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

Jose GONZALEZ GIRON; Manuel NAVA;
Elias VASQUEZ JUAREZ; Alfredo
MUNGUIA YOGUEZ; Aide OCHOA
MALDONADO; Cesar HERNANDEZ
ORTIZ; Jeronimo VARGAS BERSABE;
Ezequias POPUL AJQUIY; Ponciano NAVA
MOJICA;

Petitioners,

v.

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

Respondents.

Case No.

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

1
2 For the reasons explained in the accompanying Memorandum of Points
3 and Authorities, Petitioners hereby make this *Ex Parte* Application for a
4 Temporary Restraining Order and Order to Show Cause Re: Preliminary
5 Injunction pursuant to Federal Rule of Civil Procedure 65. Petitioners are in
6 pending removal proceedings and charged with having entered the United States
7 without authorization. Their detention is in violation of the statute at 8 U.S.C. §
8 1226(a). This was acknowledged by this Court in a class-wide action for
9 declaratory judgment which declared the policy unlawful. *Maldonado Bautista*
10 *v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 81 at 12; Dkr # 82 at
11 14. Despite this Court's orders of partial summary judgment and class
12 certification in *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM
13 (C.D. Cal.), the immigrations courts are refusing to find jurisdiction to hold bond
14 redetermination hearings, and instead are applying the Board of Immigration
15 Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to
16 find that individuals who entered the United States without inspection or subject
17 to mandatory detention under 8 U.S.C. § 1225(b).

18 The refusal to permit a bond hearing before the immigration judge
19 violates 8 U.S.C. § 1226(a) and due process. Petitioners now seek a temporary
20 restraining order requiring that the immigration judge hold a bond hearing and
21 not deny bond due to lack of jurisdiction under 8 U.S.C. § 1225(b)(2)(A).
22 Expedited relief is necessary to prevent irreparable injury before a hearing on a
23 preliminary injunction may be held.

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

1 Respondents were advised on December 15, 2025 that Petitioners
2 would be filing this ex parte application and of the contents of this application.
3 Brewer Decl. ¶ 3. See Local Rule 17-19.1.

4 Counsel for Respondents is as follows:

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10 Dated: December 15, 2025

/s/ Megan Brewer

Megan Brewer

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6	William B. Rubenstein, Newberg & Rubenstein on Class Actions § 4:31 (6th ed. Dec. 2025 Update)	12
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2 **I. INTRODUCTION**

3 Petitioners are 9 individuals in pending removal proceedings who are
4 detained in Adelanto, California. They seek a Temporary Restraining Order
5 requiring Respondents to provide them with individualized bond hearings before
6 an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the
7 issuance of a TRO.

8 Although Petitioners have been present and residing in the United States for
9 years, they are ineligible for a bond hearing based on the Board of Immigration
10 Appeals precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
11 2025). *Yajure* holds that noncitizens who entered the United States without
12 inspection are ineligible for bond hearings because they are seeking admission, and
13 fall within 8 U.S.C. § 1225(b)(2)(A). It is futile for Petitioners to request a bond
14 hearing or appeal in light of this precedent decision. Without this Court's
15 intervention, they will be subject to mandatory detention during the duration of
16 their removal case based on *Matter of Yajure Hurtado*.

17 Almost every court to address this legal issue has held that the denial of bond
18 hearings to Petitioners who are charged with having entered the United States
19 without inspection violates the plain language of the Immigration and Nationality
20 Act (INA), 8 U.S.C. § 1101 *et seq.* *Rodriguez v. Bostock*, No.3:25-CV-05240-TMC,
21 2025 WL 2782499, at *9 (W.D.Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No.
22 5:25-CV-02304 CAS (BFM), 2025WL2591530, at *3 (C.D.Cal. Sept. 8,
23 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD.Cal. Sept. 3,
24 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D.Cal. Aug. 26, 2025);
25 *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D.Cal. Aug. 15, 2025);
26 *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D.Cal. July 28,
27 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2
28 (D.Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2

(D.Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025WL2496379, at *8 (E.D.Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025WL2466670, at *6 (D.Minn. Aug. 27, 2025); *Kostak v. Trump*, No.CV 3:25-1093, 2025WL2472136, at *3 (W.D.La. Aug. 27, 2025); *Rodriguez v. Bostock*, 2025WL1193850 (W.D.Wa. Apr. 24, 2025).

