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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)**

ISMAEL SANCHEZ ROMAN

Petitioner,

v.

KRISTI NOEM,
in her official capacity as
Secretary, U.S. Department of
Homeland Security; 245 Murray Lane
SW, Washington, DC 20528;

**U.S. DEPARTMENT OF HOMELAND
SECURITY**

PAMELA J. BONDI,
in her official capacity as
Attorney General of the United States,
950 Pennsylvania Avenue, NW,
Washington, DC, 20530;

Case No.: 2:25-cv-1684

Agency No: A



**MOTION FOR A TEMPORARY
RESTRAINING ORDER**

TODD LYONS,

in his official capacity as Acting
Director and Senior Official
Performing the Duties of the Director
for U.S. Immigration and Customs
Enforcement, 500 12th Street, SW,
Washington, DC 20536;

JASON KNIGHT,

in his official capacity as Acting Field
Office Director, Salt Lake City Field
Office Director, U.S. Immigration &
Customs Enforcement, 2975 Decker
Lake Drive Suite 100, West Valley
City, UT 84119-6096

**U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT**

JOHN MATTOS,

in his official capacity as Warden,
Nevada Southern Detention Facility,
2190 E. Mesquite Ave.
Pahrump, NV 89060

Respondents.

Ismael Sanchez Roman (“Petitioner” or “Mr. Sanchez Roman”) is presently detained by U.S. Immigration and Customs Enforcement (“ICE”). Pursuant to Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act, Petitioner hereby applies for a temporary restraining order or preliminary injunction requiring that Respondents grant Petitioner a custody redetermination hearing in Immigration Court on the merits within 7 days or immediately release him from custody.

This Motion is similar to an Application for a Temporary Restraining Order filed with the original Petition for Writ of Habeas Corpus on September 8, 2025. *See* ECF No. 3. The court denied that Application without prejudice because Respondents had not yet been served with

the Petition and no counsel for Respondents had made an appearance in the case. *See* ECF No. 4.

For clarity: Petitioner does not seek, and never intended to seek, *ex parte* consideration of this Motion. Per order of this court, ECF No. 4, Respondent's counsel is expected to appear in this matter on the same day as this Motion is filed. As an additional step, Petitioner's counsel is serving this Application and all supporting exhibits on the U.S. Attorney for the District of Nevada via email.

As set forth in the accompanying Memorandum of Law, Respondents are detaining Petitioner in violation of the Immigration and Nationality Act. In the absence of a temporary restraining order or preliminary injunction, Petitioner will suffer irreparable injury through continued illegal detention.

DATED this 12th day of September, 2025.

Respectfully Submitted,

/s/Michael Kagan
Michael Kagan
Nevada Bar. No. 12318C

/s/Tia Zghaib
Tia Zghaib
Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

/s/Raymond Wu
Raymond Wu
Student Attorney Practicing
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1 **Ismael Sanchez Roman**
2 **A 074-581-919**

3 **PROOF OF SERVICE**

4 I declare I am employed in the State of Nevada in Clark County, Nevada. My business address
5 is P.O. Box 71075, Las Vegas, NV 89170. I am over the age of 18, and not a party to the
6 above-named action. On September 12, 2025, I served Petitioner's Motion for a Temporary
7 Restraining Order and Memorandum of Law and all attached exhibits on the following:

8 Sigal.Chattah@usdoj.gov
9 Veronica.criste@usdoj.gov
10 caseview.ecf@usdoj.gov
11 christian.ruiz@usdoj.gov

12 via email.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct and that this declaration, made in conformity with 28 U.S.C. § 1746, was executed
15 at Las Vegas, NV on September 12, 2025.

16 /s/ Michael Kagan

17

Michael Kagan, Esq.

**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION
FOR TEMPORARY RESTRAINING ORDER**

Petitioner respectfully requests this Court's immediate action to secure a bond hearing on the merits within seven days in accordance with the applicable statutes, or in the alternative his immediate release from detention. He applies for a Temporary Restraining Order or, in the alternative, a Preliminary Injunction for the reasons stated below.

