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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

	)	
JONATHAN ALEJANDRO NORORIS)	Case No. _____	
ESCOBAR,	)	
Petitioner,	)	EX PARTE APPLICATION FOR
v.	)	TEMPORARY RESTRAINING
	)	ORDER AND ORDER TO SHOW
Todd Lyons, Acting Director,	)	CAUSE RE: PRELIMINARY
Immigration Customs and Enforcement;	)	INJUNCTION
and Ernesto Santacruz, Jr., Field Office	)	
Acting Director for Enforcement and	)	
Removal Operation	)	
Respondents.	)	

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5 U.S.C. § 705

8 U.S.C. § 1225(b)(2)

8 U.S.C. § 1226(a)

28 U.S.C. § 2241

Immigration and Nationality Act § 236

NOTICE OF APPLICATION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Petitioner Jonathan Alejandro Nororis Escobar (“Petitioner” or “Nororis Escobar”) hereby applies to this Court *ex parte*, pursuant to Federal Rule of Civil Procedure 65, Local Rule 65-1, 5 U.S.C. § 705, and L.R. 7-19.1, seeking an Application for a Temporary Restraining Order and Order to Show Cause regarding Preliminary Injunction. This *ex parte* application is necessary, as detailed below and in the accompanying Memorandum of Points and Authorities, to prevent further irreparable injury before a hearing on a preliminary injunction may be held.

Petitioner is a citizen and national of Nicaragua who was previously released under an Order of Release on Recognizance (Form I-220A) in accordance with section 236 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1226, after entering the United States in search of protection. He was placed under ISAP supervision on February 25, 2022, and fully complied with all conditions of release and reporting requirements. Petitioner was subsequently served with a Notice to Appear (NTA) on August 16, 2022. After residing in the United States for nearly three years in full compliance with ICE supervision, Petitioner was re-apprehended

1 in the interior on August 8, 2025, when DHS officers executed a Form I-200,
2 Warrant for Arrest of Alien. The use of a Form I-200 confirms that ICE acted
3 pursuant to its § 236(a) arrest authority, which governs discretionary interior arrests
4 made “on a warrant.”

5 On September 8, 2025, Petitioner appeared before the Immigration Court in
6 Adelanto, California, for a bond redetermination hearing. The Immigration Judge
7 denied bond, finding that the Court lacked jurisdiction. The refusal to consider the
8 merits of Petitioner’s bond request violates the Immigration and Nationality Act and
9 Petitioner’s Fifth Amendment due process rights.

10 Despite this, DHS now claims that Petitioner is detained under INA § 235(b)
11 as an “arriving alien.” That classification is both factually and legally incorrect.
12 Detention under § 235(b) applies only to individuals apprehended at a port of entry
13 or interdicted at sea, not to persons arrested years later inside the United States.

14 Petitioner now seeks a temporary restraining order requiring Respondents to
15 immediately release him from custody. Petitioner requests that the Court order his
16 release on his own recognizance and prohibit Respondents from re-detaining him
17 without a full bond hearing on the merits, at which the government must prove by

1 clear and convincing evidence that Petitioner is either a danger to the community or
2 a flight risk warranting physical custody. In the alternative, Petitioner requests that
3 the Court order the Immigration Judge to conduct a bond hearing on the merits
4 without delay.

5 Petitioner requests that the Court issue a Temporary Restraining Order and an
6 Order to Show Cause regarding the preliminary injunction in the form of the
7 proposed order submitted concurrently herewith. This Application is based upon the
8 Petition for Writ of Habeas Corpus, the Memorandum of Points and Authorities in
9 support of this Application for a TRO, and the Declarations and Exhibits filed
10 concurrently.

11 Respondents were advised via email on October 24, 2025, that Petitioner
12 would be filing this Ex Parte Application and of the substance of the relief requested.
13 Counsel did reasonable and good faith efforts to orally notify the respondent's
14 counsel by calling, in accordance with Local Rule 7-19.1. (See Avendano's
15 Declaration, Exhibit N).

16 Counsel for Respondents is currently unknown. Pursuant to Local Rules 7-19
17 and 7-19.1, undersigned counsel has provided notice of this Ex Parte Application to
18 the Office of the United States Attorney for the Central District of California, Civil

1 Division, which represents the Department of Homeland Security and related federal
2 agencies in habeas corpus and immigration matters.