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

In addition, this Court has rejected the reasoning of *Matter of Yajure Hurtado* in a ruling granting partial summary judgment. *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 81. The Court then granted nationwide class certification on November 25, 2025, and stated that its ruling on partial summary judgment applied to the certified class. *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D.Cal.), Dkt # 82 at 14. Despite this, the Adelanto immigration court is refusing to apply *Maldonado Bautista* because it is not a final judgment. Brewer Dec. Exh. 10. Alternatively, Petitioners assert that the refusal to provide a bond hearing under 8 U.S.C. § 1226(a) is a violation of *Maldonado Bautista*.

The ongoing detention of Petitioners without a bond hearing deprives Petitioners of statutory and constitutional rights and constitutes irreparable injury.

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

1 judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

2
3 **II. STATEMENT OF FACTS**

4 Petitioners are 9 individuals in removal proceedings who are detained in
5 Adelanto, California, and are all charged with having entered the United States
6 without inspection under 8 U.S.C. § 1182(a)(6)(A)(i).

7 Petitioner Jose Gonzalez Jiron was in removal proceedings and was arrested
8 by immigration authorities on August 7, 2025. Brewer Dec. Exh. 1. He is detained
9 at the Adelanto detention center and has been issued a Notice to Appear which
10 alleges that he entered the United States without inspection or admission. 8 U.S.C.
11 § 1182(a)(6)(A)(i). Brewer Dec. Exh. 1. He is in pending removal proceedings
12 and has a hearing scheduled for March 6, 2025. He is not eligible for a bond
13 redetermination hearing before an immigration judge in light of the Board of
14 Immigration Appeals' precedent decision in *Matter of Yajure Hurtado*, 29 I&N
15 Dec. 216 (BIA 2025), as he is charged with having entered the United States
16 without inspection or admission. Brewer Dec. Exh. 1.

17 Petitioner Manuel Nava was arrested by immigration authorities and placed
18 into removal proceedings on November 3, 2025. Brewer Dec. Exh. 2. He was
19 charged with inadmissibility for having entered the United States without
20 inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). Brewer Dec. Exh. 2. He is in
21 pending removal proceedings and is currently detained at the Adelanto
22 immigration detention center. Brewer Dec. Exh. 2. He is not eligible for a bond
23 redetermination hearing before an immigration judge in light of the Board of
24 Immigration Appeals' precedent decision in *Matter of Yajure Hurtado*, 29 I&N
25 Dec. 216 (BIA 2025), as he is charged with having entered the United States
26 without inspection or admission. Brewer Dec. Exh. 2. He is next scheduled for a
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1 hearing before an immigration judge in the removal case on January 15, 2026.
2 Brewer Dec. Exh. 2.

3 Petitioner Elias Vasquez Juarez was arrested by immigration authorities and
4 placed into removal proceedings on September 26, 2025. Brewer Dec. Exh. 3. He
5 was charged with inadmissibility for having entered the United States without
6 inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). Brewer Dec. Exh. 3. He is in
7 pending removal proceedings and is currently detained at the Adelanto
8 immigration detention center. He is not eligible for a bond redetermination hearing
9 before an immigration judge in light of the Board of Immigration Appeals'
10 precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as
11 he is charged with having entered the United States without inspection or
12 admission. He is next scheduled for a hearing before an immigration judge in the
13 removal case on February 11, 2026. Brewer Dec. Exh. 3.

14 Petitioner Alfredo Munguia Yoguez was arrested by immigration authorities
15 and placed into removal proceedings on September 30, 2025. Brewer Dec. Exh. 4.
16 He was charged with inadmissibility for having entered the United States without
17 inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). Brewer Dec. Exh. 4. He is in
18 pending removal proceedings and is currently detained at the Desert View
19 detention center. *Id.* He is not eligible for a bond redetermination hearing before an
20 immigration judge in light of the Board of Immigration Appeals' precedent
21 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as he is
22 charged with having entered the United States without inspection or admission.
23 He is next scheduled for a hearing before an immigration judge in the removal case
24 on January 27, 2026. Brewer Dec. Exh. 4.