I. FACTS

Mr. Sanchez Roman is a 47-year-old man who works as a roofing contractor and was previously a business owner. *See* Exhibit A (Valley Roofing Plus LLC Certificate) at 002. He has a wife who suffers from lupus and a 22-year-old stepdaughter with schizophrenia. *See* Exhibit B (Declaration of Alena Sanchez Roman) at 004-005. He is an active partner, father, and caregiver for both his wife and his stepdaughter, who are both U.S. citizens. *Id.* He also has four more children with his late wife, all of whom are U.S. citizens. *Id.* His late wife unfortunately passed away in 2021 due to COVID-related complications. *See* Exhibit C (Mariza Sanchez Galvan – Certificate of Death) at 007. Petitioner has been detained by Immigration and Customs Enforcement ("ICE") for almost 7 weeks. Owing to new policies of the Department of Justice and the Department of Homeland Security, he has no access to a bond hearing in Immigration Court.

Mr. Roman has lived in this country since 1991, when he entered without inspection at the age of thirteen. In September 2000, he accepted voluntary departure to Mexico, and later returned to the U.S., where he again entered without inspection. He resided in Gooding, Idaho, prior to his ICE detention, and over the last 25 years, Mr. Sanchez Roman has had only two non-traffic misdemeanor convictions, one for domestic violence without traumatic injury

1 against a household member on December 19, 2024, and the other for drug paraphernalia on
2 April 8, 2025.

3 ICE has charged Petitioner with, among other things, having entered the United States
4 without admission or parole. *See* 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit D (Notice to Appear)
5 at 009. He is subject to removal proceedings in the Las Vegas Immigration Court, where he is
6 eligible to apply for Cancellation of Removal under 8 U.S.C. § 1229b. That application is not
7 before this Court and will be adjudicated in Immigration Court, but if successful, it will lead to
8 Petitioner becoming a lawful permanent resident.

9
10 ICE has held Mr. Sanchez Roman in custody since July 21, 2025. ICE placed Petitioner
11 in removal proceedings before the Las Vegas Immigration Court pursuant to 8 U.S.C. § 1229a.
12 ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §
13 1182(a)(6)(A)(i) as someone who entered the United States without admission.
14

15 The central question in this case is whether cases like this one fall under 8 U.S.C. § 1226
16 (“Section 1226”) or 8 U.S.C. § 1225 (“Section 1225”). If Section 1226 applies, Petitioner is
17 entitled to a bond hearing in Immigration Court. Until this summer, that had been the
18 longstanding policy of both ICE and DOJ. However, the executive branch has now taken the
19 unprecedented position that Section 1225 applies, meaning that Petitioner would be subject to
20 mandatory detention without access to bond.
21

22 On July 8, 2025, ICE, “in coordination with” the Department of Justice (“DOJ”),
23 announced a new policy that rejected well-established understanding of the statutory framework
24 and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding
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1 Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the
2 United States without inspection shall now be deemed “applicants for admission” under Section
3 1225, and therefore are subject to the mandatory detention provision under § 1225(b)(2)(A).

4 The policy applies regardless of when a person is apprehended and affects those who have
5 resided in the United States for months, years, and even decades.
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7 From July 8 until September 5, there was some uncertainty in the Immigration Courts as
8 to how cases like Petitioner’s would be handled. In some cases, some Immigration Judges
9 rejected ICE’s argument that people who had entered without inspection were not entitled to
10 bond hearings.² As a result, Petitioner had intended to seek a routine bond hearing in
11 Immigration Court and had retained the UNLV Immigration Court to represent him in that
12 application. However, there is no longer any ambiguity about how such an application would be
13 handled. It would be futile.
14

15 On September 5, 2025, the Board of Immigration Appeals (“BIA”) published a decision
16 adopting the statutory interpretation that all persons who entered the United States without
17 inspection shall now be deemed “arriving aliens” or “applicants for admission” under Section
18 1225. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). See Exhibit E at 011-024. This
19 bars Petitioner from receiving a custody redetermination hearing on the merits of his case,
20 treating him as if he is “arriving” even though he has been in the United States for 25 years.
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25 ¹ Available at [https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
26 [authority-for-applications-for-admission](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).

27 ² Decisions by immigration judges are unpublished and confidential. However, counsel is aware
28 of these decisions by Las Vegas immigration judges because the UNLV Immigration Clinic represented some
respondents in such cases, and is in close consultation with other private attorneys who reported similar results. See
also *Torralba v. Knight*, No. 2:25-v-01366-RFB-DJA, 2025 LX 396583 (D. Nev. Sept. 5, 2025) (considering a case
in which an immigration judge held that Section 1226 applies.