3 On October 24, 2025, undersigned counsel telephoned the Civil Division at
4 (213) 894-2400 and sent an email to USACAC.Civil@usdoj.gov, advising of the
5 filing of this Ex Parte Application for Temporary Restraining Order and Petition for
6 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

7
8 **Dated:** October 24, 2025

9
10 Respectfully submitted,

11 /s/ **R. Marcelo Avendano**
12 R. Marcelo Avendano, Esq.
13 Pro Bono Attorney for
14 Petitioner Jonathan Alejandro
15 Nororis Escobar
16
17
18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioner Jonathan Alejandro Nororis Escobar (“Petitioner” or “Nororis
4 Escobar”) brings the present Ex Parte Application for a Temporary Restraining
5 Order (“TRO”) and respectfully asks this Court to grant his TRO and Order to Show
6 Cause regarding Preliminary Injunction, and to order Respondents to release him
7 from custody on his own recognizance, or in the alternative, to order a bond hearing
8 on the merits before an immigration judge pursuant to 8 U.S.C. § 1226(a) within
9 seven days of the issuance of the TRO.

10 Petitioner meets all the requirements that merit the grant of this application
11 for a TRO. First, as discussed below, Petitioner is likely to succeed on the merits.
12 Petitioner should be classified as bond eligible under 8 U.S.C. § 1226(a) and not
13 subject to mandatory detention under § 1225(b)(2).

14 The record shows that Petitioner, a citizen and national of Nicaragua, entered
15 the United States on February 23, 2022 seeking protection.

1 He was subsequently released under an Order of Release on Recognizance
2 (Form I-220A) in accordance with section 236 of the Immigration and Nationality
3 Act (INA), 8 U.S.C. § 1226, and placed under ISAP supervision on February 25,
4 2022, following his initial apprehension.

5 Since his release, Petitioner has been living in the United States for more than
6 three years, has no criminal convictions. Has fully complied with all supervision
7 conditions and has established deep community ties. He currently holds an
8 employment authorization document and a Social Security number, maintains stable
9 housing, has employment waiting upon release, and is engaged to be married.
10 Despite his full compliance with all conditions of supervision, Petitioner was re-
11 arrested on August 8, 2025, pursuant to a Form I-200 Warrant for Arrest of Alien—
12 This further confirms that DHS itself recognizes his custody as falling under §
13 236(a), not § 235(b).

14 Petitioner is therefore not an arriving alien. The government's reliance on 8
15 U.S.C. § 1225(b)(2) is misplaced, as that provision applies only to individuals
16 seeking admission at the border or other ports of entry who are arrested without a
17 warrant. Petitioner, by contrast, was apprehended inside the United States, after
18 years of residence, under a warrant of arrest issued by ICE. Accordingly, INA §

1 1225(b)(2) does not govern his custody, and the Immigration Judge retains
2 jurisdiction to conduct a bond redetermination hearing and to consider his release
3 under appropriate conditions.

4 It defies logic that that Petitioner would be treated the same as an applicant
5 for admission, as though he just showed up at the border seeking entry. Petitioner
6 was arrested in the interior of the United States on a warrant more than three years
7 after he entered the United States. The plain language of § 1226(a) applies to this
8 exact scenario.

9 Accordingly, any assertion that Petitioner remains an “arriving alien” subject
10 to § 235(b) detention is inconsistent with the statutory text, implementing
11 regulations, and DHS’s own documents. The Immigration Judge therefore retains
12 full jurisdiction to conduct a bond redetermination hearing and consider Petitioner’s
13 release under appropriate conditions.

14 The plain text of § 1226(a) authorizes release on bond for individuals arrested
15 and detained pending removal proceedings unless that detention is necessary due to
16 danger or flight risk. DHS has failed to make any such showing in Petitioner’s case.
17 Unlike DHS, Petitioner has demonstrated he has no criminal record, he is not a

1 danger to the community and he is not a flight risk. The application of § 1225(b)(2)
2 to a person like Petitioner—who has resided in the United States for a prolonged
3 period, has been previously released under supervision in accordance with section
4 236 of the Immigration and Nationality Act or 8 U.S.C. § 1226, who subsequently
5 was served an NTA and poses no flight risk or danger—defies both statutory logic
6 and constitutional fairness.