25 Petitioner Aide Ochoa Maldonado was in removal proceedings and was
26 arrested by immigration authorities on October 22, 2025. She was charged with
27 inadmissibility for having entered the United States without inspection or
28

1 admission. 8 U.S.C. § 1182(a)(6)(A)(i). Brewer Dec. Exh. 5. She is in pending
2 removal proceedings and is currently detained at the Adelanto immigration
3 detention center. *Id.* She is not eligible for a bond redetermination hearing before
4 an immigration judge in light of the Board of Immigration Appeals' precedent
5 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as she is
6 charged with having entered the United States without inspection or admission.
7 She is next scheduled for a hearing before an immigration judge in the removal
8 case on January 6, 2026. Brewer Dec. Exh. 5.

9 Petitioner Cesar Hernandez Ortiz was arrested by immigration authorities
10 and placed into removal proceedings on November 18, 2025. Brewer Dec. Exh. 6.
11 He was charged with inadmissibility for having entered the United States without
12 inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). He is in pending removal
13 proceedings and is currently detained at the Adelanto immigration detention
14 center. *Id.* He is not eligible for a bond redetermination hearing before an
15 immigration judge in light of the Board of Immigration Appeals' precedent
16 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as he is
17 charged with having entered the United States without inspection or admission. He
18 is next scheduled for a hearing before an immigration judge in the removal case on
19 January 22, 2026. Brewer Dec. Exh. 6.

20 Petitioner Jeronimo Vargas Bersabe was arrested by immigration authorities
21 and placed into removal proceedings on October 10, 2025. Brewer Dec. Exh. 7. He
22 is charged with inadmissibility for having entered the United States without
23 inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). He is in pending removal
24 proceedings and is currently detained at the Desert View immigration detention
25 center. *Id.* He is not eligible for a bond redetermination hearing before an
26 immigration judge in light of the Board of Immigration Appeals' precedent
27 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as he is
28

1 charged with having entered the United States without inspection or admission.
2 He is next scheduled for a hearing before an immigration judge in the removal case
3 on January 13, 2026. Brewer Dec. Exh. 7.

4 Petitioner Ezequias Popol Ajquiy was arrested by immigration authorities
5 and placed into removal proceedings on September 7, 2025. Brewer Dec. Exh. 8.
6 He is charged with inadmissibility for having entered the United States without
7 inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). He is in pending removal
8 proceedings and is currently detained at the Adelanto immigration detention
9 center. Brewer Dec. Exh. 8. He is not eligible for a bond redetermination hearing
10 before an immigration judge in light of the Board of Immigration Appeals'
11 precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as
12 he is charged with having entered the United States without inspection or
13 admission. He is next scheduled for a hearing before an immigration judge in the
14 removal case on January 27, 2026. Brewer Dec. Exh. 8.

15 Petitioner Ponciano Nava Mojica was was arrested by immigration
16 authorities and placed in removal proceedings on November 3, 2025. Brewer Dec.
17 Exh. 9. He is charged with inadmissibility for having entered the United States
18 without inspection or admission. 8 U.S.C. § 1182(a)(6)(A)(i). He is in pending
19 removal proceedings and is currently detained in Adelanto, California. Brewer
20 Dec. Exh. 9. He is not eligible for a bond redetermination hearing before an
21 immigration judge in light of the Board of Immigration Appeals' precedent
22 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as he is
23 charged with having entered the United States without inspection or admission. He
24 is next scheduled for a hearing before an immigration judge in the removal case on
25 January 28, 2026. Brewer Dec. Exh. 9.

26 **III. ARGUMENT**

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

3 Petitioners must demonstrate that (1) they are likely to succeed on the merits
4 of their claims; (2) they are likely to suffer irreparable harm in the absence of
5 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
6 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
7 (2008). A sliding scale test may be applied and an injunction should be issued
8 when there is a stronger showing on the balance of hardships, even if there are
9 “serious questions on the merits ... so long as the plaintiff also shows a likelihood
10 of irreparable harm and that the injunction is in the public interest.” *All. for the*
11 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
12 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
13 2024).

14 Petitioners satisfy the criteria and a TRO should be granted.

15
16 A. PETITIONERS ARE NOT REQUIRED TO SEEK INJUNCTIVE
17 RELIEF THROUGH THE *MALDONADO BAUTISTA* CLASS
ACTION

18 On November 25, 2025, the Court in *Maldonado Bautista v. Santacruz*,
19 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 82 certified a class of noncitizens
20 detained without bond, and Petitioners are class members. However, as discussed
21 below, that class action seeks only declaratory relief, declaring a policy of refusing
22 bond as unlawful. It does not seek an order *requiring* IJ bond hearings, in the form
23 of injunctive relief. As such, Petitioners may properly file a separate habeas action
24 seeking a bond hearing to secure their release from custody. Hence, this suit is not
25 duplicate litigation that is precluded by Fed. R. Civ. P. 23.

