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
24 construe statute).

25 Finally, the entire statute is premised on the idea that an inspection occurs
26 near the border and shortly after arrival, as the statute repeatedly refers to
27 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
28

1 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
2 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
3 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
4 meaning”).

5 The new precedent decision in *Matter of YAJURE HURTADO*, 29 I&N
6 Dec. 216 (BIA 2025), requires immigration judges to deny bond to Petitioners
7 because they are charged with having entered the United States without inspection,
8 focusing on the definition of “applicant for admission” at § 1225(a)(1) which
9 defines an “applicant for admission” as a person who is “present in the United
10 States who has not been admitted or who arrives in the United States,” 8 U.S.C. §
11 1225(a)(1). But as the Ninth Circuit has explained, “when deciding whether
12 language is plain, [courts] must read the words in their context and with a view to
13 their place in the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*,
14 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that
15 context underscores that the definition in (a)(1) is limited by other aspects of the
16 statute to those who undergo an initial inspection at or near a port of entry shortly
17 after arrival—and that it does not apply to those who are arrested in the interior of
18 the United States months or years or decades later.

19 This is the portion of the decision that the Court relied on in denying the
20 TRO. Dkt # 8 at 8. However, this reading of § 1225(a)(1) has been uniformly
21 rejected. For instance, *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL
22 2609425, at *6 (E.D. Mich. Sept. 9, 2025), the District Court held that it “finds it
23 difficult to square a noncitizen’s continued presence with the term ‘seeking
24 admission,’ when that noncitizen never attempted to obtain lawful status. This is
25 especially true in light of § 1225’s statutory context.” *See also Giron Reyes v.*
26 *Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23,
27
28

2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025).

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

Last, to the extent that the statute is ambiguous, then it must be read to provide a right to a bond hearing under § 1226(a) in order to comport with procedural due process, which requires such a hearing absent an explicit statement to the contrary. *See e.g. Zadvydas v. Davis*, 533 U.S. 678, 697, 121 S. Ct. 2491, 2503, 150 L. Ed. 2d 653 (2001) (requiring release for post-final order detention cases in order to meet constitutional concerns in light of textual ambiguity).

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

1 construction of § 1225 and the conclusion that § 1226(a) applies to Petitioners. In
2 passing the Act, Congress was focused on the perceived problem of recent arrivals
3 to the United States who did not have documents to remain. *See* H.R. Rep. No.
4 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably,
5 Congress did not say anything about subjecting all people present in the United
6 States after an unlawful entry to mandatory detention if arrested. This is important,
7 as prior to IIRIRA, people like Petitioners were not subject to mandatory
8 detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest
9 noncitizens for deportation proceedings, which applied to all persons physically
10 present within the United States). Had Congress intended to make such a
11 monumental shift in immigration law (potentially subjecting millions of people to
12 mandatory detention), it would have explained so or spoken more clearly. *See*
13 *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it
14 addressed the matter, Congress explained precisely the opposite, noting that the
15 new § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1)
16 regarding the authority of the Attorney General to arrest, detain, and release on
17 bond a[] [noncitizen] *who is not lawfully in the United States.*” H.R. Rep. No. 104-
18 469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210
19 (same).

20 3. The Record And Longstanding Agency Practice Reflect That §
21 1226 Governs Petitioners’ Detention.

22 The Board has a long practice of considering people like the Petitioners as
23 detained under §1226(a) further supports this reading of the statute. Even as
24 recently as June 30, 2025, the Board held in *Matter of Akhmedov*, 29 I&N Dec.
25 166 (BIA 2025), that an immigration judge had jurisdiction under 8 U.S.C. §
26 1226(a) to conduct a bond redetermination hearing for a noncitizen who was
27 charged with entering the United States without inspection or admission. For
28

1 decades, and across administrations, the Board has acknowledged that § 1226(a)
2 applies to individuals who are present without admission after entering the United
3 States unlawfully, but who were later apprehended within the United States long
4 after their entry. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025); *Matter of R-*
5 *A-V-P-*, 27 I. & N. Dec. 803, 806 (BIA 2020); *In Re: Hugo Leonel Lacan-Batz*,
6 No. : AXXX XX3 200 - BOS, 2009 WL 1863766, at *1 (BIA June 19, 2009)
7 (unpublished); *In Re: Jorge Luis Contreras-Linares*, No. : AXX XX6 969 - ELOY,
8 2003 WL 23508582, at *1 (BIA Dec. 18, 2003) (unpublished). Such a
9 longstanding and consistent interpretation “is powerful evidence that interpreting
10 the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573
11 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United*
12 *States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
13 interpretation and practice to reject government’s new proposed interpretation of
14 the law at issue).