7 The government’s ongoing detention of petitioner, despite his perfect
8 compliance with the agency and absence of danger or flight risk, is arbitrary and
9 capricious because it lacks basis for detention of an individual who has been living
10 in the US for more than 3 years and already has ties to the community.

11 Furthermore, the other TRO factors weigh heavily in favor of relief. There is
12 ample case law supporting that Petitioner’s continued detention without a bond
13 hearing on the merits causes immediate and irreparable injury. Lastly, the balance
14 of hardships and public interest factors weigh in favor of the TRO because the
15 government’s position is inconsistent with federal law.

16 Petitioner therefore respectfully requests that this Court grant his Application
17 for a Temporary Restraining Order, enjoining Respondents from continuing to

1 detain him unless and until he is provided with a bond hearing on the merits before
2 an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within seven days of the
3 issuance of the TRO.

4 **II. FACTUAL BACKGROUND**

5 Petitioner Jonathan Alejandro Nororis Escobar entered the United States on
6 February 23, 2022 seeking protection (*See Avendano's Declaration, Exhibit A*).

7 He was subsequently released under an Order of Release on Recognizance
8 (Form I-220A) in accordance with 8 U.S.C. § 1226, and placed under ISAP
9 supervision on February 25, 2022, following his initial apprehension (*See*
10 *Avendano's Declaration Exhibit B*).

11 From that point forward, Petitioner remained under ICE supervision through
12 the ISAP (Intensive Supervision Appearance Program) and fully complied with all
13 immigration reporting requirements. He appeared punctually for all appointments,
14 maintained communication with ICE, and demonstrated consistent good faith and
15 reliability. (*See Avendano's Declaration Exhibit H*).

1 Petitioner was later served with a Notice to Appear (NTA) on August 16, 2022
2 (*See Avendano's Declaration Exhibit I*). Since his release, Petitioner has been living
3 in the United States for more than three years, has no criminal convictions (*See*
4 *Avendano's Declaration Exhibit F*). Has fully complied with all supervision
5 conditions and has established deep community ties (*See Avendano's Declaration*
6 *Exhibits H*).

7 Petitioner has built his life in the United States, has lived and worked in
8 California for over 3 years, maintained steady residence, obtained employment
9 authorization (*See Avendano's declaration Exhibit C*) and a Social Security Number
10 (*See Avendano's declaration Exhibit D*). He lives with his father and supports him
11 financially and emotionally, has been working, his employer is willing to give his
12 employment back after he is released from immigration custody (*See Avendano's*
13 *declaration exhibit G*). Petitioner is in a relationship with Alisha Contreras; they
14 have plans to get married as soon (*See Avendano's declaration Exhibit E*). He has
15 never been convicted of any crime, developed strong community and family ties.

16 Despite this unbroken record of compliance and rehabilitation, ICE re-
17 detained On or about August 7, 2025, Petitioner was arrested on a Form I-200
18 Warrant for Arrest of Alien by U.S. Immigration and Customs Enforcement (ICE)

1 officers in Paso Robles, California and transferred him to the Adelanto ICE
2 Processing Center in Adelanto, California, where he remains detained (*See*
3 *Avendano's declaration Exhibit K*).

4 Petitioner promptly requested a bond hearing, which was held before the
5 Adelanto Immigration Court on September 6, 2025. During the hearing, Petitioner,
6 through counsel, presented strong evidence of community ties, absence of criminal
7 history, and prior compliance under ISAP supervision (*See Avendano's declaration*
8 *exhibit H*). Nevertheless, the Immigration Judge denied *bond* (*See Avendano's*
9 *declaration Exhibit M*), not on the merits, but on jurisdictional grounds, citing *Matter*
10 *of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and finding that the Court lacked jurisdiction
11 because Petitioner was allegedly subject to mandatory detention under INA § 235(b)
12 and 8 U.S.C. § 1225(b)(2).

13 The merits of the bond were never reached. As a result, Petitioner has now
14 been detained for months without any individualized determination of whether his
15 continued detention is justified—a deprivation of liberty that violates the
16 Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.
17 Petitioner's detention serves no purpose other than to separate him from his loved
18 ones.