26 The relief sought in *Maldonado Bautista* was a declaration that the policy
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1 of denying bond was unlawful for the proposed certified class¹. Brewer Dec. Exh.
2 12. The *Maldonado Bautista* declaratory judgement is instructive to this Court
3 only in so far as its statutory analysis determined to recognize that Petitioners'
4 detention falls under § 1226(a). At least two TROs have subsequently been issued
5 in separate cases, recognizing the need for a separate § 2241 habeas action. *See*
6 *Cervantes Orellana v. Noem, et. al.*, No. 2:25-cv-01038-KCD-NPM (M.D.Fla.);
7 *Huerta Estrada, et. al., v. Noem, et.al.*, No. 5:25-cv-03271-SSS-BFM (C.D.Cal);
8 *Arreola Chavez v. Bondi, et.al.*, No. 5:25-cv-00227 (S.D.Tex), Brewer Dec. Exhs.
9 15-17. The declaratory judgement—which only declares the rights and obligations
10 of the parties in *Maldonado Bautista*—does not order habeas (or injunctive) relief
11 for class members, including Petitioners. *See Pride v. Correa*, 719 F.3d 1130, 1133
12 (9th Cir. 2013) (when “the complainant is a member in a class action seeking the
13 same relief” a court “may dismiss those portions of the complaint which duplicate
14 the class action's allegations and prayer for relief” but “a district court may not
15 ‘dismiss[] those allegations ... which go beyond the allegations and relief prayed
16 for in [the class action].”) (quoting *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir.
17 1979)).

18 Here, the *Maldonado Bautista* complaint only seeks habeas relief as to the
19 named Petitioners; as to the rest of the class, it merely requests that the Court
20 declare the detention policy unlawful. Brewer Dec. Exh. 12. In this action,
21 however, Petitioners seek a writ of habeas corpus requiring that Defendants release
22 them or provide them with a bond hearing within 7 days. ECF #1. This goes
23 beyond the relief prayed for in the class action.

24 A core purpose of Rule 23(b)(2) is to allow courts to issue an indivisible
25

26 ¹ *Maldonado Bautista* could not order class wide injunctive relief because that is
27 barred by 8 U.S.C. § 1252(f). *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550
28 (2022).

1 declaratory judgment that paves the way for follow-on individual proceedings
2 seeking further (non-monetary) relief. *See* Advisory Committee Note (1966), Fed.
3 R. Civ. P. 23 (“Declaratory relief ‘corresponds’ to injunctive relief when [it] . . .
4 serves as a basis for later injunctive relief. The subdivision does not extend to
5 cases in which the appropriate final relief relates exclusively or predominately to
6 money damages.”); 2 William B. Rubenstein, Newberg & Rubenstein on Class
7 Actions § 4:31 (6th ed. Dec. 2025 Update) (same); *see also* *Powell v. McCormack*,
8 395 U.S. 486, 499 (1969) (“A declaratory judgment can then be used as a predicate
9 to further relief, including an injunction.”). Thus, it is not only permissive but
10 specifically *contemplated* by the Declaratory Judgment Act that a class-wide
11 declaratory judgment may serve as the basis for a later injunction or habeas to give
12 effect to the declaratory judgment. *See* *Anatol Zukerman & Charles Krause*
13 *Reporting, LLC v. U.S. Postal Serv.*, 64 F.4th 1354, 1366–67 (D.C. Cir. 2023); *see*
14 *also* 28 U.S.C. § 2202 (allowing for “[f]urther relief or proper relief based on a
15 declaratory judgment or decree”).

16
17 B. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF
18 THEIR CLAIMS.

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

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

25
26 1. The Text Of § 1226(a) and § 1225(b)(2) Demonstrate That
27 Petitioners Are Not Subject To Mandatory Detention.
28

1 Petitioners are eligible for bond hearings before the immigration judge under
2 8 U.S.C. § 1226(a).

3 First, the plain text of § 1226 demonstrates that subsection (a) applies to
4 Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending
5 a decision on whether the [noncitizen] is to be removed from the United States.” 8
6 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not
7 just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also
8 noncitizens, such as Petitioner, who are inadmissible pursuant to 8 U.S.C. §
9 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out
10 specific categories of noncitizens from being released—including certain
11 categories of inadmissible noncitizens—and subjects them instead to mandatory
12 detention. See, e.g., § 1226(c)(1)(A), (C).