As a result, Petitioner remains in detention and has sought action by this Court via a Writ of Habeas Corpus.

II. LEGAL STANDARDS FOR A TRO OR PRELIMINARY INJUNCTION

The standard for obtaining a TRO or a preliminary injunction is the same. *Quiroga v. Chen*, 735 F. Supp. 2d 1226, 1228 (D. Nev. 2010). In considering whether to grant a TRO pursuant to Fed. R. Civ. P. 65(a), a court must consider whether “(1) [the plaintiff] is likely to succeed on the merits, (2) they 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.” *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021); *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

“The first factor—likelihood of success on the merits—is the most important factor.” *Chamber of Comm.*, 62 F.4th at 481 (quoting *California ex rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc)). When the government is the defendant, “the balance of the equities and public interest factors merge.” *Id.* (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). As such, even if Plaintiff raises only “serious questions” as to the merits of his claims, the court can grant relief if the balance of hardships tips “sharply” in Plaintiff’s favor, and the remaining equitable factors are satisfied. *All. for the Wild Rockies*, 632 F.3d at 1135.

III. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

1. Petitioner is subject to Section 1226 and is thus eligible to apply for bond

1 Under the Immigration and Nationality Act, people with pending removal proceedings in
2 Immigration Court are subject to detention. However, some may be released on bond. Section
3 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8
4 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the
5 outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been
6 arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8
7 U.S.C. § 1226(c). The basic question is thus whether this case falls under Section 1226 – as all
8 parties would have agreed until very recently – or Section 1225.
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10 Beginning in July 2025, Respondents have been officially insisting that Section 1226 does
11 not apply to people like Mr. Sanchez Roman. Instead, they now rely on Section 1225, the
12 provision that provides for mandatory detention, without opportunity to ask for bond, of
13 noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals
14 seeking admission referred to under Section 1225(b)(2). Although this became official DHS and
15 DOJ policy in July 2025, the claim had emerged previously in decisions by certain Immigration
16 Judges and in decisions by the Board of Immigration Appeals. On September 5, 2025, this broad
17 misinterpretation of both 8 U.S.C. § 1225 and 8 U.S.C. § 1226 was adopted by the BIA. *Matter*
18 *of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
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20 The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
21 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208,
22 Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
23 most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3
24 (2025).
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Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

2. At least eighteen district courts have agreed that Section 1226 applies

At least eighteen district courts across the country, with seven being in the Ninth Circuit, have addressed the question presented here and reached the same conclusion: Section 1226 applies to individuals who enter without inspection and are apprehended by ICE only after residing in the United States. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (finding that Section 1226, given established past interpretation and the agency's previous position, applied); *Ceja Gonzalez v. Noem*, No 5:25-cv-02054-ODW (C.D. Cal. Aug. 13, 2025) (rejecting argument for the application of Section 1225 based on plain language of the statute); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *8 (D. Ariz. Aug. 11, 2025) (citing past interpretation that Section 1226 applies by Immigration Judges); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (Holding that the Section 1225 argument disregards the “seeking admissions” language