1 **III. ARGUMENT**

2 **a. Legal Standard**

3 *Ex parte* applications are for extraordinary relief. See Mission Power
4 Engineering Co. v. Continental Casualty Co., 883 F. Supp. 488 (C.D. Cal. 1995).
5 Petitioner must show (i) that they “will be irreparably prejudiced if the underlying
6 motion is heard according to the regular noticed motion procedures” and (ii) that
7 they are “without fault in creating the crisis that requires *ex parte* relief, or that the
8 crisis occurred as a result of excusable neglect.” Mission Power, 883 F. Supp. At
9 293).¹

10 *“A plaintiff seeking a preliminary injunction must establish that he is likely to*
11 *succeed on the merits, that he is likely to suffer irreparable harm in the absence of*
12 *preliminary relief, that the balance of equities tips in his favor, and that an injunction*

¹There is overlap between the *ex parte* requirements and the standard for granting a temporary restraining order (and a preliminary injunction). The TRO requirements address the irreparable harm which is relevant to the irreparable prejudice that would occur if the motion is heard according to the regular noticed motion procedures. Therefore, Petitioner will not separately address the *ex parte* requirement of irreparable prejudice.

1 *is in the public interest.*”² Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20
2 (2008) (citing Munaf v. Geren, 553 U.S. 674, 689–90 (2008); Amoco Prod. Co. v.
3 Vill. of Gambell, 480 U.S. 531, 542 (1987); Weinberger v. Romero Barcelo, 456
4 U.S. 305, 311–12 (1982)). “*Likelihood of success on the merits is a threshold inquiry*
5 *and is the most important factor.*” Simon v. City & Cnty. of San Francisco, 135
6 F.4th 784, 797 (9th Cir. 2025) (quoting Env’t Prot. Info. Ctr. v. Carlson, 968 F.3d
7 985, 989 (9th Cir. 2020)). “[I]f a plaintiff can only show that there are serious
8 questions going to the merits—a lesser showing than likelihood of success on the
9 merits—then a preliminary injunction may still issue if the balance of hardships tips
10 sharply in the plaintiff’s favor, and the other two Winter factors are satisfied.”
11 Friends of the Wild Swan v. Weber, 767 F.3d 936, 942 (9th Cir. 2014) (internal
12 quotation marks and citations omitted).

13 Here, as discussed further below, Petitioner is likely to succeed on the merits,
14 is currently suffering irreparable harm, and the balance of equities and public interest
15 weigh in Petitioner’s favor.

² The standards for issuing a temporary restraining order and a preliminary injunction are “substantially identical. Frontline Med. Assocs., Inc. v. Coventry Healthcare Workers Comp., Inc., 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009).

b. Petitioner is likely to succeed on the merits of his claim

The likelihood of success factor weighs in Petitioner's favor because Petitioner is likely to succeed on his claims that 8 U.S.C. § 1226(a) governs his detention, not 8 U.S.C. § 1225(b)(2) and that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of a bond hearing on the merits is unlawful.

Further, Petitioner possesses a protected liberty interest under the Fifth Amendment. The due process clause of the Fifth Amendment applies to all "persons" within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Thus, Petitioner's continued detainment violates his due process rights.

The same issues presented in the present Application for TRO have been addressed in Federal Courts of the Western District of Washington and in the Central District of California. See *Rodriguez v. Bostock*, No. 3:25-CV-05240 TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025)(granting Petitioner's preliminary injunction, and finding that petitioner is likely to succeed on the merits, that his detention should be governed under Section 1226(a), ordering a bond hearing, and

1 enjoining Respondents from denying bond on the basis that he is detained pursuant
2 to 8 U.S.C. § 1225(b)(2); See also *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-
3 BFM, 2025 U.S. Dist. LEXIS 171364, *24 (C.D. Ca. Jul. 28, 2025) (Ordering that
4 “Respondents are enjoined from continuing to detain Petitioners unless they are
5 provided an individualized bond hearing before an immigration judge pursuant to 8
6 U.S.C. § 1226(a) within 7 days of the date of this Order”); *Gomes v. Hyde*, No.
7 1:25-CV-11571-JEK, 2025 U.S. Dist. LEXIS 128085, at *24 (D. Mass. July 7,
8 2025)(remanding the case to the Immigration Court with instructions to consider
9 Petitioner’s eligibility for bond under Section 1226(a)).