13 Notably, recent amendments to § 1226 dramatically reinforce that this
14 section covers people like Petitioners who DHS alleges to be present without
15 admission. The Laken Riley Act added language to § 1226 that directly references
16 people who have entered without inspection, those who are inadmissible because
17 they are present without admission. See Laken Riley Act (LRA), Pub. L. No. 119-
18 1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people
19 charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for
20 presence without admission) or § 1182(a)(7) (the inadmissibility ground for
21 lacking valid documentation to enter the United States) *and* who have been
22 arrested, charged with, or convicted of certain crimes are subject to § 1226(c)’s
23 mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E). By including such
24 individuals under § 1226(c), Congress further clarified that § 1226(a) covers
25 persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is *only*
26 charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-
27 related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that
28

1 person's detention. *See Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC,
2 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025), explaining these
3 amendments explicitly provide that § 1226(a) covers people like Petitioners
4 because the “‘specific exceptions’ [in the LRA] for inadmissible noncitizens who
5 are arrested, charged with, or convicted of the enumerated crimes logically leaves
6 those inadmissible noncitizens not criminally implicated under Section 1226(a)’s
7 default rule for discretionary detention.”); *Diaz Martinez v. Hyde*, 2025 WL
8 2084238, at *7 (D. Mass. July 24, 2025) (“if, as the Government argue[s], . . . a
9 non-citizen’s inadmissibility were alone already sufficient to mandate detention
10 under section 1225(b)(2)(A), then the 2025 amendment would have no effect.”
11 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
12 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove*
13 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing
14 that a statutory exception would be unnecessary if the statute at issue did not
15 otherwise cover the excepted conduct).

16 Despite the clear statutory language *Matter of Yajure Hurtado*, 29 I&N Dec.
17 216 (BIA 2025), found that noncitizens who entered the United States without
18 inspection were ineligible for bond redetermination hearings because they were
19 seeking admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

20 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read
21 to apply to everyone who is in the United States “who has not been admitted.”
22 Section 1226(a) covers those who are present within and residing within the
23 United States and who are not at the border seeking admission. The text of § 1225
24 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
25 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
26 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
27
28

1 Government must determine whether a[] [noncitizen] seeking to enter the country
2 is admissible,” *id.* at 287.

3 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
4 paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving
5 [noncitizens]”—encompasses only the “inspection” of certain “arriving”
6 noncitizens and other recent entrants the Attorney General designates, and only
7 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8
8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who
9 misrepresent information to an examining immigration officer or do not have
10 adequate documents to enter the United States. Thus, subsection (b)(1)’s text
11 demonstrates that it is focused only on people arriving at a port of entry or who
12 have recently entered the United States and not those already residing here.
13 Paragraph (b)(2) is similarly limited to people applying for admission when they
14 arrive in the United States. The title explains that this paragraph addresses the
15 “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking
16 admission,” but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By
17 limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not
18 intend to sweep into this section individuals like Petitioners, who have already
19 entered and are now residing in the United States. An individual submits an
20 “application for admission” only at “the moment in time when the immigrant
21 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d
22 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of
23 Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in
24 the United States without admission or parole is someone “deemed to have made
25 an actual application for admission.” *Id.* (emphasis omitted). That holding is
26 instructive here too, as only those who take affirmative acts, like submitting an
27 “application for admission,” are those who can be said to be “seeking admission”
28

1 within § 1225(b)(2)(A). Otherwise, that language would serve no purpose,
2 violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

3 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
4 [noncitizens] *arriving* from contiguous territory,” i.e. those who are “*arriving* on
5 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
6 underscores Congress’s focus in § 1225 on those who are arriving into the United
7 States—not those already residing here. Similarly, the title of § 1225 refers to the
8 “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*,
9 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
10 construe statute).

11 Finally, the entire statute is premised on the idea that an inspection occurs
12 near the border and shortly after arrival, as the statute repeatedly refers to
13 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
14 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
15 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
16 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
17 meaning”).