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

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

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

3 In the absence of a preliminary injunction, Petitioners will continue to be
4 unlawfully detained by Respondents pursuant to § 1225(b)(2) and denied a bond
5 hearing before an IJ. Petitioners are separated from their community and United
6 States citizen children. Tolchin Dec. Exhs. C, E.

7 “Freedom from imprisonment—from government custody, detention, or
8 other forms of physical restraint—lies at the heart of the liberty” that the Due
9 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
10 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
11 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
12 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
13 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
14 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
15 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
16 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
17 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
18 government’s current policies [which fail to consider financial ability to pay
19 immigration bonds] are likely unconstitutional—and thus that members of the
20 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
21 the absence of the injunction—that Plaintiffs have also carried their burden as to
22 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
23 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
24 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
25 Petitioners’ continued detention without an initial bond hearing would cause
26 immediate and irreparable injury, as this violates statutory rights afforded under §
27 1226(a).”)
28

1 C. THE BALANCE OF EQUITIES TIPS IN PETITIONERS' FAVOR
2 AND AN INJUNCTION IS IN THE PUBLIC INTEREST.

3 Because the government is a party, these two factors are considered
4 together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established
5 that the public interest factor weighs in their favor because their claims assert that
6 the new Board decision has violated federal laws. *See Valle del Sol Inc. v.*
7 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing
8 Petitioners from obtaining bond “is inconsistent with federal law, . . . the balance
9 of hardships and public interest factors weigh in favor of a preliminary injunction.”
10 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)
11 (*Moreno I*); *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming
12 in part permanent injunction issued in *Moreno II* and quoting approvingly district
13 judge’s declaration that “it is clear that neither equity nor the public’s interest are
14 furthered by allowing violations of federal law to continue”). This is because “it
15 would not be equitable or in the public’s interest to allow the [government] . . . to
16 violate the requirements of federal law, especially when there are no adequate
17 remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.
18 2013) (second alteration in original) (citation omitted). Indeed, Respondent
19 “cannot suffer harm from an injunction that merely ends an unlawful practice.”
20 *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

21 D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

22 Prudential exhaustion does not require Petitioners to be forced to endure the
23 very harm they are seeking to avoid by appealing the IJ bond orders to the Board
24 of Immigration Appeals and waiting many months for a decision from the BIA.
25 The Board has now issued a precedent decision precisely on this issue, and any
26 appeal would clearly be futile. *Matter of YAJURE HURTADO*, 29 I&N Dec. 216
27 (BIA 2025). *See Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir.

2021) (“[W]here the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required.”)

Further, irreparable injury is an exception to any prudential exhaustion requirement. “[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 time frame 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.

Each day that Petitioners remain in detention is one in which their statutory and constitutional rights have been violated. 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.

1 Oct. 2, 2017) (internal quotation marks and brackets omitted); *see also Cortez v.*
2 *Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district
3 courts have echoed these points.¹

4 Petitioners assert both statutory and constitutional claims and have a
5 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
6 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
7 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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

12
13 **E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF**

14 Finally, nothing in the Immigration and Nationality Act precludes this Court
15 from granting the injunction, as the Court agreed in its September 24, 2025 order.
16 Dkt # 8.

17 The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial
18 review of all questions of law . . . including interpretation and application of
19 constitutional and statutory provisions, arising from any action taken . . . to remove
20 an alien from the United States” to the appropriate federal court of appeals, does
21

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

1 not apply because that section applies only to review of removal orders, and
2 Petitioners do not seek review of orders of removal but of custody. *Maldonado*
3 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July
4 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

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

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

1 As such, the Court has jurisdiction over Petitioners' challenge to their
2 detention.

3
4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court should grant Petitioners' Motion for
6 Preliminary Injunction and order that Petitioners Jose Guadalupe Sixtos Chavez
7 and Jesus Herrera Torres be provided an individualized bond hearing before an
8 immigration judge pursuant to 8 U.S.C. § 1226(a), with instructions that the
9 immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

10
11 Dated: September 29, 2025

Respectfully Submitted,

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