10 The same result is warranted here.

11 **1. 8 U.S.C. § 1226(a) governs Petitioner’s detention**

12 8 U.S.C. 1226(a) recites as follows:

13 *(a) Arrest, detention, and release*

14 *On a warrant issued by the Attorney General, an alien may be arrested and*
15 *detained pending a decision on whether the alien is to be removed from the*
16 *United States. Except as provided in subsection (c) and pending such decision,*
17 *the Attorney General—*

18 *(1) may continue to detain the arrested alien; and*

1 (2) may release the alien on—

2 (A) bond of at least \$1,500 with security approved by, and containing
3 conditions prescribed by, the Attorney General; or

4 (B) conditional parole; but

5 (3) may not provide the alien with work authorization (including an
6 “employment authorized” endorsement or other appropriate work permit),
7 unless the alien is lawfully admitted for permanent residence or otherwise
8 would (without regard to removal proceedings) be provided such
9 authorization.

10 Petitioner Jonathan Alejandro Nororis Escobar was arrested on an I-200
11 Warrant for Arrest by U.S. Immigration and Customs Enforcement officers on
12 August 7, 2025, following a prior period of release under the ISAP (Intensive
13 Supervision Appearance Program) that began on February 25, 2022. Pursuant to an
14 Order of Release on Recognizance (Form I-220A) issued under section 236 of the
15 Immigration and Nationality Act (INA), 8 U.S.C. § 1226.

16 (2) Inspection of other aliens

17 (A) In general

1 Subject to subparagraphs (B) and (C), in the case of an alien who is an
2 applicant for admission, if the examining immigration officer determines that an
3 alien seeking admission is not clearly and beyond a doubt entitled to be admitted,
4 the alien shall be detained for a proceeding under section 1229a of this title.

5 Respondent got a Notice to Appear and charging documents on August 16,
6 2022. He has been fighting his asylum application at the Van Nuys Immigration
7 Court and at Adelanto Immigration Court. Petitioner HAS NO criminal history. It
8 can not be determined by any immigration officer at this point that Petitioner would
9 be clearly and beyond a doubt not entitled to be admitted.

10 8 U.S.C. § 1225 (b)(2) applies to the inspection of aliens arriving in the United
11 States and arrested without a warrant at the border or other ports of entry. The
12 Supreme Court recognized, § 1225 is concerned “*primarily [with those] seeking*
13 *entry,*” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases “*at the Nation’s*
14 *borders and ports of entry, where the Government must determine whether a[]*
15 *[noncitizen] seeking to enter the country is admissible.*” *Id.* at 287. The entire statute
16 is premised on the idea that an inspection occurs near the border and shortly after
17 arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8
18 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting “inspection[s]” of people

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

4 Indeed, the IJ order denying bond to Petitioner and finding that Petitioner is
5 an “applicant for admission” cites cases in which aliens were apprehended at the
6 border or within a few miles of the border. (Brooks Decl. at Ex. D, p. 13-14). In this
7 case Petitioner was not apprehended at or near a port of entry, nor is he an “applicant
8 for admission.”. Accordingly, Petitioner is detained pursuant to INA § 236(a), not
9 as an arriving alien under § 235(b). He has resided in the United States for more than
10 three years, was previously released under Order of Release on Recognizance in
11 accordance with section 236 of the Immigration and Nationality Act or 8 U.S.C. §
12 1226. And, placed under ISAP supervision, on February 25, 2022. Petitioner was re-
13 detained in the interior pursuant to a warrant—circumstances governed exclusively
14 by 8 U.S.C. § 1226(a), not § 1225(b)(2).

15 For example, in Dep’t of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 139-
16 40, the alien “succeeded in making it 25 yards into U.S. territory before he was
17 caught.” In United States v. Gambino-Ruiz, 91 F.4th 981, 988 (9th Cir. 2024), the
18 respondent “crossed the border between ports of entry.” In Matter of M-S-, 27 I&N

1 Dec. 509 respondent was apprehended within hours about 50 miles north of the
2 border. And, in Matter of Q. Li, 29 I&N Dec. at 68 respondent was encountered
3 approximately 5.4 miles away from a designated port of entry and 100 yards north
4 of the border.

5 8 U.S.C. § 1225(b)(2)(A) clearly does not apply to Petitioner and does not
6 apply to those who are arrested in the interior of the United States years later

7 Section 1226(a) covers those who are present within and residing within the
8 United States and who are not at the border seeking admission.

