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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Pablo JUAN TOMAS; Rosa LOPEZ

Petitioner,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Todd LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; Pam BONDI, Attorney General of the United States; Ernesto SANTACRUZ Jr., Acting Director, Los Angeles ICE Field Office; and Fereti SEMAIA, Warden, Adelanto ICE Processing Center.

Respondents.

No.

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

For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioners hereby make this *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioners are in pending removal proceedings and charged with having entered the United States without authorization. They are therefore is ineligible for a bond redetermination hearing light of the Board of Immigration Appeals' decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025).

The Board's decision in *Matter of YAJURE HURTADO* holds that the immigration courts lack jurisdiction to consider bond for noncitizens in removal proceedings who are charged with having entered the United States without inspection or admission. This holding violates the Immigration and Nationality Act and due process. Petitioners now seek a temporary restraining order requiring that the immigration judge hold a bond hearing and not deny bond due to lack of jurisdiction under 8 U.S.C. § 1225(b)(2)(A). Expedited relief is necessary to prevent irreparable injury before a hearing on a preliminary injunction may be held.

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

Respondents were advised on October 20, 2025 that Petitioners would be filing this ex parte application and of the contents of this application. Tolchin Decl. ¶ 3. See Local Rule 17-19.1.

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Dated: October 21, 2025

/s/ *Stacy Tolchin*

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I. INTRODUCTION

Petitioners seek a Temporary Restraining Order that requires Respondents to provide them with individualized bond hearings before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

Although Petitioners have been present and residing in the United States since 2019 and 2008, respectively, they are detained by immigration authorities and subject to a pending removal hearing, and ineligible for a bond hearing based on the Board of Immigration Appeals precedent decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025). That new precedent decision holds that noncitizens who entered the United States without inspection are ineligible for bond redetermination hearings because they are seeking admission, and fall within 8 U.S.C. § 1225(b)(2)(A). It is entirely futile for Petitioners to request a bond hearing or appeal in light of this precedent decision. Without this Court's intervention, they will be subject to mandatory detention during the duration of their removal case based on *Matter of YAJURE HURTADO*.

Almost every 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*. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 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 *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL

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Despite the new Board decision to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioners who previously entered and is now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on bond or conditional parole. Section 1226(a) expressly applies to people who, like Petitioners, are charged as removable for having entered the United States without inspection and being present without admission.

The Board's new decision is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioners who are present within the United States. The ongoing detention of Petitioners without a bond hearing is depriving Petitioners of statutory and constitutional rights and unquestionably constitutes irreparable injury.

Petitioners therefore seek a Temporary Restraining Order enjoining Respondents from continuing to detain them unless Petitioners are provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO, with instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

II. STATEMENT OF FACTS

Petitioners are two noncitizens from Guatemala who are detained at the Adelanto immigration detention center and are in pending removal proceedings. Both are charged with having entered the United States without inspection or admission.

Petitioner Juan Tomas is a citizen of Guatemala who has lived in the United States since 2019, after having entered the United States without inspection at the age of 15. Tolchin Dec. Exh. B. Petitioner Juan Tomas applied for Special Immigrant Juvenile (SIJ) Status, which was approved on May 20, 2025. Tolchin Dec. Exh. C. SIJ status is available to alien children subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. Tolchin Dec. Exh. D. The approved petition is the first step in applying for permanent resident status. However, the approved petition does not confer an immigration benefit independently. Petitioner Juan Tomas is not yet eligible to apply for permanent residency, as his petition was filed on January 22, 2025, and the priority date for applications for SIJ permanent resident status is not current. Tolchin Dec Exh. D.

On June 27, 2025, Petitioner Juan Tomas was arrested by immigration authorities. Tolchin Dec. Exh. B. Petitioner was transferred to the Adelanto detention center and has been detained there since that time. Petitioner Juan Tomas was placed into removal proceedings and charged with inadmissibility for having entered the United States without inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). Tolchin Dec. Exhs. A, B. He is next scheduled for a hearing before an immigration judge on November 6, 2025. Tolchin Dec. Exh. A. Petitioner Juan Tomas is not eligible for a bond redetermination hearing before an immigration judge in light of the Board of Immigration Appeals' precedent decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025).