1 found within the section); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL
 2 2374411, at *12 (D. Minn. Aug. 15, 2025) (DHS's argument for section 1225 would make the
 3 Laken Riley Act duplicative); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL
 4 2371588 (S.D.N.Y. Aug. 13, 2025) (an immigrant who has resided in the US for two plus years
 5 is not governed by Section 1225); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-
 6 BFM, Dkt. 14 (C.D. Cal. July 28, 2025) (granting temporary restraining order because section
 7 1225 does not apply, instead section 1226 applies); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK,
 8 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition because petitioner
 9 was not an alien "seeking admission" and therefore was governed by Section 1226); *Arrazola-*
 10 *Gonzalez v. Noem*, NO. 5:25-cv-01789, 2025 LX 342294 (C.D. Cal. Aug. 15, 2025) (granting
 11 temporary restraining order as Section 1226 granted Immigration Judges jurisdiction over
 12 petitioners because Section 1226 applies to immigrants already within the United States);
 13 *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 LX 329730 (D. Mass. Aug. 19, 2025)
 14 (granting petition for writ of habeas corpus and ordering petitioner by granted a bond hearing
 15 under Section 1226, not Section 1225, because the plain language is clear); *Francisco T. v.*
 16 *Bondi*, No. 25-CV-03219 (JMB/DTS), Dkt. 17 (D. Minn. August 29, 2025) (granting temporary
 17 restraining order because of the plain language of the statutes supports that Section 1226
 18 governs); *Kostak v. Trump*, No. 3:25-1093, 2025 LX 395222 (W.D. La. Aug. 27, 2025)
 19 (granting temporary restraining order and ordering bond hearing on the merits because Section
 20 1225 applies to aliens seeking entry into the United States while Section 1226 applies to aliens
 21 already present in the United States); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025
 22 LX 366449 (D. Minn. Aug. 27, 2025) (ordering a bond hearing on the merits under Section
 23 1226 because petitioner entered the US more than ten years ago); *Garcia v. Noem*, No. 25-cv-
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02180-DMS-MMP, 2025 LX 390497 (S.D. Cal. Sep. 3, 2025) (granting temporary restraining order in part and ordering bond hearing within fourteen days because adopting the Section 1225 argument would make the “seeking admission” element superfluous); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (ordering individualized bond hearing for each petitioner because if Section 1225 applied, it would make Section 1226(c)(1)(E) meaningless); *Hernandez Marcelo v. Trump et al.*, No. 3:25-cv-00094-RGE-WPK, Dkt. 38 (S.D. Iowa Sept. 10, 2025) (reading Section 1225’s “seeking admission” as a separate element from “applicant for admission” comports with the plain language, therefore, the petitioner falls under Section 1226, and his preliminary injunction is granted in part to give him a bond hearing under 1226); *Jiminez v. FCI Berlin, Warden et al.*, NO. 25_cv-326-LM-AJ, Dkt. 16 (D.N.H. September 8, 2025) (Applying Section 1226 to petitioner because they have been in the country for nearly two years pursuant to a grant of conditional parole under Section 1226(a) and in accordance with the Supreme Court’s interpretation of the two sections in *Jennings*).

On September 5, 2025, the District of Nevada granted a petition for habeas corpus on a closely related issue concerning immigration bonds. This court noted in passing “the decisions of federal district courts within the Ninth Circuit and across the country that have thus far considered and rejected DHS’ novel interpretation of sections § 1225 and § 1226.” *See Torralba v. Knight*, No. 2:25-v-01366-RFB-DJA, 2025 LX 396583, ECF No. 32 at 12 (D. Nev. Sept. 5, 2025).

The most detailed examination of this issue is the Western District of Washington’s decision granting a preliminary injunction in *Rodriguez Vazquez*. 779 F. Supp. 3d 1239. That case arose after immigration judges in the Tacoma, Washington immigration court stopped

1 providing bond hearings for persons who entered the United States without inspection and who
2 have since resided here. The U.S. District Court in the Western District of Washington found
3 that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b),
4 applies to noncitizens who are not apprehended upon arrival to the United States.
5

6 **3. The plain text of the statute favors Petitioner**

7 Section 1226 authorizes the kind of arrest that occurred in this case. “An alien may be
8 arrested and detained pending a decision on whether the alien is to be removed from the United
9 States.” 8 U.S.C. § 1226(a). This section is generally applicable to people apprehended inside
10 the United States and subject to removal proceedings. Such people are generally able to apply
11 for bond, except for narrow categorical exceptions. *See* 8 U.S.C. § 1226(a) (“Except as provided
12 in subsection (c)” when a noncitizen is arrested under Section 1226(a), bond is available). Those
13 exceptions generally involve certain types of criminal convictions, none of which are applicable
14 in this case. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). As the *Rodriguez Vazquez*
15 court concluded, “A plain reading of this exception implies that the default discretionary bond
16 procedures in Section 1226(a) apply to a noncitizen who ... is present without being admitted or
17 paroled but *has not been* implicated in any crimes [listed in subsection (c)].” 779 F. Supp. 3d at
18 1256.
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21 While Section 1226 clearly addresses immigration arrests inside the country, Section
22 1225 addresses “[i]nspection of aliens arriving in the United States and certain other aliens who
23 have not been admitted or paroled.” 8 U.S.C. § 1225(b)(1). Thus, it seems clear that Section
24 1225 “applies primarily to aliens seeking entry into the United States,” not those already
25 residing here. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022). The source of
26 dispute in this case is the text of Section 1225(a)(1) which states that “an alien present in the
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1 United States who has not been admitted . . . shall be deemed for purposes of this chapter an
2 applicant for admission.” Section 1225 goes on to say that “if the examining immigration
3 officer determines that” an applicant for admission who is “seeking admission is not clearly and
4 beyond a doubt entitled to be admitted, the alien shall be detained” without bond. 8 U.S.C.
5 1225(b)(2)A). Respondent’s position depends on reading these provisions entirely in isolation.
6