18 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), requires
19 immigration judges to deny bond to Petitioners because they are charged with
20 having entered the United States without inspection, focusing on the definition of
21 “applicant for admission” at § 1225(a)(1) which defines an “applicant for
22 admission” as a person who is “present in the United States who has not been
23 admitted or who arrives in the United States,” 8 U.S.C. § 1225(a)(1). But as the
24 Ninth Circuit has explained, “when deciding whether language is plain, [courts]
25 must read the words in their context and with a view to their place in the overall
26 statutory scheme.” *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th
27 Cir. 2022) (internal quotation marks omitted). Here, that context underscores that
28

1 the definition in (a)(1) is limited by other aspects of the statute to those who
2 undergo an initial inspection at or near a port of entry shortly after arrival—and
3 that it does not apply to those who are arrested in the interior of the United States
4 months or years or decades later.

5 Significantly, in deeming that all noncitizens who entered without inspection
6 are necessarily encompassed by the mandatory detention provision at § 1225(b)(2),
7 the Board ignores that the provision does not simply address applicants for
8 admission. Instead, the language “applicant for admission” in (b)(2)(A) is further
9 qualified by clarifying the subparagraph applies only to those “seeking
10 admission”—in other words, those who have applied to be admitted or paroled.
11 The new decision ignores this text, just as it ignores the statutory language in §
12 1226 that expressly encompasses persons who have entered the United States and
13 are present without admission. Thus, Petitioners prevail regardless of the scope of
14 § 1225(a)(1)’s definition of “applicant for admission.” This is because
15 classification as an “applicant for admission,” is not sufficient to render someone
16 subject to mandatory detention under § 1225(b)(2). The “applicant for admission”
17 must *also* be “seeking admission,” and that is clearly not the case for Petitioners.
18

19 2. The Record And Longstanding Agency Practice Reflect That §
20 1226 Governs Petitioners’ Detention.

21 The Board has a long practice of considering people like the Petitioner as
22 detained under §1226(a) further supports this reading of the statute. Even as
23 recently as June 30, 2025, the Board held in *Matter of Akhmedov*, 29 I&N Dec.
24 166 (BIA 2025), that an immigration judge had jurisdiction under 8 U.S.C. §
25 1226(a) to conduct a bond redetermination hearing for a noncitizen who was
26 charged with entering the United States without inspection or admission. For
27 decades, and across administrations, the Board has acknowledged that § 1226(a)
28

1 applies to individuals who are present without admission after entering the United
2 States unlawfully, but who were later apprehended within the United States long
3 after their entry. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025); *Matter of R-*
4 *A-V-P-*, 27 I. & N. Dec. 803, 806 (BIA 2020); *In Re: Hugo Leonel Lacan-Batz*,
5 No. : AXXX XX3 200 - BOS, 2009 WL 1863766, at *1 (BIA June 19, 2009)
6 (unpublished); *In Re: Jorge Luis Contreras-Linares*, No. : AXX XX6 969 - ELOY,
7 2003 WL 23508582, at *1 (BIA Dec. 18, 2003) (unpublished). Such a
8 longstanding and consistent interpretation “is powerful evidence that interpreting
9 the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573
10 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United*
11 *States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
12 interpretation and practice to reject government’s new proposed interpretation of
13 the law at issue).

14 Indeed, agency regulations have long recognized that people like Petitioners
15 are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
16 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
17 fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the
18 regulations governing immigration courts and implementing § 1226 decades ago.
19 Specifically, EOIR explained that “[d]espite being applicants for admission,
20 [noncitizens] who are present without having been admitted or paroled (formerly
21 referred to as [noncitizens] who entered without inspection) will be eligible for
22 bond and bond redetermination.” 62 Fed. Reg. at 10323.3

23 In sum, § 1226 governs this case. Section 1225 and its mandatory detention
24 provision applies only to individuals arriving in the United States as specified in
25 the statute, while § 1226 applies to those who have previously entered without
26 admission and are now present and residing in the United States.
27
28

1 3. Petitioners' Detention Without the Right to a Bond Hearing
2 Before an Immigration Judge Violates *Maldonado Bautista*

3 The Court's November 20 and November 25, 2025 orders in *Maldonado*
4 *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), (Brewer Dec. Exhs.
5 13, 14), expressly apply the order on Partial Summary Judgment on a class wide
6 basis and invalidate the argument that § 1225(b)(2) applies to those who entered
7 without inspection.

