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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HENRIQUE JAVIER MEJIA-PACHECO,

Petitioner,

v.

Ernesto SANTACRUZ JR., Acting Director, Los Angeles Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Fereti SEMAIA, Warden of Adelanto ICE Processing Center,

Respondents.

Case No.

PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

PETITIONER'S DHS NO:

[redacted]

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for emergency relief in the form of a temporary restraining order (TRO) directing to immediately release Petitioner from their custody.

In the alternative, Petitioner requests that Respondents provide Petitioner with an individualized bond hearing before an immigration judge within seven days of the issuance of TRO, at which the government bears the burden of proving by clear and convincing evidence that Petitioner's continued detention is justified.

Petitioner further seeks the issuance of a temporary restraining order requiring that, in the event Respondents seek to re-detain Petitioner, Respondents must first provide Petitioner with a pre-deprivation bond hearing before a neutral arbiter.

Petitioner also seeks a temporary restraining order enjoining the Respondents from relocating Petitioner outside of the Central District of California pending final resolution of this case.

This application is supported by the Memorandum of Points and Authorities accompanying exhibits, as well as any additional submissions that may be considered by the Court.

Dated: November 26, 2025

Respectfully Submitted,

/s/Gita B. Kapur
Gita B. Kapur
Attorney for Petitioner

CERTIFICATE OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, I hereby certify that on November 26, 2025 at approximately at 2:00 PM, I emailed David M. Harris, Chief of the Civil Division, U.S. Attorney's Office, Central District of California. I provided a copy of the Application for a Temporary Restraining Order and Memorandum of Points and Authorities to Mr. Harris by emailing copies to David.M.Harris@usdoj.gov.

Dated: November 26, 2025

Respectfully Submitted

/s/Gita B. Kapur
Gita B. Kapur
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 26, 2025, I served a copy of this Application for TRO and OSC by email to the following individual:

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Ernesto SANTACRUZ JR., Acting Director, Los Angeles Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Fereti SEMAIA, Warden of Adelanto ICE Processing Center,

Respondents.

Case No.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

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I. INTRODUCTION

Petitioner, Henrique Javier Mejia-Pacheco, by and through undersigned counsel, hereby files this motion for a Temporary Restraining Order (TRO) that requires Respondents to immediately release him from custody or to provide him with an individualized bond hearing before an immigration judge (IJ) pursuant to 8 U.S.C. §1226(a) within seven days of the issuance of a TRO.

Although Petitioner was present within and residing in the United States at the time of his immigration arrest, he has been subjected to a new United States Department of Homeland Security (DHS) policy issued on July 8, 2025 which instructs all Immigration and Customs Enforcement (ICE) employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. §1225(b)(2)(A) and therefore subject to mandatory detention.

The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *See* Ex. C (ICE Interim Guidance). On October 6, 2025, without warning or prior notice, ICE officers arrested Petitioner during his regularly scheduled ICE check-in and took him into immigration custody. Since then, Petitioner has been detained at the Adelanto ICE Processing Center in Adelanto, California. *See* Ex. A (ICE's Online Detainee Locator System Search Result).

On October 20, 2025, Petitioner, through the undersigned counsel's office, sent a Parole/Bond request to ICE Enforcement and Removal Operations (ERO)

with supporting documentation. On November 5, 2025, ERO denied Petitioner's Parole/Bond request, and there was no individualized assessment of Petitioner's circumstances, ties to the community, compliance history, and/or lack of dangerousness. *See* Ex. B (ERO Notice Denying Petitioner's Parole/Bond Request). Upon information and belief, ICE denied Petitioner's request based solely on a blanket policy categorizing him as an "applicant for admission" subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

The denial of a bond hearing to the Petitioner and his ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. §1101 *et seq*. Despite the new DHS policy's assertions to the contrary, 8 U.S.C. §1225(b)(2)(A) does not apply to individuals like Petitioner 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 of conditional parole. Section 1226(a) expressly applies to individuals, like Petitioner, who are charged as removable for having entered the U.S. without inspection and being present without admission.

Respondents' new legal interpretation set forth in the policy is plainly contrary to the statutory framework and contrary to decades of agency practice applying §1226(a) to people like Petitioner who are present within the U.S. Respondents' new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving Petitioner of statutory and constitutional rights and

unquestionably constitutes irreparable injury.