7 The *Rodriguez Vazquez* court thoroughly examined why standard canons of construction
8 cannot sustain Respondent’s new interpretation, which also departs from longstanding agency
9 practice. 2025 WL 1193850 at 26-32. The most fundamental, fatal flaw in Respondent’s
10 position is that by reading Section 1225 so expansively it would render much of Section 1226
11 irrelevant. A statute must be read to give meaning to all of its provisions. *See Corley v. United*
12 *States*, 556 U.S. 303, 314 (2009). Section 1226(c) is dedicated to carving out exceptions from
13 bond eligibility for people with certain criminal records. That is also the import of the recent
14 Laken Riley Act. Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). But these
15 provisions would be irrelevant if every person who was not admitted or paroled were ineligible
16 for bond under Section 1225 anyway. *See Rodriguez Vazquez*, 2025 WL 1193850 at 26-27.
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19 The better way to understand these provisions is that Section 1226 is the default rule for
20 people apprehended after already residing in the United States. By contrast, Section 1225
21 “generally begins at the Nation’s borders and ports of entry, where the Government must
22 determine whether a [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S.
23 at 287. As the Washington District Court noted, the Supreme Court has discussed Section 1225
24 specifically with reference only to recent entrants or people caught at the border. *Rodriguez*
25 *Vazquez*, 779 F. Supp. 3d at 1258 (discussing *Jennings* and *Dep’t of Homeland Sec. v.*
26 *Thuraissigiam*, 591 U.S. 103, 140 (2020). In *Thuraissigiam*, the Supreme Court described
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1 Section 1225 as applying to people detained “shortly after unlawful entry.” 591 U.S. at 140
2 (emphasis added). This is also how the executive agencies understand the distinction between
3 Sections 1225 and 1226. A 1997 interim rule stated: “[d]espite being applicants for admission,
4 [noncitizens] who are present without having been admitted or paroled will be eligible for bond
5 and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
6

7 Respondents’ new interpretation of Section 1225 would render the Laken Riley Act,
8 enacted on January 29, 2025, duplicative. The act amends Section 1226 to include mandatory
9 detention for immigrants who “(1) [are] unlawfully presented in the United States...; and (2)
10 [have] been charged with, arrested for, convicted of, or admits to having committed acts that
11 constitute the essential elements of burglary, theft, larceny, or shoplifting.” Laken Riley Act,
12 Pub. L. No. 119-1, 139 Stat. 3 (2025) *codified at* 8 U.S.C. § 1226(c)(E)(i). The language
13 explicitly targets “aliens present without admission or parole” as the immigrants at issue and
14 governed by Section 1226. *Id.* Congress obviously believed it necessary to amend Section 1226
15 to include mandatory detention under Section 1226 for certain immigrants who reside in the
16 United States but entered the country without inspection. That would not have been required if
17 the agency’s new interpretation were right, because such people would already be subject to
18 mandatory detention under Section 1225. Congress’s intent is clear here: to carve out an
19 exception to eliminate a category of immigrants from potential bond hearings rather than
20 barring all those who entered without inspection from bond proceedings.
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24 In the September 5 decision, the BIA held that an immigrant who has been present in the
25 United States for more than 2 years is still an “arriving alien” because they entered the country
26 without inspection. *Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025). The BIA argues the following:
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Holding otherwise would require reading the INA to conclude that Congress intended that aliens unlawfully entering the United States without inspection, particularly those who successfully evaded apprehension for more than 2 years, be rewarded with the opportunity for a bond hearing before an Immigration Judge, whereas aliens who present themselves to officers at a port of entry are ineligible for a bond hearing. This is an incongruous result which is not supported by the plain language or any reasonable interpretation of the INA. *Id.*

