BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
PAULINE H. ALARCON (Cal. Bar No. 345785)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-3992
E-mail: Pauline.Alarcon@usdoj.gov

Attorneys for Federal Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Pablo JUAN TOMAS, *et al*, Petitioners, v. Kristi NOEM, *et al*, Respondents.	No. 5:25-cv-02786-MWC-DTB **FEDERAL RESPONDENTS' OPPOSITION TO PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** Honorable Michelle Williams Court United States District Judge

OPPOSITION TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

Federal Respondents hereby oppose Petitioners Pablo Juan Tomas and Rosa Lopez's *ex parte* application for temporary restraining order and order to show cause re: preliminary injunction. Dkt. 4 (the "Application"). The government reiterates here the legal position it has taken in its opposition to the *ex parte* TRO application filed in the *Bautista* case, 5:25-cv-01873-SSS-BFM, which the government filed on July 24, 2025 as Docket no. 8.[1] The same legal issue at issue in *Bautista* has subsequently been raised and resolved in this District in a series of other cases including *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-02054-ODW-ADS, *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.*, 5:25-cv-01789-ODW-DFM, and *Ruben Benitez et al. v. Kristi Noem, et al.*, 5:25-cv-02190-RGK-AS.

As Petitioners are forced to concede (Application at 2), the Board of Immigration Appeals (BIA) has also recently ruled on this issue in its order issued on September 5, 2025 in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). After detailed analysis, the BIA determined that based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. A copy of the BIA's decision in *Matter of Yajure Hurtado* is attached hereto as Exhibit A. The Hon. Cathy Ann Bencivengo in the Southern District of California recently issued a decision affirming that the reasoning of *Matter of Yajure Hurtado* is correct and denying a TRO accordingly in *Chavez v. Noem*, Case no. 3:25-cv-02325-CAB-SBC, Dkt. no. 8 (September 24, 2025). A copy of that *Chavez* decision is attached as Exhibit B hereto.

Federal Respondents are aware that there is authority within this District,

[1] The District Court granted the *ex parte* TRO application in *Bautista* via order issued on July 28, 2025, requiring a Section 1226(a) bond hearing to be provided to the petitioners within seven days [Dkt. 14].

including this Court, that disagree with this analysis and that the Court has jurisdiction under 8 U.S.C. § 1226(a). *See Becerra Ortiz v. Lyons, et al.*, No. 2:25-cv-9831-MWC-KES, Dkt. 7. Because this Court has addressed this issue, Federal Respondents do not include it here.

I. INTRODUCTION

Petitioners are both noncitizen detainees in immigration custody. Dkt. 1 (the "Petition") ¶ 1. Petitioner Tomas is a citizen of Guatemala, who entered the United States without inspection in 2019. *Id.* ¶ 31. Petitioner Tomas was arrested by immigration authorities on June 27, 2025. *Id.* ¶ 36. Petitioner Lopez is also a citizen of Guatemala, who entered the United States without inspection in 2008. *Id.* ¶ 40. Petitioner Lopez was arrested by immigration authorities on August 9, 2025. *Id.* ¶ 42.

On October 21, 2025, Petitioners filed the instant Petition asking the Court to release them or provide them bond hearings within seven days. Petition at 10, ¶ (c). That same day, Petitioners filed their *ex parte* Application seeking essentially the same relief. The Application and the Petition should be denied. Petitioners fail to demonstrate they are entitled to injunctive relief. Petitioners cannot show a likelihood of success on the merits because they seek to circumvent the detention statute under which they are rightfully detained to secure bond hearings that they are not entitled to. Petitioners fall precisely within the statutory definition of aliens subject to mandatory detention without bond found in § 1225(b)(2). As the BIA determined in *Matter of Yajure Hurtado*, Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

For those reasons, and those set forth below, the Court should deny Petitioners' request for relief and dismiss this action in its entirety.

II. ARGUMENT

As Petitioners concede (Application at 14), Petitioners have not appealed to the BIA. To excuse this, they argue that such appeal to the BIA would be "futile." Petition ¶ 45. But when a noncitizen fails to exhaust appellate review at the BIA, courts should

"ordinarily" dismiss the habeas petition without prejudice or stay proceedings until he exhausts his appeals. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Bypassing review at the BIA is "improper." *Id.* The Ninth Circuit identifies three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). First, the agency's "expertise" makes its "consideration necessary to generate a proper record and reach a proper decision." *Id.* (quoting *Noriega–Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages "the deliberate bypass of the administrative scheme." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). And third, "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.* (quoting *Noriega–Lopez*, 335 F.3d at 881). Each reason applies here. *See Puga*, 488 F.3d at 815. Therefore, the Court should deny the Petition and Application for failure to exhaust.

Petitioners cannot show the "exigency or diligence ex parte relief requires." *Hooks v. Target Corp.*, No. 5:22-cv-00052-SSS-SPX, 2023 WL 4680353, at *1 (C.D. Cal. Mar. 2, 2023). Petitioners assert they cannot obtain bond hearings, due to the "precedent decision in *Matter of YAJURE HURTADO*" on September 5, 2025. Petition ¶ 24. But Petitioners were in immigration custody prior to the *Hurtado* decision. *Id.* ¶ 36 ("On June 27, 2025, Petitioner Juan Tomas was arrested by immigration authorities. Petitioner was transferred to the Adelanto detention center and has been detained there since that time"); *Id.* ¶ 42 ("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").

Petitioners fail to explain their efforts, if any, to obtain a bond hearing prior to the *Hurtado* decision. Petitioner Lopez's request for a bond redetermination hearing was a month after the *Hurtado* decision issued, on October 8, 2025. *Id.* ¶ 45. Indeed, the Petition does not explain whether Petitioner Tomas ever made a request for a bond hearing.

Therefore, Petitioners cannot obtain *ex parte* relief, because they failed to act with requisite diligence.

Finally, the balance of hardships favors Respondents. Where the moving party only raises "serious questions going to the merits," the balance of hardships must "tip sharply" in his favor. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)). Petitioners fail to do so here. *See id.* The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous."). Judicial intervention would only disrupt the status quo. The Court should avoid a path that "inject[s] a degree of uncertainty" in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like this. *See* 8 C.F.R. § 1003.1(d)(1). By regulation it must "provide clear and uniform guidance" "through precedent decisions" to "DHS [and] immigration judges." *Id.* Here, the BIA has provided that clear guidance by its decision in *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

III. CONCLUSION

Petitioners' request for relief via the Application and Petition should be denied. Should the Court nonetheless grant the Application, however, the relief should be limited to what other Judges in this District have generally issued in similar cases: Requiring release unless a Section 1226(a) bond hearing is provided within seven (7) days.

Dated: October 22, 2025

Respectfully submitted,

BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ *Pauline H. Alarcon*
PAULINE H. ALARCON
Assistant United States Attorney

Attorneys for Federal Respondent

LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Federal Respondents certifies that this brief contains 1,341 words, which complies with the word limit of L.R. 11-6.1.