Petitioner therefore seeks a TRO enjoining Respondents from continuing to detain him or to provide a constitutionally required individualized bond hearing before an IJ.

Petitioner also seeks an Order prohibiting Respondents from relocating Petitioner outside of the Central District pending final resolution of this litigation.

II. STATEMENT OF FACTS

Petitioner has built a life of stability, family devotion, and community contribution in the United States over the past seven years, only to face sudden and devastating separation from his loved ones due to his current immigration detention.

At just 17 years old, on or about July 15, 2018, Petitioner entered the U.S. without inspection, fleeing circumstances that drove him to see a better future. He was placed in removal proceedings under 8 U.S.C. §1182(a)(6)(A)(i) as an individual present without admission or parole, but was released on his own recognizance, allowing him to begin integrating into American society. *See* Ex. D (Notice to Appear).

On July 17, 2018, Petitioner was released on his own recognizance. *See* Ex. E (Order of Release on Recognizance). Specifically, ICE's Order of Release on Recognizance stated that Petitioner was being released on his own recognizance "[i]n accordance with section 236 of the Immigration and Nationality Act," codified at section 1226.

Additionally, the Notice to Appear (NTA) issued by DHS to Petitioner did not classify him as an "arriving alien." Instead, the NTA charged him as "present in the United States who has not been admitted or paroled." *See* Ex. D (Notice to Appear). This classification places him squarely within section 1226.

In 2019, Petitioner properly filed an asylum application (I-589) disclosing the hardships he underwent causing him to leave his home country. Unfortunately, his asylum application was denied, and he was ordered removal from the United States. On November 26, 2019, Petitioner timely appealed this denial to the Board of Immigration Appeals (BIA), and this matter is still pending. *See* Ex. F (EOIR Automated Case Information).

On October 6, 2025, Petitioner appeared for his regularly scheduled ICE check-in appointment in San Bernardino, California. Petitioner has consistently appeared at all of his scheduled ICE check-in appointments, which occur every six months.

Without warning or prior notice, on October 6, 2025, ICE officers arrested Petitioner during this check-in and took him into ICE custody. Since the time of his release on his recognizance from July 2018 until he was taken into custody by ICE, he has been living with his father, spending time with family, working, and developing ties with his community.

Since October 6, 2025, Petitioner has been detained at the Adelanto ICE Processing Center in Adelanto, California. *See* Ex. A (ICE's Online Detainee

Locator System Search Result).

Petitioner was not provided with any hearing, notice, or opportunity to be heard before being taken into custody.

Petitioner has not engaged in any criminal conduct, violated any condition of his release, or failed to appear at any ICE appointment. There has been no change in Petitioner's circumstances that would justify his re-detention after seven years of compliant community residence.

On or about October 20, 2025, Petitioner, through the undersigned counsel's office, sent a parole/bond request to the Adelanto ICE Processing Center, ICE ERO with supporting documentation.

On or about November 5, 2025, Petitioner was notified by email that ERO denied Petitioner's parole/bond request. There was no individualized assessment of Petitioner's circumstances, ties to the community, compliance history, and/or lack of dangerousness. *See* Ex. B (ERO Notice Denying Parole/Bond Request).

Upon information and belief, ICE denied Petitioner's request based solely on a blanket policy categorizing him as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

At no time between November 2019 and October 2025 did immigration authorities seek to detain Petitioner or revoke his release on recognizance, despite the IJ's adverse decision and the pendency of his BIA appeal.

Petitioner has consistently demonstrated a strong commitment to complying

with all immigration requirements and has exhibited good moral character. He has never missed any scheduled Immigration Court hearings or ICE check-in appointments, attending each one faithfully over the past seven years. Petitioner has worked diligently to support his family and contribute positively to his community, maintaining a peaceful and law-abiding life without any criminal record. The parole/bond denial has caused undue hardship to Petitioner and his family, depriving them of even the opportunity for a fair assessment of his release.

During his seven years of residency in the U.S., Petitioner has been living with his father, Juan Enrique Mejia Trochez. Petitoner's father depends entirely on his son, Petitioner, for his daily well-being and survival.

After suffering a devastating workplace accident that crushed and partially amputated his thumb in December 2024, Mr. Mejia Trochez has lived with constant, severe pain that affects his hand, arm, back, leg, knee, and spine. His mobility is extremely limited, and he is no longer able to work, lift objects, walk steadily, or care for himself independently. He reports daily pain at a level of ten out of ten, and these limitations have caused significant depression and anxiety. *See* Ex. G (Medical Record of Petitioner's Father).