Petitioner Rosa Lopez is a citizen of Guatemala who entered the United States without inspection in 2008. Tolchin Dec. Exh. H. She resides with her family in Los Angeles, California. Petitioner Rosa Lopez had no contact with immigration authorities until she was arrested at a Home Depot August 9, 2025 as part of a large-scale immigration enforcement action. Tolchin Dec. Exh. I. Petitioner Rosa Lopez

was placed into removal proceedings and was charged with inadmissibility for having entered the United States without inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). Tolchin Dec. Exh. I.

On October 8, 2025, Petitioner Rosa Lopez's request for a bond redetermination hearing was denied by the immigration judge based on lack of jurisdiction. Tolchin Dec. Exhs. E, G, This was required by *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025). Any appeal to the Board is futile in light of this precedent decision. Petitioner Rosa Lopez remains in detention at the Adelanto immigration detention center. Her next hearing is scheduled for December 3, 2025. Tolchin Dec. Exh. F.

III. ARGUMENT

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

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

Petitioners satisfy the criteria and a TRO should be granted.

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

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

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

1. The Text Of § 1226(a) and § 1225(b)(2) Demonstrate That Petitioner Is Not Subject To Mandatory Detention.

First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. 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 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioner, who are inadmissible pursuant to 8 U.S.C. § 1182(a). 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., § 1226(c)(1)(A), (C).

If the Board's position that § 1226(a) did not apply to inadmissible noncitizens such as Petitioners who are present without admission in the United States were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 dramatically reinforce that this section covers people like Petitioners who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered

without inspection, those who are inadmissible because they are present without admission. *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 presence without admission) or § 1182(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 § 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. *See Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide that § 1226(a) covers people like Petitioners because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Despite the clear statutory language, the Board issued its precedent decision on September 5, 2025 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).

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

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." Section 1226(a) covers those who are present within and residing within the United States and who are not at the border seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), 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 like Petitioners, 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 who 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. *See 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. *See 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").

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

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.

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

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies to Petitioners. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioners were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest

noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States*." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

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

The Board has a long practice of considering people like the Petitioner as detained under §1226(a) further supports this reading of the statute. Even as recently as June 30, 2025, the Board held in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), that an immigration judge had jurisdiction under 8 U.S.C. § 1226(a) to conduct a bond redetermination hearing for a noncitizen who was charged with entering the United States without inspection or admission. For decades, and across administrations, the Board has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 806 (BIA 2020); *In Re: Hugo Leonel Lacan-Batz*, No. : AXXX XX3 200 - BOS, 2009 WL 1863766, at *1 (BIA June 19, 2009) (unpublished); *In Re: Jorge Luis Contreras-Linares*, No. : AXX XX6 969 - ELOY, 2003 WL 23508582, at *1 (BIA Dec. 18, 2003) (unpublished). 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 government's new proposed interpretation of the law at issue).

Indeed, agency regulations have long recognized that people like Petitioners 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, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the regulations governing immigration courts and 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 and its mandatory detention provision 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 present and residing in the United States.

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

In the absence of a TRO, Petitioners will continue to be unlawfully detained by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.

"Freedom 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). 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). It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) ("Thus, it follows inexorably from our conclusion that the government's current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm."); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a).")

C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A TRO IS IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established that the public interest factor weighs in their favor because their claims assert that the Board's decision has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the decision that prevents Petitioner from obtaining 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 821, 832 (9th Cir. 2022) (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, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

Prudential exhaustion does not require Petitioners to be forced to endure the very harm his is seeking to avoid by seeking a bond hearing before the immigration judge, when Board precedent requires that the immigration judge deny for lack of jurisdiction. Further, appealing the IJ bond orders to the Board of Immigration Appeals and waiting many months for a decision from the BIA is entirely futile. *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (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 his 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. 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.[1]

Petitioners assert both statutory and constitutional claims and have a

[1] *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).

"fundamental" interest in a bond hearing, as "freedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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

E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

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

The "zipper clause" at 8 U.S.C. § 1252(b)(9), which channels "[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioner does not seek review of orders of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of

three discrete events along the road to deportation was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). Petitioners' challenge to their detention does not fall within these discrete actions. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

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

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

IV. CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' Application for a Temporary Restraining Order and Order to Show Cause and order that Petitioners be provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO, with instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

Dated: October 21, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 21, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF STACY TOLCHIN; AND [PROPOSED] ORDER by email to the following individual:

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo contains 6487 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin
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