9 Further, the distinction between persons already located inside the United
10 States, like petitioner, and individuals attempting to enter the United States, like the
11 petitioner in Thuraissigiam is important because “[i]t is well established that certain
12 constitutional protections available to persons inside the United States are
13 unavailable to aliens outside of our geographic borders.” Zadvydas, 533 U.S. 678
14 at 693 (citing United States v. Verdugo–Urquidez, 494 U.S. 259, 269 (1990);
15 Johnson v. Eisentrager, 339 U.S. 763, 784 (1950)). “But once an alien enters the
16 country, the legal circumstance changes, for the Due Process Clause applies to all

1 *'persons' within the United States, including aliens, whether their presence here is*
2 *lawful, unlawful, temporary, or permanent."* Id.

3 **2. Legislative History Makes Clear that § 1226(a) governs Petitioner's**
4 **detention**

5 The legislative history of the Illegal Immigration Reform and Immigrant
6 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104--208, Div. C, §§ 302--03, 110
7 Stat. 3009-546, 3009-582 to 3009-583, 3009-585, also supports the conclusion that
8 § 1226(a) applies to Petitioners, not §1225. In passing the Act, Congress was focused
9 on the perceived problem of recent arrivals to the United States who did not have
10 documents to remain. See H.R. Rep. No. 469, pt. 1, at 157-58, 228-29; H.R. Rep.
11 No. 104-828, at 209. Notably, Congress did not say anything about subjecting all
12 people present in the United States after an unlawful entry to mandatory detention if
13 arrested. This is important, because prior to IIRIRA, people like Petitioner were not
14 subject to mandatory detention. See 8 U.S.C. § 1252(a)(1) (1994) (authorizing
15 Attorney General to arrest noncitizens for deportation proceedings, which applied to
16 all persons physically present within the United States). Had Congress intended to
17 make such a monumental shift in immigration law (potentially subjecting millions
18 of people to mandatory detention), it would have explained so or spoken more

1 clearly. See *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But,
2 Congress explained precisely the opposite, noting that the new § 1226(a) merely
3 “restates the current provisions in [INA] section 242(a)(1) regarding the authority
4 of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who
5 is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis
6 added); see also H.R. Rep. No. 104-828, at 210.

7 **3. DHS practice Makes clear that § 1226(a) governs Petitioner’s**
8 **detention**

9 DHS has long considered people like the Petitioner as detained under
10 §1226(a). For decades, and across administrations, DHS has acknowledged that §
11 1226(a) applies to individuals who are present without admission after entering the
12 United States unlawfully, but who were later apprehended within the United States
13 long after their entry. Such a longstanding and consistent interpretation “*is powerful*
14 *evidence that interpreting the Act in [this] way is natural and reasonable.*”
15 *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); see also
16 *BankAmerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on
17 “over 60 years” of government interpretation and practice to reject government’s
18 new proposed interpretation of the law at issue).

1 Indeed, agency regulations have long recognized that people like Petitioner
2 are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
3 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
4 fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the
5 regulations governing immigration courts and implementing § 1226 decades ago.
6 Specifically, EOIR explained that “[d]espite being applicants for admission,
7 [noncitizens] who are present without having been admitted or paroled (formerly
8 referred to as [noncitizens] who entered without inspection) will be eligible for bond
9 and bond redetermination.” 62 Fed. Reg. at 10323.3 In sum, § 1226 applies to
10 Petitioner. Section 1225 and its mandatory detention provision applies only to
11 individuals arriving in the United States as specified in the statute, while § 1226
12 applies to those arrested on warrant, like Petitioner and who have previously entered
13 and are now present and residing in the United States.

14 **c. Petitioner will suffer irreparable harm in the absence of a TRO**

15 In the absence of a TRO, Petitioner will continue to be unlawfully detained
16 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing on the merits.
17 Petitioner has now been detained for more than two months.