Petitioner is the sole support for Mr. Mejia Trochez, providing housing, paying all expenses, and caring for his physical and emotional needs due to his injury. Without Petitioner, Mr. Mejia Trochez lacks financial resources, stability, and assistance with daily tasks. Since Petitioner's detention, he has been

overwhelmed, frightened, and unable to care for himself, urgently needing Petitioner to live safely and maintain his dignity.

Petitioner has strong U.S. ties through his cousin, Jose Hernan Bautista Trochez, a U.S. permanent resident in Los Angeles who volunteered as Petitioner's sponsor for a bond/parole request with ICE ERO. *See* Ex. H, collectively (Jose Hernan Bautista Trochez's Declaration, Permanent Resident Card, and California Driver's License). As an older cousin who watched Petitioner grow up, Mr. Bautista Trochez attests to Petitioner's good moral character, responsibility, and hard work. He describes Petitioner as compassionate, honest, and disciplined, someone committed to supporting his family and community.

Under the discretionary framework of 8 U.S.C. § 1226(a), Petitioner deserves the chance to reunite with his family, where he can continue providing the care and support, they so urgently need. His prolonged detention serves no purpose but to inflict unnecessary hardship on a devoted family man who has called the United States home.

III. ARGUMENT

The requirements for granting a TRO 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).

Petitioner must demonstrate that (1) he is likely to succeed on the merits of his claims; (2) he is likely to suffer irreparable harm in the absence of preliminary

relief; (3) the balance of equities tips in his 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 show 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).

Petitioner satisfies the criteria and a TRO should be granted.

A. Petitioner is Likely to Succeed on the Merits of His Claims

Petitioner is likely to succeed on his claims that his ongoing detention by Respondents under 8 U.S.C. §1225(b)(2) and the denial of a bond hearing before an IJ are 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 8 U.S.C. §1226(a) and 8 U.S.C. §1225(b)(2) Demonstrates that Petitioner is Not Subject to Mandatory Detention.

First, Petitioner's status as an individual with lengthy, uninterrupted residence in the U.S. following his release on his own recognizance in 2018 places him squarely within the discretionary detention framework of 8 U.S.C. §1226(a).

Specifically, ICE's Order of Release on Recognizance stated that Petitioner

was released on his own recognizance "[i]n accordance with section 236 of the Immigration and Nationality Act," codified at 8 U.S.C. §1226. Additionally, the NTA issued by DHS to Petitioner did not classify him as an "arriving alien." Instead, the NTA charged him as "present in the United States who has not been admitted or paroled." This classification places him squarely within 8 U.S.C. §1226, not 8 U.S.C. §1225. *See* Ex. D (Notice to Appear); Ex. E at 8 (Order of Release on Recognizance).

It is therefore unlawful to deny him any bond hearing based on an overbroad reading of §1225(b)(2)(A), which is the mandatory detention regime for certain noncitizens being inspected as "applicants for admission," not for long-present interior residents like Petitioner. The plain text of the INA, as recently interpreted in *Maldonado Bautista v. Santacruz Jr., et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal.) dictates that a noncitizen arrested in the interior after years of residence and long-standing treatment as a §1226(a) respondent is not subject to mandatory detention under §1225(b)(2).

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 is 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 Respondents' position that §1226(a) did not apply to inadmissible noncitizens such as Petitioner, who is present without admission in the United States, there would be no reason to specify that §1226(c) governs certain persons who are inadmissible; instead, the statute would have only needed to address people who are deportable for certain offenses. Notably, recent amendments to §1226 dramatically reinforces that this section covers people like Petitioner who DHS alleges to be present without admission. The Laken Riley Act (LRA) added language to §1226 that directly references people who have entered without inspection and who are present without admission. *See* 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, by default, §1226(a) covers persons charged 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 *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, DHS issued a new policy on July 8, 2025 instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under §1182(a)(6)(A)(i), i.e., those who are present without admission, to be an "applicant for admission" and therefore subject to mandatory detention pursuant to §1225(b)(2)(A). *See* Ex. C (ICE Interim Guidance). The new policy was implemented "in coordination with" the DOJ. *Id.* And on September 5, 2025, the BIA, in *Matter of Yajure Hurtado*, adopted this same position.