8 On November 20, 2025, the Court in *Maldonado Bautista v. Santacruz*,
9 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 81 (Exh. 13), issued an order
10 granting partial summary judgment to the named plaintiffs. In that order, the Court
11 rejected the argument that noncitizens who entered the United States without
12 inspection are ineligible for bond based on 8 U.S.C. § 1225(b)(2), and found that
13 they were eligible for bond hearings before immigration judges under 8 U.S.C. §
14 1226(a). The Court expressly found that those who entered the United States
15 without inspection were not applicants for admission under 8 U.S.C. § 1225(b)(2).
16 The Court stated:

17 In response, Respondents argue Petitioners are "applicants for admission"
18 because § 1225(b)(2) is a "catchall provision" that applies to all applicants
19 for admission not covered by § 1225(b)(1). [Opp. at 21, (citing *Jennings*,
20 583 U.S. at 287)]. According to Respondents, "applicants for admission"
21 "fall into one of two categories, those covered by § 1225(b)(1) and those
22 covered by § 1225(b)(2)." [Opp. at 21 (citing *Jennings*, 583 U.S. at 297)].
23 Such an argument relies on the assumption that "applicants for admission"
24 encompasses *all* noncitizens coming into and already in the United States. If
25 this assumption is true, then Respondents are correct. But this cannot be
26 correct.

27 Respondents' argument is at odds with the plain language of the INA.
28 Neither party contends with the definition section of the INA, which readily
resolves this dispute over statutory interpretation.

Dkt # 81 at 12 (Exh. 13). This is a rejection of the Board's decision in *Matter of*
Yajure Hurtado, 29 I&N Dec. 216, 229 (BIA 2025) ("The Immigration Judge

1 properly held that he lacked authority to hear the respondent's request for a bond as
2 the respondent is an applicant for admission and is subject to mandatory detention
3 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)...”). As such, the
4 legal ruling that a noncitizen who entered without inspection is subject to §
5 1225(b)(2) was rejected in *Lazaro Maldonado Bautista*.

6 That legal ruling now applies nationwide to all noncitizens who entered
7 without inspection and meet the class definition which was certified on November
8 25, 2025 in *Maldonado Bautista*. Brewer Dec. Exh. 14. The class is defined as:

9 All noncitizens in the United States without lawful status who (1) have
10 entered or will enter the United States without inspection; (2) were not or
11 will not be apprehended upon arrival; and (3) are not or will not be subject
12 to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time
13 the Department of Homeland Security makes an initial custody
14 determination.

14 *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt #
15 82. Brewer Dec. Exh. 14. Petitioners are all members of this class, as they are
16 alleged to have entered the United States without inspection in the Notice to
17 Appear and is not otherwise precluded from bond.

18 Further, the November 25, 2025 class certification Court order confirms that
19 the court’s prior November 20, 2025 order on partial summary judgment applies to
20 the nationwide class. The court stated explicitly “[w]hen considering this
21 determination with the MSJ Order, the Court extends the same declaratory relief
22 granted to Petitioners to the Bond Eligible Class as a whole.” Dkt # 82 at 14. As
23 such, the court’s November 20, 2025 ruling on partial summary judgment that
24 noncitizens who entered without inspection are eligible for bond hearings before
25 the immigration judge under § 1226(a) applies nationwide. Dkt # 81.

26 There is no merit to the position that class-wide declaratory relief was not
27 issued, as the November 25, 2025 did just that. Dkt # 82 at 14. The Court explicitly
28 extended declaratory relief to the certified class. *Id.* Hence, the position from the

1 Adelanto immigration court judges and the Department of Justice that class-wide
2 declaratory judgment was not issued is incorrect. Brewer Dec. Exhs. 10, 11.

3
4 C. PETITIONERS WILL SUFFER IRREPARABLE HARM IN THE
5 ABSENCE OF A TRO.

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

8 “Freedom from imprisonment—from government custody, detention, or
9 other forms of physical restraint—lies at the heart of the liberty” that the Due
10 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
11 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
12 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
13 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
14 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
15 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
16 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
17 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
18 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
19 government's current policies [which fail to consider financial ability to pay
20 immigration bonds] are likely unconstitutional—and thus that members of the
21 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
22 the absence of the injunction—that Plaintiffs have also carried their burden as to
23 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
24 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
25 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
26 Petitioners’ continued detention without an initial bond hearing would cause
27 immediate and irreparable injury, as this violates statutory rights afforded under §
28 1226(a).”)