The BIA's reading of 8 U.S.C. § 1225(a)(1) conflicts with basic rules of statutory interpretation and renders other parts of the statute meaningless. As the Supreme Court has explained, "every clause and word of a statute should have a meaning." *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)). *See also* *Duncan v. Walker*, 533 U.S. 167, 174 (2001). If the BIA were right, the Laken Riley Act – not to mention much of the pre-existing Section 1226 – would be meaningless. There is a reason why the relevant agencies did not take this view until this year: Because it is plainly wrong.

4. **Assuming *Arguendo* that any Statutory Ambiguity Exists, the Interpretation Should be Construed in Favor of Petitioner.**

If there is any remaining ambiguity in the immigration statute, the ambiguity should be interpreted in favor of liberty as a matter of constitutional due process. This basic principle is most clearly applied through the rule of lenity. Under the rule of lenity, "any reasonable doubt about the application of a penal law must be resolved in the favor of liberty." *Wooden v. United States*, 595 U.S. 360, 388 (2022) (Kavanaugh, J., concurring). That same principle applies here. The Supreme Court has recognized that the rule of lenity applies in the immigration context when physical liberty is at stake. *See Clark v. Martinez*, 543 U.S. 371, 380 (2005) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 11–12, n. 8 (2004)).

1 If there is any ambiguity regarding the language and applicability of Section 1225 and
2 Section 1226, it should be clear that allowing a bond hearing under Section 1226 is the
3 resolution that most favors liberty. By contrast, a decision adopting Section 1225 would take
4 away Petitioner's liberty when the statute does not clearly require that outcome.
5

6 **5. Petitioner is Unable to Exhaust Administrative Remedies.**

7 Administrative exhaustion is required under three conditions: First, if the agency has
8 unique expertise. Second, if courts have reason to discourage bypassing administrative
9 adjudication. Third, if the agency is unlikely to correct its own errors. *See Puga v. Chertoff*, 488
10 F.3d 812, 815 (9th Cir. 2007). In this case, the third factor looms largest, but none of them favor
11 requiring waiting for the BIA.
12

13 The BIA and the Department of Justice ("DOJ") have already signaled their views on
14 the matter. On July 8, 2025, DHS issued new "Interim Guidance" that asserted a position held
15 by both DHS and DOJ. It states: "This message serves as notice that DHS, in coordination with
16 the Department of Justice (DOJ), has revisited its legal position on detention and release
17 authorities."³
18

19 The BIA, as of September 5, 2025, adopted this position with the published opinion of
20 *Matter of Yajure Hurtado*. 29 I&N Dec. 216 (BIA 2025). Before this decision, detained
21 immigrants rightly categorized as detained under Section 1226 would be given bond hearings
22 by an immigration judge. Because there is now a BIA precedent decision, an immigration judge
23 would no longer have the authority to hold a bond hearing for Petitioner even if they understand
24 that Respondent's interpretation of the law is wrong. *See* 8 C.F.R. § 1003.1(d) (describing the
25

26
27 ³ Available at [https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
28 [authority-for-applications-for-admission](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).

1 BIA's power to issue precedent decisions); 8 C.F.R. § 1003.10(d) ("Immigration judges shall be
2 governed by ... the decisions of the Board.").

3 The issues in this Petition cannot be directly appealed from the BIA to the Ninth
4 Circuit Court of Appeals. The circuit courts of appeal have jurisdiction to review a "final order
5 of removal." 8 U.S.C. § 1252(a). But there is no order of removal in this case. This Petition
6 concerns conditions of custody only. While this court lacks jurisdiction to review questions of
7 removal from the United States, the writ of habeas corpus is the mechanism for seeking judicial
8 review of conditions of custody. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103
9 (2020). Petitioner relies on this court's jurisdiction "over constitutional claims or questions
10 of law" governing immigration detention. *Hernandez v. Sessions*, 872 F.3d 976, 987 (9th Cir.
11 2017)
12