The new policy 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 Petitioner, 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 U.S. "who has not been admitted." Section 1226(a) covers those who are present within and residing within the U.S. and who are not at an international 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., "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeing 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 [noncitizen]," encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under §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 recently arriving at a port of entry or who have recently entered the U.S. and not those already residing here. Paragraph (b)(2) is similarly limited to people

applying for admission when they arrive in the U.S. 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 Petitioner, 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' 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 DHS and EOIR policy on this basis ignore all this and instead focus on the definition of "application 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 9th 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 years or decades later.

Moreover, in deeming that all noncitizens who entered without inspection are necessarily encompassed by the mandatory detention provision at §1225(b)(2), the DHS and EOIR policy 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 policy and the implementation of the policy ignore this text, just as it ignores the statutory language in §1226 that expressly encompasses persons who have entered the U.S. and are present without admission.

2. The Legislative History Further Supports the Application of §1226(a) to Petitioner's 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 Sat. 3009-546, 3009-582 to 3009-583, 3009-585, also supports a limited construction of §1225 and the conclusion that §1226(a) applies to Petitioner. 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 U.S. after an unlawful entry to mandatory detention if arrested.

This is important, as prior to IIRIRA, individuals like Petitioner 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 Petitioner's Detention.

DHS' long practice of considering people like Petitioner as detained under §1226(a) further supports this reading of the statute. Typically, in cases like that of Petitioner, DHS issues a Form I-286, Notice of Custody Determination, or Form I-200, stating that the person is detained under §1226(a) or has been arrested under that statute. This decision to invoke §1226(a) is consistent with longstanding practice. For decades, and across administrations, DHS 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. 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 Petitioner 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 individuals like Petitioner 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 apply 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.

4. Heightened Private Interests Weigh in Favor of Releasing Petitioner

Immediately.

In 2018, Petitioner was released from ICE custody on his own recognizance and has remained at liberty for over seven years. *See* Ex. E (Order of Release on Recognizance). In 2019, he filed an asylum application; although denied, he timely appealed to the BIA, and that appeal remains pending. *See* Ex. F (EOIR Automated Case Information).

On October 6, 2025, Petitioner appeared for his regularly scheduled ICE check-in appointment. Petitioner has consistently appeared at all of his scheduled ICE check-in appointment, which occur every six months.

Without warning or prior notice, on October 6, 2025, ICE officers arrested Petitioner during his check-in and took him into immigration custody. Since the time of his release on his own recognizance in July 2018 until he was taken into custody by ICE, he has been living with his father, spending time with family, working, and developing ties with his community.

Unlike *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981), where the BIA allowed bond revocation upon "considerable change in circumstances," Petitioner has no material changes in circumstances to justify his sudden arrest during a routine ICE check-in appointment, which he attended voluntarily and consistently for years. Unlike the petitioner in *Sugay*, in this instant matter, Petitioner has no criminal record and has complied fully with ICE supervision.

The facts underlying Petitioner's immigration case remain unchanged, and

he had previously been permitted to remain in the community while awaiting the BIA's decision. Because removal is legally stayed during the pendency of a timely BIA appeal, continued detention does not serve any immigration purpose. Given his long history of compliance and the absence of risk of flight or danger to the community, continued detention is unnecessary. For these reasons, Petitioner should be released pending the appeal or, at minimum, provided a bond hearing before a neutral adjudicator to meaningfully assess the necessity of his continued detention.

The Supreme Court has held that adequate due process requires procedural safeguards proportional to the liberty interest at stake. *Haygood v. Younger,* 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc), citing *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972). This Court must balance Petitioner's significant liberty interest against the government's interest in efficient immigration administration to determine the process due. *Id.* at 1357; see also *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

Under the *Mathews v. Eldridge* balancing test, the Court must consider: (1) the private interest affected; (2) the risk of erroneous deprivation through current procedures and the value of additional safeguards; and (3) the government's interest including administrative burdens. *Haygood,* 769 F.2d at 1357.

The Supreme Court further instructs that the Constitution generally requires a hearing before depriving liberty, absent extraordinary circumstances. *Zinermon v.*

Burch, 494 U.S. 113, 127 (1990). Denial of a pre-deprivation hearing based on jurisdictional technicalities, such as under *Matter of Hurtado*, violates due process's individualized balancing requirement.