1 It “is well established that the deprivation of constitutional rights
2 unquestionably constitutes irreparable injury.” Melendres v. Arpaio, 695 F.3d 990,
3 1002 (9th Cir. 2012) (citation modified); Warsoldier v. Woodford, 418 3d 989, 1001–
4 02 (9th Cir. 2005). See also Hernandez v. Sessions, 872 F.3d 976, 994–95 (9th Cir.
5 2017) (“Thus, it follows inexorably from our conclusion that the government's
6 current policies [which fail to consider financial ability to pay immigration bonds]
7 are likely unconstitutional—and thus that members of the plaintiff class will likely
8 be deprived of their physical liberty unconstitutionally in the absence of the
9 injunction—that Plaintiffs have also carried their burden as to irreparable harm.”);
10 Bautista, No. 2025 U.S. Dist. LEXIS 171364, *24 (“[T]he Court finds that the
11 potential for Petitioners’ continued detention without an initial bond hearing would
12 cause immediate and irreparable injury, as this violates statutory rights afforded
13 under § 1226(a)).

14 “When an alleged deprivation of a constitutional right is involved, most
15 courts hold that no further showing of irreparable injury is necessary.” Warsoldier
16 v. Woodford, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, &
17 Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)). As the Supreme
18 Court has recognized, incarceration “has a detrimental impact on the individual”

1 because “*it often means loss of a job*” and “*disrupts family life.*” *Barker v. Wingo*,
2 407 U.S. 514, 532–33 (1972).

3 “*Freedom from imprisonment—from government custody, detention, or other*
4 *forms of physical restraint—lies at the heart of the liberty*” that the Due Process
5 Clause protects. *Zadvydas*, 533 U.S. at 690. Detention constitutes “*a loss of liberty*
6 *that is . . . irreparable.*” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181
7 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds*,
8 remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022).

9 Thus, due to Petitioner’s continued detention, he faces irreparable harm absent
10 a temporary restraining order.

11 **d. The balance of equities and public interest weighs in petitioner’s**
12 **favor**

13 When the government is the nonmoving party, “*the last two Winter factors*
14 *merge.*” *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). Petitioner has
15 established that the public interest factor weighs in his favor because classifying
16 Petitioner under § 1225(b)(2) deprives him of due process and is in violation of
17 federal laws. *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th

1 Cir. 2020) (“It is always in the public interest to prevent the violation of a party’s
2 constitutional rights.”) (citing Padilla, 953 F.3d at 1147–48).

3 Because the policy preventing Petitioners from obtaining bond “is
4 *inconsistent with federal law, . . . the balance of hardships and public interest factors*
5 *weigh in favor of a preliminary injunction.*” Moreno Galvez v. Cuccinelli, 387 F.
6 Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); see also Moreno Galvez, 52
7 F.4th at 832 (affirming in part permanent injunction issued in Moreno II and quoting
8 approvingly district judge’s declaration that “it is clear that neither equity nor the
9 public’s interest are furthered by allowing violations of federal law to continue”).
10 This is because “*it would not be equitable or in the public’s interest to allow the*
11 *[government] . . . to violate the requirements of federal law, especially when there*
12 *are no adequate remedies available.*” Valle del Sol Inc. v. Whiting, 732 F.3d 1006,
13 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Thus, the
14 balance of equities and public interest weigh in Petitioner’s favor.

15 **e. Waiver of Exhaustion is Appropriate Here**

16 Although prudential exhaustion may apply to habeas claims brought under 28
17 U.S.C. § 2241, a court may waive the prudential exhaustion requirement if

1 “administrative remedies are inadequate or not efficacious, pursuit of administrative
2 remedies would be a futile gesture, irreparable injury will result, or the
3 administrative proceedings would be void.” Hernandez, 872 F.3d at 988 (quoting
4 Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)). “*The party moving the court*
5 *to waive prudential exhaustion requirements bears the burden of demonstrating that*
6 *at least one of these Laing factors applies.*” Aden v. Nielsen, No. C18-1441RSL,
7 2019 U.S. Dist. LEXIS 194142, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7,
8 2019) (citing Ortega-Rangel, 313 F. Supp. 3d at 1003).

9 Waiver of the prudential exhaustion requirement is appropriate here because
10 1) an appeal to the BIA would be futile and 2) because of the irreparable harm that
11 would result in waiting for an appeal before the BIA. Futility is an exception to the
12 prudential exhaustion requirement. Here, Petitioner has already been denied a bond
13 hearing on the merits by an IJ based on the view that § 1225 applies and not § 1226.
14 Further, a recent BIA decision, Matter of YAJURE HURTADO, 29 I&N Dec. 216
15 (BIA 2025) stated that based on the plain language of section 235(b)(2)(A) of the
16 Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration
17 Judges lack authority to hear bond requests or to grant bond to aliens who are present
18 in the United States without admission.