13
14 Only the intervention of the federal courts through a habeas corpus action will correct
15 the legal error and allow Petitioner to pursue his liberty through a bond hearing. Under the
16 agency's errant position, Petitioner is barred from any administrative relief because he entered
17 the United States without inspection 25 years ago. Furthermore, the dispute about Section 1225
18 v. Section 1226 is purely a matter of statutory interpretation. Courts, not agencies, are primarily
19 responsible for resolving such questions. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369,
20 385 (2024).
21

22 **B. Petitioner Will Be Irreparably Harmed.**
23

24 If this Court does not intervene, Petitioner will remain detained illegally. The Ninth
25 Circuit has already held that a petitioner at risk of continuing immigration detention has
26 demonstrated irreparable harm. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).
27 Petitioner would continue to be separated from his family and unable to support his wife or his
28

1 stepdaughter, who suffers from schizophrenia. *See* Exhibit B. His wife, a U.S. citizen, suffers
2 from lupus, which significantly limits her ability to maintain day-to-day activity without support
3 from Petitioner. *See* Exhibit F (Dr. Jennifer Benally's Letter Regarding Lupus) at 026-027.
4 Furthermore, his detention causes irreparable financial harm to the family, as he was the
5 primary source of income. *See* Exhibit B. This has forced Petitioner's wife to work more while
6 suffering from increased health issues because of the additional stress on her body. *Id.*
7

8 Petitioner's stepdaughter's mental health worsens every day because of his detention.
9 *Id.* She struggles to sleep more than a few hours a night, all the while asking when Petitioner
10 will return home. *Id.* Petitioner provided her with both care and a father figure that helped
11 stabilize the schizophrenia, which is no longer present because of the improper detention
12 without a bond hearing. Therefore, Petitioner and his family have suffered and will continue to
13 suffer irreparable harm at the hands of Respondents.
14

15
16 **C. The Balance of Equities Favors a TRO and Would Be in the Public Interest**

17 The public interest will not be harmed by ordering the government to follow the same
18 policy it had in place since 1997. Nor would the public be harmed when an Immigration Judge
19 has already considered the merits of releasing Petitioner on bond. That means that an
20 Immigration Judge has already found that Petitioner is neither a flight nor a public safety risk.
21

22 Absent an order from this Court, the weighty legal issues in this case may be rendered
23 moot. That is because if Petitioner remains detained, the Immigration Court will move forward
24 on an expedited docket and may adjudicate his removal case before the BIA rules on the bond
25 appeal, or before this Petition reaches a final conclusion. Thus, an illegal detention would have
26 been allowed to persist without a judicial remedy. That is not in the public interest.
27
28

D. The Court Should Not Require Petitioner to Provide Security Prior to the Temporary Restraining Order

Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damage sustained by any party found to have been wrongfully enjoined or restrained.” However, district courts exercise this discretion to require no security in cases brought by indigent and/or incarcerated people, and in the vindication of immigrants’ rights. *See e.g., Ashland v. Cooper*, 863 F.2d 691, 693 (9th Cir. 1988); *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020). Additionally, courts “may dispense with the filing of a bond when,” as here, “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct”, *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003), or plaintiff shows a high likelihood of success on the merits. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l Plan. Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985), *amended*, 775 F.2d 998 (9th Cir. 1985). As such, this Court should waive the security requirement here.

CONCLUSION

The Court should grant Petitioner’s motion for a temporary restraining order or, in the alternative, a preliminary injunction ordering a bond hearing for Petitioner in Immigration Court within seven days or the immediate release of Petitioner from ICE detention.

1 DATED this 12th day of September, 2025.

2
3 Respectfully Submitted,

4 /s/Michael Kagan
5 Michael Kagan
6 Nevada Bar. No. 12318C

7 /s/Tia Zghaib
8 Tia Zghaib
9 Student Attorney Practicing
10 Under Nevada Supreme Court Rule 49.3

11 /s/Raymond Wu
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EXHIBIT LIST

Exhibit	Document	Page
A	Valley Roofing Plus LLC Certificate	001-002
B	Declaration of Alena Sanchez Roman	003-005
C	Mariza Sanchez Galvan – Certificate of Death	006-007
D	Notice to Appear	008-009
E	<i>Matter of Yajure Hurtado</i>	010-024
F	Dr. Jennifer Benally’s Letter Regarding Lupus	025-028