Here, Petitioner's private interest in release is heightened by his critical family ties and caregiving responsibilities. He is the sole supporter and care taker of his elderly father, who suffers from severe and worsening medical conditions following a December 2024 workplace accident that crushed and partially amputated his thumb. Mr. Mejia Trochez experiences excruciating pain and has severely limited mobility, impairing his ability to work or care for himself. His daily pain is at the highest intensity and has caused serious depression and anxiety.

Petitioner provides essential housing, financial support, nutrition, and emotional care. Since Petitioner's detention, Mr. Mejia Trochez's health and well-being have deteriorated further, as Petitioner had been managing his medical care and medication. *See* Ex. G (Medical Record of Petitioner's Father). Mr. Mejia Trochez's fragile condition intensifies the hardship of Petitioner's detention and underscores the urgent need for release to preserve his father's health and dignity.

Petitioner also maintains strong family ties here, including his cousin, Jose Hernan Bautista Trochez, a U.S. lawful permanent resident in Los Angeles, who sponsored Petitioner in a bond/parole request and attests to Petitioner's good moral character, responsibility, and dedication to family and community. *See* Ex. H, collectively (Jose Hernan Bautista Trochez' Declaration, Permanent Resident Card,

and California Driver's License).

Moreover, Petitioner has steady employment with a pallets company, providing crucial financial stability for himself and his family. Losing this employment would inflict significant hardship by jeopardizing his income and ability to care for his father.

Applying the *Mathews* test, the risk of erroneous deprivation without a TRO or bond hearing is substantial, given the significant liberty and family interests at stake. The value of procedural safeguards to prevent this harm is therefore high. Conversely, the government's interest in detention pending appeal, including administrative burdens, is limited and does not outweigh Petitioner's interests.

Accordingly, the heightened private interests weigh strongly in favor of Petitioner's immediate release or, at minimum, an individualized bond hearing that carefully evaluates these circumstances before any continued detention is imposed.

Petitioner's steady employment and consistent financial and physical support to his father reflect responsibility, maturity, and meaningful contribution to his family's well-being. His presence is essential, not optional, to ensuring his father's basic needs and medical care.

Furthermore, under current BIA interpretations, there is no administrative mechanism for Petitioner to request a bond hearing from an IJ because such a request will be necessarily be denied.

B. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.

In the absence of a TRO, Petitioner will continue to be unlawfully detained by Respondents pursuant to §1225(b)(2) and denied a bond hearing before an IJ. Petitioner has now been detained without a bond hearing for more than 45 days.

"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.")

Again, Petitioner has significant family ties: his father who greatly depends on him, and his cousin who is a United States lawful permanent resident. Petitioner's father whose documented medical condition limits his ability to

perform daily tasks independently. Petitioner's presence is not only a source of emotional support, but a necessary part of ensuring his father's physical wellbeing, daily stability, and access to basic care. *See* Ex. G (Medical Record of Petitioner's Father). Detaining Petitioner therefore places his father at risk of worsening emotional deterioration and physical harm, as he is left without the only person capable of providing essential daily care and ensuring his well-being.

Petitioner also has a U.S. citizen cousin, Jose Hernan Bautista Trochez, currently residing in Los Angeles, California and has formally expressed his support for Petitioner. As stated in his declaration, Mr. Bautista Trochez has known Petitioner since childhood and attests to his honesty, strong work ethic, discipline, and compassion toward others, describing him as a young man who "came to this country full of dreams" and strives to be "the best he could for his dad and himself." Mr. Bautista Trochez has affirmed his willingness to serve as Petitioner's sponsor, take financial responsibility for him, and ensure that he attends all immigration appointments and court appearances. *See* Ex. H, collectively (Jose Hernan Bautista Trochez's Declaration, Permanent Resident Card, and California Driver's License).

Furthermore, Petitioner has secured stable employment and receives a consistent income, making him financially capable of supporting his family. Without a TRO, Petitioner faces irreparable harm as he will be unable to earn a livelihood, jeopardizing his ability to provide for himself and his dependent. This deprivation disrupts not only his economic stability but also his essential role as the

family's primary provider.

Beyond economic interests, Petitioner faces significant non-compensable harm regarding the health and welfare of his elderly father. His father suffers from severe medical conditions and relies on Petitioner as his primary caregiver. The critical need for Petitioner's presence and support is underscored by his father's fragile health and dependence on him for daily care. Furthermore, Petitioner's strong familial ties include his cousin, a U.S. lawful permanent resident who has committed to supporting and sponsoring Petitioner, reflecting the petitioner's valued and trusted role within his family network.