1 Under these facts, an appeal to the BIA would be futile. In *Bautista*, 2025 U.S.
2 Dist. LEXIS 171364, at *24 the Court stated it “was unconvinced that the
3 administrative process would self-correct in light of the DHS Guidance Notice.” The
4 Court also took note of “*DHS’s unequivocal commitment to the contested legal*
5 *authority in [the] matter*”, meaning that DHS was unlikely to correct itself.

6 Here, it is appropriate for this Court to interpret the appropriate statute that
7 applies to Petitioner. The task of resolving this question of statutory interpretation
8 belongs to the independent judgment of the courts. *Loper Bright Enters. v.*
9 *Raimondo*, 603 U.S. 369, 385, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024) (“*When*
10 *the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of*
11 *Congress, in order to ascertain the rights of the parties.*”)

12 Next, irreparable harm is also present here and is an exception to the
13 prudential exhaustion requirement. The Ninth Circuit has previously held that
14 irreparable harm is demonstrated when “*at least some individuals who would be*
15 *detained if not provided a bond hearing will be granted conditional release under*
16 *[the proposed] injunction.*” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.
17 2013). Here, Petitioner is very likely to be granted conditional release if given a bond
18 hearing because he does not pose a threat to the United States and Petitioner has a

1 strong record of compliance in immigration court. While previously in proceedings
2 before the Van Nuys Immigration Court, he retained counsel and attended every
3 hearing. Petitioner also has perfect compliance with ISAP for more than three years
4 this is strong evidence that he is not a flight risk. He has consistently demonstrated
5 reliability in attending check-ins and responding to immigration officers' requests.
6 Petitioner has no criminal convictions. Petitioner's father is waiting for him to be
7 released. Petitioner is engaged to a U.S. citizen fiancée. Petitioner has plans to get
8 married after he is out of immigration custody. the only thing preventing Petitioner
9 from conditional release pending the outcome of the removal proceedings is the
10 statutory violation of §1226(a) See also Cortez v. Sessions, 318 F. Supp. 3d 1134,
11 1139 (N.D. Cal. 2018) (waiving exhaustion where detainee "suffers potentially
12 irreparable harm every day that he remains in custody without a hearing, which could
13 ultimately result in his release from detention").

14 District Courts in the 9th Circuit district courts in this circuit have routinely
15 waived prudential exhaustion requirements for noncitizens like Petitioner facing
16 prolonged detention while awaiting administrative appeals. See, e.g., Montoya
17 Echeverria v. Barr, No. 20-CV-02917-JSC, 2020 U.S. Dist. LEXIS 92510, 2020 WL
18 2759731, at *6 (N.D. Cal. May 27, 2020), Marroquin Ambriz, 420 F. Supp. 3d at

1 [961-62](#) (N.D. Cal. 2019), Ortega-Rangel, [313 F. Supp. 3d at 1003-04](#), Cortez, [318](#)
2 [F. Supp. 3d at 1138-39](#); Villalta v. Sessions, No. 17-CV-05390-LHK, [2017 U.S.](#)
3 [Dist. LEXIS 162981, 2017 WL 4355182](#), at *3-4 (N.D. Cal. Oct. 2, 2017); Lopez
4 Reyes, [2018 U.S. Dist. LEXIS 222013, 2018 WL 7474861](#), at *6-7, Rios Troncoso
5 v. Sessions, No. CV1701492PHXDGCMHB, [2017 U.S. Dist. LEXIS 141885, 2017](#)
6 [WL 3838686](#), at *3 (D. Ariz. Sept. 1, 2017), Birru v. Barr, No. 20 CV-01285-LHK,
7 [2020 U.S. Dist. LEXIS 68132, 2020 WL 1905581](#), at *3-4 (N.D. Cal. Apr. 17, 2020).

8 In sum, waiver of the prudential exhaustion requirement is appropriate, and
9 Petitioner respectfully requests that the Court grant the requested relief.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully asks the Court to grant the Application for a Temporary Restraining Order and Order to Show Cause.

DATED: October 24, 2025

By: /s/ R. Marcelo Avendano

R. Marcelo Avendano

Pro Bono Attorney for Jonathan

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