1
2 D. THE BALANCE OF EQUITIES TIPS IN PETITIONERS' FAVOR
AND A TRO IS IN THE PUBLIC INTEREST.

3 Because the government is a party, these two factors are considered
4 together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established
5 that the public interest factor weighs in their favor because their claims assert that
6 the Board's decision has violated federal laws. *See Valle del Sol Inc. v. Whiting*,
7 732 F.3d 1006, 1029 (9th Cir. 2013). Because the decision that prevents Petitioners
8 from obtaining bond "is inconsistent with federal law, . . . the balance of hardships
9 and public interest factors weigh in favor of a preliminary injunction." *Moreno*
10 *Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*);
11 *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part
12 permanent injunction issued in *Moreno II* and quoting approvingly district judge's
13 declaration that "it is clear that neither equity nor the public's interest are furthered
14 by allowing violations of federal law to continue"). This is because "it would not
15 be equitable or in the public's interest to allow the [government] . . . to violate the
16 requirements of federal law, especially when there are no adequate remedies
17 available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)
18 (second alteration in original) (citation omitted). Indeed, Respondents "cannot
19 suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*
20 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

21
22 E. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

23 Prudential exhaustion does not require Petitioners to be forced to endure the
24 very harm his is seeking to avoid by seeking a bond hearing before the
25 immigration judge, when Board precedent requires that the immigration judge
26 deny for lack of jurisdiction. Further, appealing the IJ bond orders to the Board of
27 Immigration Appeals and waiting many months for a decision from the BIA is
28 entirely futile. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See*

1 *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“[W]here the
2 agency's position on the question at issue appears already set, and it is very likely
3 what the result of recourse to administrative remedies would be, such recourse
4 would be futile and is not required.”)

5 Further, irreparable injury is an exception to any prudential exhaustion
6 requirement. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Here, the
7 exceptions regarding irreparable injury and agency delay apply and warrant
8 waiving any prudential exhaustion requirement.

9 Each day that Petitioners remain in detention is one in which their statutory
10 and constitutional rights have been violated. Similarly situated district courts have
11 repeatedly recognized this fact. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237
12 (W.D.N.Y. 2019); *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL
13 4355182, at *3 (N.D. Cal. Oct. 2, 2017); *Cortez v. Sessions*, 318 F. Supp. 3d 1134,
14 1139 (N.D. Cal. 2018) (similar).

15 Petitioners assert both statutory and constitutional claims and have a
16 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
17 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
18 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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

23
24 **F. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF**

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

27 The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial
28 review of all questions of law . . . including interpretation and application of

1 constitutional and statutory provisions, arising from any action taken . . . to remove
2 an alien from the United States” to the appropriate federal court of appeals, does
3 not apply because that section applies only to review of removal orders, and
4 Petitioners do not seek review of orders of removal but of custody. *Maldonado*
5 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July
6 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

7 The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to
8 hear “any cause or claim by or on behalf of any alien arising from the decision or
9 action by the Attorney General to commence proceedings, adjudicate cases, or
10 execute removal orders against any alien under this chapter.” The Supreme Court
11 previously characterized § 1252(g) as a narrow provision, applying “only to three
12 discrete actions that the Attorney General may take: her ‘decision or action’ to
13 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v.*
14 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in
15 original). In doing so, the Supreme Court found it “implausible that the mention of
16 *three discrete events* along the road to deportation was a shorthand way to
17 referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis added).
18 Petitioners’ challenge to their detention does not fall within these discrete actions.
19 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
20 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

21 Finally, 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”
22 Section 1252(a)(2) contains four subsections, which outlines categories of claims
23 that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these
24 subsections precluding judicial review apply to this matter, as the specified
25 statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two
26 provisions Petitioners challenge. Thus, no part of § 1252 deprives this Court of
27 jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-
28

1 SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining
2 Order, Dkt. 14 at 6.

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

5
6 **IV. CONCLUSION**

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

13
14 Dated: December 15, 2025

Respectfully Submitted,

15 S/Megan Brewer

16 Megan Brewer (CA SBN
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 15, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF MEGAN BREWER; AND [PROPOSED] ORDER by email to the following individual:

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Deputy Chief, Complex and Defensive Litigation Section
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s/ Megan Brewer
Megan Brewer
Counsel for Petitioner

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo contains 6575 words, which complies with the word limit of L.R. 11-6.1.

s/ Megan Brewer
Megan Brewer
Counsel for Petitioner