The deprivation of Petitioner's ability to provide this essential care and support causes substantial and irreparable injury, warranting immediate judicial protection. Accordingly, the issuance of a TRO is necessary to prevent continuing harm to Petitioner and his family.

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). Petitioner has established that the public interest factor weighs in his favor because his claims assert that the new policy has violated federal laws. See *Valle del Sol Inc. v. Whitting,* 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing 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 de Sol Inc. v. Whitting*, 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).

Moreover, Petitioner's detention is unjustified while his I-589 application remains pending before the BIA, as there has been no decision or action by the government to resolve his case. The absence of a ruling from BIA means that Petitioner's immigration status has not changed, and he continues to have a pending claim for protection that remains legally viable. Detaining Petitioner during this period, without any movement in his case or adjudicatory determination, serves no legitimate purpose and imposes unnecessary hardship while his appeal remains unresolved.

D. Prudential Exhaustion is Not Required.

Prudential exhaustion does not require Petitioner to endure irreparable harm by being forced to exhaust an administrative remedy that does not exist. Where no bond hearing has been afforded at all, and ERO has denied parole/bond request with no individualized assessment of Petitioner's circumstances, ties to the community, compliance history, and/or lack of dangerousness, exhaustion is impossible and therefore excused. As recognized in *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004), exceptions to the exhaustion requirement include situations where administrative remedies are inadequate or not efficacious, or where irreparable injury would result from forcing exhaustion.

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.

1. Futility

Futility is an exception to the prudential exhaustion requirement. Petitioner has been subjected to the new DHS policy instructing all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under

§1182(a)(6)(A)(i) to be an "applicant for admission" under §1225(b)(2)(A) and subject to mandatory detention. The DHS policy states it was issued "in coordination with the Department of Justice (DOJ)." *See* Ex. C (ICE Interim Guidance). IJs function within the Executive Office for Immigration Review which is a component of the DOJ.

Further, the most recent published BIA decision on this issue, i.e., *Matter of Hurtado*, held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under §1225(b)(2)(A). *See* Mot. To Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31. Under these facts, appeals to the BIA would be futile.

2. Irreparable Injury

Irreparable injury is an exception to any prudential exhaustion requirement. Because Petitioner is denied parole/bond and ordered mandatorily detained, each day he remains 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. *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. Session*, 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).

Petitioner asserts both statutory and constitutional claims and has a "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 Petitioner faces extends beyond a chance at physical liberty. These 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.*

3. Agency Delay

Third, BIA's delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A court's ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the 9th Circuit has explained, Supreme Court precedent "permits a court under certain prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.'" *Klein v. Sullivan*, 978 S.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldrige*, 424 U.S. 319, 330 (1976)). Surely, as noted above, Petitioner's interest here in physical liberty is a "fundamental" one. *Hernandez*, 872 F.3d at 993. Moreover, the Supreme Court has explained that "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this fundamental interest and the Supreme Court's admonition that only speedy relief is meaningful, BIA takes over half a year in most cases to adjudicate an appeal of a decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up in a detention facility with conditions

"similar … to those in many prisons and jails" and separated from family." *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g., Hernandez*, 872 F.3d at 996.

District courts facing situations similar to the one at issue here acknowledged that the BIA's months-long review is unreasonable and results in ongoing injury to the detained individual. *See, e.g., Perez*, 445 F. Supp. 3d at 286.

Indeed, as one district judge observed, "the vast majority of … cases … have 'waived exhaustion … where several additional months may pass before the BIA renders a decision on appending appeal [of a custody order]." *Montoya Echeverria*, 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301, at *5); *see also Hechavarria*, 358 F. Supp. 3d at 237-38 (citing *McCarthy* and BIA delays as reason to waive prudential exhaustion requirement).

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Application for a Temporary Restraining Order and Order to Show Cause.

DATED: November 26, 2025

Respectfully Submitted

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner, certifies that this brief contains 6,982 words, which complies with the word limit of L.R. 11-6.1.

Dated: November 26, 2025

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

HENRIQUE JAVIER MEJIA-PACHECO,

Petitioner,

v.

Ernesto SANTACRUZ JR., Acting Director, Los Angeles Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Fereti SEMAIA, Warden of Adelanto Ice Processing Center,

Respondents.

Case No.

PETITIONER'S EXHIBITS IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE