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7
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10
11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 MUHAMMET FATIH PERCIN,

14 Petitioner,

15 v.

16 Ernesto SANTACRUZ JR., Acting
17 Director, Los Angeles Field Office,
18 Immigration and Customs Enforcement,
19 Enforcement and Removal Operations;
20 Todd LYONS, Acting Director,
21 Immigration and Customs Enforcement;
22 Kristi NOEM, Secretary, U.S. Department
23 of Homeland Security; U.S.
24 DEPARTMENT OF HOMELAND
25 SECURITY; Pamela BONDI, U.S.
Attorney General; David MARIN,
Warden of ICE Desert View Annex,

Respondents.

Case No.

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

PETITIONER'S DHS NO:

A 

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

5
6 In the alternative, Petitioner requests that Respondents provide Petitioner
7 with an individualized bond hearing before an immigration judge within seven days
8 of the issuance of TRO, at which the government bears the burden of proving by
9 clear and convincing evidence that Petitioner's continued detention is justified.

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

14
15 Petitioner also seeks a temporary restraining order enjoining the Respondents
16 from relocating Petitioner outside of the Central District of California pending final
17 resolution of this case.

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

21
22 Dated: December 29, 2025

Respectfully Submitted,

23 /s/Gita B. Kapur

24 Gita B. Kapur

25 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 December 29, 2025 at approximately 6:00 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: December 29, 2025

Respectfully Submitted

/s/Gita B. Kapur

Gita B. Kapur

Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 29, 2025, I served a copy of this

Application for TRO and OSC by email to the following individual:

David M. Harris
Chief of the Civil Division
U.S. Attorney's Office
300 N. Los Angeles St., 7th Floor
Los Angeles, CA 90012
Email: David.M.Harris@usdoj.gov

/s/Gita B. Kapur
Gita B. Kapur
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8 Attorneys for Petitioner,
9 Muhammet Fatih Percin

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MUHAMMET FATIH PERCIN,

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; David MARIN,
Warden of ICE Desert View Annex,

Respondents.

Case No.

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

PETITIONER'S DHS NO:

A 

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1 **I. INTRODUCTION**

2 Petitioner, Muhammet Fatih Percin, by and through undersigned counsel,
3 moves for a Temporary Restraining Order requiring Respondents either to: (1)
4 immediately release him from immigration custody, or (2) in the alternative,
5 provide him with an individualized custody/bond hearing before an immigration
6 judge pursuant to 8 U.S.C. § 1226(a) within seven days of this Court's order.
7 Petitioner also seeks an order prohibiting Respondents from transferring him
8 outside the Central District of California while this litigation is pending.
9

10 Although Petitioner has been physically present and residing in the interior
11 of the United States since December 2023, DHS is now detaining him under a new
12 policy issued on July 8, 2025, which instructs ICE officers to treat any person
13 arrested within the United States and charged as inadmissible under 8 U.S.C. §
14 1182(a)(6)(A)(i) as an "applicant for admission" subject to mandatory detention
15 under 8 U.S.C. § 1225(b)(2)(A), and categorically ineligible for bond. *See* Exhibit
16 O (ICE Interim Guidance) Purporting to apply that policy "in coordination with the
17 Department of Justice," Petitioner was detained by ICE since November 17, 2025,
18 without notice, despite nearly two years of full compliance with all
19 immigration-court obligations. He was held by ICE in Los Angeles from November
20 17 to 20, 2025, and since November 20, 2025, has been detained at the ICE Desert
21 View Facility in Adelanto, California. *See* Exhibit E (ICE's Online Detainee
22 Locator System Search Result).
23
24
25

1 Petitioner's ongoing detention under § 1225(b)(2)(A) violates the plain text
2 and structure of the Immigration and Nationality Act (INA). Section 1225(b)(2)(A)
3 does not apply to individuals like Petitioner who entered the country almost two
4 years ago, have lived in the interior, and are now in removal proceedings as
5 noncitizens "present in the United States without admission or parole." Those
6 individuals are detained, if at all, under 8 U.S.C. § 1226(a), which expressly governs
7 noncitizens already present in the United States and authorizes their release on bond
8 or conditional parole following an individualized custody determination. From the
9 outset, DHS treated Petitioner as a § 1226(a) respondent, charged him as "present"
10 (not "arriving"), released him under § 1226, and supervised him in the community
11 on that basis for nearly two years.
12

13
14 Respondents' new legal interpretation, embodied in the July 8, 2025 policy
15 and implemented through Petitioner's re-detention, is irreconcilable with the
16 statutory framework and decades of agency practice applying § 1226(a) to people
17 in Petitioner's posture. *See* Exhibit O (ICE Interim Guidance). By re-characterizing
18 him as an "applicant for admission" and invoking § 1225(b)(2)(A), Respondents
19 have categorically denied him any opportunity for an individualized custody
20 determination, despite his clean record, his consistent compliance, and his strong
21 pending applications for asylum relief. This unlawful mandatory detention not only
22 exceeds DHS's statutory authority but also deprives Petitioner of core statutory and
23 constitutional rights and is inflicting ongoing, irreparable harm.
24
25

1 Immediate injunctive relief is therefore necessary to preserve the status quo,
2 prevent further unlawful detention and potential transfer out of this District, and
3 ensure that Petitioner receives the individualized custody process that the INA and
4 the Due Process Clause require. Petitioner respectfully asks this Court to enjoin
5 Respondents from continuing to detain him under § 1225(b)(2)(A), to bar his
6 transfer outside the Central District pending resolution of this action, and to order
7 either his immediate release or, at a minimum, a prompt bond hearing under §
8 1226(a) before a neutral adjudicator.
9

10 **II. STATEMENT OF FACTS**

11 Petitioner is a thirty-year-old citizen and national of Turkey. He was born
12 on  in Turkey. See Exhibit A (Petitioner's Passport Biographic
13 Page). On December 27, 2023, Petitioner entered the United States at or near
14 Tecate, California, without inspection, and DHS charged him as inadmissible
15 under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i). See Exhibit
16 B (Notice to Appear).
17

18 The Notice to Appear did not classify Petitioner as an "arriving alien."
19 Instead, it charged him as a noncitizen "present in the United States who has not
20 been admitted or paroled." See *Id.* On December 27, 2023, DHS issued an Order
21 of Release on Recognizance stating that Petitioner was being released on his own
22 recognizance "in accordance with section 236 of the Immigration and Nationality
23 Act," codified at 8 U.S.C. § 1226. See Exhibit C (Order of Release on
24
25

1 Recognizance (stating release "[i]n accordance with section 236 of the INA," i.e.,
2 8 U.S.C. § 1226)). From that point forward, DHS treated him as a § 1226(a)
3 detainee in standard § 240 removal proceedings. In March 2024, Petitioner filed
4 an I-589 application for Asylum, Withholding of Removal, and Convention
5 Against Torture (I-589 application) with the Immigration Court in Los Angeles,
6 California; his master hearing of the I-589 application is scheduled for January 6,
7 2026, 1:00 p.m., at Adelanto, California. *See* Exhibit D (Automated Case System;
8 Immigration Court scheduled hearing date January 6, 2026).

9
10 For approximately one year and eleven months after his December 2023
11 release, Petitioner complied fully with all release conditions: he attended his
12 USCIS biometric appointment and appeared at all immigration court hearings,
13 lived stably with his lawful permanent resident wife, Mrs. Karol S Bala Posadas,
14 at his verified address, worked, and developed strong family and community ties
15 in Los Angeles. *See* collectively Exhibit H (Declarations of Karol S Bala
16 Posadas); Exhibit I (Copy of Petitioner's Marriage Certificate); Exhibit J (Proof of
17 Shared Residency with Mrs. Karol Bala Posadas); Exhibit K (Signed Statements
18 of Petitioner's Friends, Colleagues, and Clients along with their Identifications, to
19 prove Good Moral Character); Exhibit L (Employment Verification Letter; Proof
20 of Income; Petitioner's Valid Employment Authorization Card); and Exhibit M
21 (USCIS Biometric Appointment Notice dated June 04, 2024). Nothing in
22 Petitioner's conduct or immigration case changed before ICE abruptly re-detained
23
24
25

1 him on November 17, 2025.

2 The Petitioner complied with all of his immigration court obligations and
3 attended his USCIS Biometric Appointment. *See* Exhibit M (USCIS Biometric
4 Appointment Notice dated June 4, 2024). Between his initial release on
5 December 27, 2023 and his detention on November 17, 2025, Petitioner did not
6 miss any of his immigration court hearings or USCIS appointments, did not
7 abscond, and did not incur any criminal convictions. *See Id.*

9 On July 8, 2025, DHS issued interim nationwide guidance instructing ICE
10 officers to treat all noncitizens arrested in the United States and charged under 8
11 U.S.C. § 1182(a)(6)(A)(i) as “applicants for admission” subject to mandatory
12 detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for bond. Acting
13 under that policy, ICE officers detained Petitioner without warning on November
14 17, 2025 while he was accompanying his wife, Mrs. Karol S Bala Posadas, who is
15 an active U.S. military service member and a lawful permanent resident, to obtain
16 her military ID at the Los Angeles Air Force Base Exchange Visitor Center. *See*
17 Exhibit H (Declaration of Karol S Bala Posadas); Exhibit N (U.S. Permanent
18 Resident Card and U.S. Army Card of Petitioner’s Wife).

21 Thus, the only “change” between December 2023 and November 2025 is
22 DHS’s July 8, 2025 policy reinterpretation of its detention authority. *See* Exhibit
23 O (ICE Interim Guidance). Petitioner’s own conduct and equities—steady
24 immigration laws compliance, strong family support, pending asylum relief—have
25

1 only improved, underscoring that his present detention is arbitrary and
2 policy-driven, not fact-driven.

3 Petitioner has not been afforded any custody hearing before an immigration
4 judge and has been told he is now subject to mandatory detention under §
5 1225(b)(2)(A) because of the new DHS/DOJ interpretation, notwithstanding his
6 prior treatment under § 1226(a) and his nearly two years of residence in the U.S.
7 He remains in civil immigration detention solely on the basis of this new policy.
8

9 Petitioner's detention is inflicting severe harm. Petitioner's wife, Mrs. Bala
10 Posadas, is a lawful permanent resident and a Private (PVT) in the United States
11 Army National Guard, serving in [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED]. She relies on Petitioner's presence for both financial and
15 emotional support, as well as practical assistance with daily responsibilities such
16 as caring for their home and pets. In her declaration, Mrs. Bala Posadas explains
17 that, as a direct result of Petitioner's incarceration, she is now the sole financial
18 provider for the household. She bears full responsibility for all bills while
19 continuing to fulfill her demanding military obligations and remaining mission-
20 ready at all times. Mentally, Petitioner's sudden detention has left her struggling
21 with overwhelming stress, anxiety, difficulty concentrating, burnout, and a
22 constant spiking of her nervous system, causing her to cry intensely every day and
23 lose hope of seeing him again. Physically, Mrs. Bala Posadas has experienced
24
25

1 sleep disruption, persistent headaches, constant anger, tense back and shoulders,
2 and an inability to fight off even a simple cold. These hardships have also
3 disrupted her career, [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED]—instead forcing her to deal with legal issues, lawyers, and resolving this
7 situation—while she is scheduled to ship out on March 10, 2026, for 6 months and
8 4 days of military duties, placing an extreme burden on her ability to maintain
9 mental and physical readiness essential for her service to the country. *See* Exhibit
10 H (Declaration of Karol S Bala Posadas).

11
12 Despite nearly two years of perfect immigration laws compliance, with no
13 criminal convictions, and strong pending claims to relief (I-589 application), DHS
14 is now detaining Petitioner as a mandatory § 1225(b)(2)(A) “applicant for
15 admission” solely by virtue of its new policy, and continues to refuse him any
16 individualized custody determination.

17 **III. ARGUMENT**

18
19 The requirements for granting a TRO are “substantially identical” to those
20 for granting a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush &*
21 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

22 Petitioner must demonstrate that (1) he is likely to succeed on the merits of
23 his claims; (2) he is likely to suffer irreparable harm in the absence of preliminary
24 relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the
25

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

9 Petitioner satisfies the criteria and a TRO should be granted.

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

11 Petitioner is likely to succeed on his claims that he is not subject to mandatory
12 detention and that DHS’s reclassifying him under a § 1225(b)(2)(A) framework
13 without any opportunity to seek a bond hearing before a neutral arbiter is in
14 violation of the INA and the Due Process Clause.

15 This case presents a pure statutory question: whether a long-present
16 noncitizen arrested in the interior and charged under 8 U.S.C. § 1182(a)(6)(A)(i) is
17 detained under § 1226(a)’s discretionary regime or instead is subject to mandatory
18 detention as an “applicant for admission” “seeking admission” under §
19 1225(b)(2)(A). The text, structure, and history of the INA confirm that § 1226(a)
20 governs Petitioner’s detention and that Respondents’ reliance on § 1225(b)(2) is
21 unlawful.
22
23

24 On December 18, 2025, the court in *Lazaro Maldonado Bautista v. Santacruz*
25

1 resolved this exact question, entering a final, nationwide judgment declaring that
2 interior arrests of EWI noncitizens are governed by § 1226(a) and are not subject to
3 mandatory no-bond detention. *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-
4 cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). The text, structure, and history of
5 the INA—now formally confirmed by the *Maldonado Bautista* judgment—
6 demonstrate that § 1226(a) governs Petitioner’s detention and that Respondents’
7 reliance on § 1225(b)(2) is unlawful.
8

9 1. The Text of 8 U.S.C. §1226(a) and 8 U.S.C. §1225(b)(2) Demonstrates that
10 Petitioner is Not Subject to Mandatory Detention.
11

12 First, Petitioner’s status as an individual with more than a year of
13 uninterrupted residence in the U.S. following his release on his own recognizance
14 in December 2023 places him squarely within the discretionary detention
15 framework of 8 U.S.C. §1226(a).

16 Specifically, ICE’s Order of Release on Recognizance stated that Petitioner
17 was released on his own recognizance “[i]n accordance with section 236 of the
18 Immigration and Nationality Act,” codified at 8 U.S.C. §1226. Additionally, the
19 NTA issued by DHS to Petitioner did not classify him as an “arriving alien.”
20 Instead, the NTA charged him as “present in the United States who has not been
21 admitted or paroled.” This classification places him squarely within 8 U.S.C. §1226,
22 not 8 U.S.C. §1225. See Exhibits B (Notice to Appear) and C (Order of Release on
23 Recognizance).
24
25

1 It is therefore unlawful to deny him any bond hearing based on an overbroad
2 reading of §1225(b)(2)(A), which is the mandatory detention regime for certain
3 noncitizens being inspected as “applicants for admission,” not for long-present
4 interior residents like Petitioner. The plain text of the INA, as recently interpreted
5 in *Maldonado Bautista v. Santacruz Jr., et al.*, Case No. 5:25-cv-01873-SSS-BFM,
6 (C.D. Cal. Dec. 18, 2025) (final judgment for nationwide Bond Eligible Class,
7 declaring detention governed by § 1226(a), vacating DHS’s July 8, 2025 “applicants
8 for admission” no-bond policy, and confirming class-wide bond eligibility), dictates
9 that a noncitizen arrested in the interior after years of residence and long-standing
10 treatment as a §1226(a) respondent is not subject to mandatory detention under
11 §1225(b)(2).
12

13
14 By its own terms, §1226(a) applies to anyone who is detained “pending a
15 decision on whether the [noncitizen] is to be removed from the United States.” 8
16 U.S.C. §1226(a). Section 1226 explicitly confirms that this authority includes not
17 just noncitizens who are deportable pursuant to 8 U.S.C. §1227(a), but also
18 noncitizens, such as Petitioner, who is inadmissible pursuant to 8 U.S.C. §1182(a).
19 While §1226(a) provides the right to seek release, §1226(c) carves out specific
20 categories of noncitizens from being released – including certain categories of
21 inadmissible noncitizens – and subjects them instead to mandatory detention. *See*,
22 e.g., §1226(c)(1)(A), (C).
23

24 If Respondents’ position that §1226(a) did not apply to inadmissible
25

1 noncitizens such as Petitioner, who is present without admission in the United
2 States, there would be no reason to specify that §1226(c) governs certain persons
3 who are inadmissible; instead, the statute would have only needed to address people
4 who are deportable for certain offenses. Notably, recent amendments to §1226
5 dramatically reinforces that this section covers people like Petitioner who DHS
6 alleges to be present without admission. The Laken Riley Act (LRA) added
7 language to §1226 that directly references people who have entered without
8 inspection and who are present without admission. *See* LRA, Pub. L. No. 119-1,
9 139 Stat. 3 (2025).

11
12 Specifically, pursuant to the LRA amendments, people charged as
13 inadmissible pursuant to §1182(a)(6) (the inadmissibility ground for presence
14 without admission) or §1182(a)(7) (the inadmissibility ground for lacking valid
15 documentation to enter the United States) and who have been arrested, charged
16 with, or convicted of certain crimes are subject to §1226(c)'s mandatory detention
17 provisions. *See* 8 U.S.C. §1226(c)(1)(E). By including such individuals under
18 §1226(c), Congress further clarified that, by default, §1226(a) covers persons
19 charged under §1182(a)(6) or (a)(7) and the additional crime-related provisions of
20 §1226(c)(1)(E) do not apply, then §1226(a) governs that person's detention. *See*
21 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)
22 (observing that a statutory exception would be unnecessary if the statute at issue did
23 not otherwise cover the excepted conduct).
24
25

1 Despite the clear statutory language, DHS issued a new policy on July 8,
2 2025 instructing all Immigration and Customs Enforcement (ICE) employees to
3 consider anyone inadmissible under §1182(a)(6)(A)(i), i.e., those who are present
4 without admission, to be an “applicant for admission” and therefore subject to
5 mandatory detention pursuant to §1225(b)(2)(A). *See* Exhibit O (ICE Interim
6 Guidance). The new policy was implemented “in coordination with” the DOJ. *Id.*
7 And on September 5, 2025, the BIA, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216
8 (BIA 2025), adopted this same position.
9

10 The new policy is also inconsistent with the canon against superfluities.
11 Under this “most basic [of] interpretive canons, ... ‘[a] statute should be construed
12 so that effect is given to all of its provisions, so that no part will be inoperative or
13 superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314
14 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101
15 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023)
16 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
17 making every effort not to interpret a provision in a manner that renders other
18 provisions of the same statute inconsistent, meaningless or superfluous.’” (citation
19 omitted)). But by concluding that the mandatory detention provision of §1225(b)(2)
20 applies to Petitioner, DHS and EOIR violate this rule.
21
22

23 In sum, §1226’s plain text demonstrates that §1225(b)(2) should not be read
24 to apply to everyone who is in the U.S. “who has not been admitted.” Section
25

1 1226(a) covers those who are present within and residing within the U.S. and who
2 are not at an international border seeking admission.

3 The text of §1225 reinforces this interpretation. As the Supreme Court
4 recognized, §1225 is concerned “primarily [with those] seeking entry,” *Jennings v.*
5 *Rodriguez*, 583 U.S. 281, 297 (2018), i.e., “at the Nation’s borders and ports of
6 entry, where the Government must determine whether a[] [noncitizen] seeing to
7 enter the country is admissible,” *Id.* at 287.

9 Paragraphs (b)(1) and (b)(2) in §1225 reflect this understanding. To begin,
10 paragraph (b)(1), which concerns “Expedited removal of inadmissible arriving
11 [noncitizen],” encompasses only the “inspection” of certain “arriving” noncitizens
12 and other recent entrants the Attorney General designates, and only those who are
13 “inadmissible under §1182(a)(6)(C) or §1182(a)(7).” 8 U.S.C. §1225(b)(1)(A)(i).

15 These grounds of inadmissibility are for those who misrepresent information
16 to an examining immigration officer or do not have adequate documents to enter
17 the United States. Thus, subsection (b)(1)’s text demonstrates that it is focused only
18 on people recently arriving at a port of entry or who have recently entered the U.S.
19 and not those already residing here. Paragraph (b)(2) is similarly limited to people
20 applying for admission when they arrive in the U.S. The title explains that this
21 paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those noncitizens
22 who are “seeking admission,” but who (b)(1) does not address. *Id.* §1225(b)(2),
23 (b)(2)(A). By limiting (b)(2) to those “seeking admission,” Congress confirmed that
24
25

1 it did not intend to sweep into this section individuals like Petitioner, who have
2 already entered and are now residing in the United States. An individual submits an
3 “application for admission” only at “the moment in time when the immigrant
4 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d 918,
5 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals
6 rejected the idea that §1225(a)(1) means that anyone who is presently in the United
7 States without admission or parole is someone “deemed to have made an actual
8 application for admission.” *Id.* (emphasis omitted). That holding is instructive here
9 too, as only those who take affirmative acts, like submitting an “application for
10 admission,” are those who can be said to be “seeking admission” within
11 §1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key
12 rule of statutory construction. *See Shulman*, 58 F.4th at 410-11.

15 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
16 [noncitizens] *arriving* from contiguous territory,” i.e., those who are “*arriving* on
17 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
18 underscores Congress’ focus in §1225 on those who are arriving into the United
19 States, not those already residing here. Similarly, the title of §1225 refers to the
20 “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*,
21 599 U.S. 110, 120-21 (2023) (emphasis added) (relying on section title to help
22 construe statute).
23

24 Finally, the entire statute is premised on the idea that an inspection occurs
25

1 near the border and shortly after arrival, as the statute repeatedly refers to
2 “examining immigration officer[s],” 8 U.S.C. §1225(b)(2)(A), (b)(4), or officers
3 conducting “inspection[s]” of people “arriving in the United States,” *Id.*
4 §1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015)
5 (looking to an Act’s “broader structure ... to determine [the statute’s] meaning”).
6

7 The new DHS and EOIR policy on this basis ignore all this and instead focus
8 on the definition of “application for admission” at §1225(a)(1), which defines an
9 applicant for admission” as a person who is “present in the United States who has
10 not been admitted or who arrives in the United States.” 8 U.S.C. §1225(a)(1).
11

12 But as the 9th Circuit has explained, “when deciding whether language is
13 plain, [courts] must read the words in their context and with a view to their place in
14 the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236,
15 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that context
16 underscores that the definition in (a)(1) is limited by other aspects of the statute to
17 those who undergo an initial inspection at or near a port of entry shortly after arrival,
18 and that it does not apply to those who are arrested in the interior of the United
19 States years or decades later.
20

21 Moreover, in deeming that all noncitizens who entered without inspection are
22 necessarily encompassed by the mandatory detention provision at §1225(b)(2), the
23 DHS and EOIR policy ignores that the provision does not simply address applicants
24 for admission. Instead, the language “applicant for admission” in (b)(2)(A) is
25

1 further qualified by clarifying the subparagraph applies only to those “seeking
2 admission” – in other words, those who have applied to be admitted or paroled. The
3 new policy and the implementation of the policy ignore this text, just as it ignores
4 the statutory language in §1226 that expressly encompasses persons who have
5 entered the U.S. and are present without admission.
6

7 2. The Legislative History Further Supports the Application of §1226(a) to
8 Petitioner’s Detention.
9

10 The legislative history of the Illegal Immigration Reform and Immigrant
11 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, §§302-03, 110
12 Stat. 3009-546, 3009-582 to 3009-583, 3009-585, also supports a limited
13 construction of §1225 and the conclusion that §1226(a) applies to Petitioner. In
14 passing the Act, Congress was focused on the perceived problem of recent arrivals
15 to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-
16 469, pt. 1, at 157-58, 228-29 (1996); H.R. Rep. No. 104-828, at 209 (1996).
17 Notably, Congress did not say anything about subjecting all people present in the
18 U.S. after an unlawful entry to mandatory detention if arrested.
19

20 This is important, as prior to IIRIRA, individuals like Petitioner were not
21 subject to mandatory detention. *See* 8 U.S.C. §1252(a)(1) (1994) (authorizing
22 Attorney General to arrest noncitizens for deportation proceedings, which applied
23 to all persons physically present within the United States). Had Congress intended
24 to make such a monumental shift in immigration law (potentially subjecting
25

1 millions of people to mandatory detention), it would have explained so or spoken
2 more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468-69 (2001).
3 But to the extent it addressed the matter, Congress explained precisely the opposite,
4 noting that the new §1226(a) merely “restates the current provisions in [INA]
5 section 242(a)(1) regarding the authority of the Attorney General to arrest, detain,
6 and release on bond a[] [noncitizen] *who is not lawfully in the United States*.” H.R.
7 Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828,
8 at 210 (same).
9

10 3. The Record and Longstanding Agency Practice Reflect that §1226 Governs
11 Petitioner’s Detention.
12

13 DHS’ long practice of considering people like Petitioner as detained under
14 §1226(a) further supports this reading of the statute. Typically, in cases like that of
15 Petitioner, DHS issues a Form I-286, Notice of Custody Determination, or Form I-
16 200, stating that the person is detained under §1226(a) or has been arrested under
17 that statute. This decision to invoke §1226(a) is consistent with longstanding
18 practice. For decades, and across administrations, DHS has acknowledged that
19 §1226(a) applies to individuals who are present without admission after entering
20 the United States unlawfully, but who were later apprehended within the United
21 States long after their entry. Such a longstanding and consistent interpretation “is
22 powerful evidence that interpreting the Act in [this] way is natural and reasonable.”
23 *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see*
24
25

1 also *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part
2 on “over 60 years” of government interpretation and practice to reject government’s
3 new proposed interpretation of the law at issue).

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

14
15 In sum, §1226 governs this case. §1225 and its mandatory detention
16 provision apply only to individuals arriving in the United States as specified in the
17 statute, while §1226 applies to those who have previously entered without
18 admission and are now present and residing in the United States. one year

19
20 4. Heightened Private Interests Weigh in Favor of Releasing Petitioner
21 Immediately.

22 In March 2024, Petitioner properly filed an I-589 application disclosing the
23 hardships and the persecution he suffered, causing him to leave his home country.
24 He has a master hearing scheduled for January 6, 2026 at 1:00 p.m. *See Exhibit D*
25

1 (Automated Case System Information).

2 Petitioner has consistently appeared at all of his scheduled immigration
3 hearings and USCIS Biometric appointment. *See* Exhibit M (USCIS Biometric
4 Appointment Notice). On November 17, 2025, Petitioner accompanied Mrs. Bala
5 Posadas to obtain her military ID at the Los Angeles Air Force Base Exchange.
6 After they arrived, Petitioner was told at the entrance that he could not enter the
7 premises and was waiting inside the front office while Mrs. Bala Posadas completed
8 the process. However, sometimes later, police officers at the visitor center had
9 begun a background check on Petitioner. The police then detained Petitioner, placed
10 him in handcuffs, and he was ultimately taken into ICE custody, without warning,
11 explanation, questioning, or opportunity to provide a statement. *See* Exhibit H
12 (Declaration of Karol S. Bala Posadas).
13
14

15 Petitioner has no criminal record, as confirmed by his wife, Mrs. Bala
16 Posadas, in her declaration. *See Id.* Petitioner has continued to reside at the same
17 address with Mrs. Bala Posadas and to comply with USCIS appointment and
18 immigration court requirements. During his one year and eleven months of
19 residence in the United States prior to re-detention, Petitioner lived with Mrs. Bala
20 Posadas, worked, spent time with family, and developed strong ties to his
21 community, while appearing for all immigration court hearings and USCIS
22 appointments. *See* Exhibits I (Petitioner's Marriage Certificate) and J (Proof of
23 Shared Residency with Karol S Bala Posadas). Petitioner's employer confirms he is
24
25

1 a hard worker and outstanding employee with good work ethic since November
2 2024, constantly receiving positive feedback from clients regarding his
3 professionalism, dedication, and coaching abilities. *See* Exhibit L (Employment
4 Verification Letters; Proofs of Income; Petitioner's Valid Employment
5 Authorization Card). Additionally, Petitioner's strong community ties—including
6 declarations from his friends, colleagues, and clients attesting to his good moral
7 character, strong work ethic, supportive nature, effectiveness as a coach, and kind
8 treatment of others—further confirm that he is not a danger to the community and
9 is deeply embedded in lawful, pro-social activities. *See* Exhibit K (Compilation of
10 Signed Statements of Petitioner's Friends, Colleagues, and Clients with
11 Identification Documents).

12
13
14 From November 17 to November 20, 2025, Petitioner was detained by ICE
15 at Los Angeles, California. Since November 20, 2025, Petitioner has been detained
16 at the ICE Desert View Facility in Adelanto, California. *See* Exhibit E (ICE's
17 Online Detainee Locator System Search Result). Petitioner was not provided with
18 any hearing, notice, or opportunity to be heard before being taken into custody.
19

20 On or around December 3, 2025, Petitioner, through his immigration counsel,
21 Ms. Elif Yesildal, filed a Motion for Bond with the Immigration Court at Adelanto,
22 California. The Motion was denied on December 9, 2025, as the Immigration Court
23 found that it lacked jurisdiction over the request for custody redetermination
24 pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exhibit F
25

1 (Order of Immigration Judge dated December 9, 2025). In addition, Ms. Yesildal
2 also filed a parole request on behalf of the Petitioner with the Enforcement and
3 Removal Operation (ERO). However, the Petitioner's parole request was also
4 denied on December 8, 2025. *See* Exhibit G (Parole Request Denial Email dated
5 December 8, 2025). Petitioner's master hearing of his I-589 application is scheduled
6 for January 6, 2026, 1:00 p.m., at Adelanto, California. *See* Exhibit D (Automated
7 Case System Information).

9 Unlike *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981), where the BIA
10 allowed bond revocation upon "considerable change in circumstances," Petitioner
11 has no material changes in circumstances to justify his sudden arrest during a
12 routine ICE check-in appointment, which he attended voluntarily and consistently
13 for one year and ten months. Unlike the petitioner in *Sugay*, in this instant matter,
14 Petitioner has no material changes in circumstances that would justify this sudden
15 ICE detention. *Sugay* does not authorize revocation based solely on a belated legal
16 reinterpretation of the statute or a new internal policy untethered to any change in
17 the noncitizen's conduct, residence, or compliance.
18

19 Here, there has been no material change in Petitioner's circumstances that
20 would justify revoking his prior release. He continues to live at the same address
21 with Mrs. Bala Posadas, has appeared to his USCIS appointment, complied with all
22 immigration court requirements, has accrued additional positive equities through
23 community, evidencing an intent to comply rather than flee. *See* Exhibits H, K and
24
25

1 L.

2 The only genuine “change” is the government’s new classification of him as
3 a § 1225(b)(2) mandatory detainee under the July 2025 policy and *Yajure*, a shift
4 that conflicts with the INA and falls outside *Sugay*’s paradigm of changed factual
5 risk. Under *Sugay*’s own logic, the stability of Petitioner’s address, his pre-arranged
6 departure plans, his compliance history, and the absence of any new adverse
7 conduct all cut strongly against re-detention and underscore the need for an
8 individualized bond assessment rather than automatic custody.
9

10 Due process mandates that a bond hearing before a neutral adjudicator is
11 required prior to this unwarranted and prolonged deprivation of liberty, especially
12 given his longstanding status and prior release. The Supreme Court has held that
13 adequate due process requires procedural safeguards proportional to the liberty
14 interest at stake. *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en
15 banc), citing *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972). This Court must
16 balance Petitioner’s significant liberty interest against the government’s interest in
17 efficient immigration administration to determine the process due. *Id.* at 1357; see
18 also *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
19
20

21 Under the *Mathews v. Eldridge* balancing test, the Court must consider: (1)
22 the private interest affected; (2) the risk of erroneous deprivation through current
23 procedures and the value of additional safeguards; and (3) the government’s interest
24 including administrative burdens. *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
25

1 *Eldridge*, 424 U.S. 319, 335 (1976)).

2 The Supreme Court further instructs that the Constitution generally requires
3 a hearing before depriving a person of liberty or property, absent extraordinary
4 circumstances. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Only in a “special
5 case” where post-deprivation remedies are “the only remedies the State could be
6 expected to provide” can post-deprivation process satisfy the requirements of due
7 process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one of the variables in
8 the *Mathews* equation, the value of pre deprivation safeguards, is negligible in
9 preventing the kind of deprivation at issue” such that “the State cannot be required
10 constitutionally to do the impossible by providing pre deprivation process,” can the
11 government avoid providing pre-deprivation process. *Id.*

14 Because, under *Mathews v. Eldridge*, the provision of a pre-deprivation
15 hearing must balance the individual’s significant liberty interest, specifically, his
16 freedom from prolonged detention, against the government’s interest in detaining
17 individual pending removal. As such, the denial of a pre-deprivation hearing based
18 on jurisdictional technicalities, such as under *Matter of Yajure Hurtado*, violates
19 due process’s individualized balancing requirement.

21 Here, the Petitioner’s private interest in release is heightened by his
22 compliance efforts by regularly and timely appearing for his USCIS appointment,
23 immigration court requirements as well as his ongoing efforts to obtain lawful
24 status, such as a pending I-589 application. His strong community ties are evidenced
25

1 by his residence with his wife, Mrs. Bala Posadas. Moreover, the Petitioner's good
2 moral character is demonstrated through his lack of any criminal record or acts; his
3 dedicated involvement in his work as an outstanding employee and coach since
4 November 2024, where he consistently receives positive feedback for his
5 professionalism, dedication, strong work ethic, and coaching abilities; and
6 supporting statements from friends, colleagues, and clients affirming his supportive
7 nature, and kind treatment of others. *See* Exhibits H-L.

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

16 Accordingly, the heightened private interests weigh strongly in favor of
17 Petitioner's immediate release or, at minimum, an individualized bond hearing that
18 carefully evaluates these circumstances before any continued detention is imposed.
19 Under current BIA interpretations, there is no administrative mechanism for
20 Petitioner to request a bond hearing from an IJ because such a request was denied
21 on December 9, 2025. *See* Exhibit F (Order of IJ Dated December 9, 2025).

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

24 In the absence of a TRO, Petitioner will continue to be unlawfully detained
25

1 by Respondents pursuant to §1225(b)(2) and denied a bond hearing before an IJ.
2 Petitioner has now been detained without a bond hearing since November 17, 2025.

3 “Freedom from imprisonment, from government custody, detention, or other
4 forms of physical restraint, lies at the heart of the liberty” that the Due Process
5 Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes
6 “a loss of liberty that is ... irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp.
7 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), aff’d in part, vacated in part on
8 other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir.
9 2022). It “is well established that the deprivation of constitutional rights
10 unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990,
11 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989,
12 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th
13 Cir. 2017) (“Thus, it follows inexorably from our conclusion that the government’s
14 current policies [which fail to consider financial ability to pay immigration bonds]
15 are likely unconstitutional – and thus that members of the plaintiff class will likely
16 be deprived of their physical liberty unconstitutionally in the absence of the
17 injunction – that Plaintiffs have also carried their burden as to irreparable harm.”)

18
19
20
21 Petitioner has significant family ties in the United States, specifically with
22 Mrs. Bala Posadas, who regards Petitioner not merely as a husband, but as her best
23 friend and the backbone of her life. Petitioner’s presence in his home is essential.
24 The separation caused by Petitioner’s detention has left a void in his home and life,
25

1 disrupting the family unit that was established to provide him the safety he was
2 denied in his home country. *See* Exhibit H (Declaration of Karol S Bala Posadas).
3 Petitioner's strong family and community ties—documented by letters and
4 statements from his employer, friends, colleagues, and clients, with proof of their
5 lawful status—further underscore that he is deeply rooted in Los Angeles,
6 California, not a danger or flight risk, and that his detention is tearing apart a
7 stable, supportive environment. *See Id.* *See also* Exhibits K (Compilation of Signed
8 Statements of Petitioner's Friends, Colleagues, and Clients with their Identification
9 Documents) and L (Employment Verification Letters; Proofs of Income;
10 Petitioner's Valid Employment Authorization Card).

13 Furthermore, the Petitioner has secured stable employment as a coach since
14 November 2024 and receives a consistent income, contributing to the financial
15 stability of his family. *See* Exhibit L (Employment Verification Letters; Proofs of
16 Income; Petitioner's Valid Employment Authorization Card). Without a TRO,
17 Petitioner faces irreparable harm as he will be unable to earn a livelihood,
18 jeopardizing his ability to provide for himself and his family. This deprivation
19 disrupts not only his economic stability but also his essential role in assisting with
20 household responsibilities, including caring for their home and pets, while placing
21 immense financial pressure on his wife as the sole provider for bills such as rent,
22 utilities, and car payments. *See* Exhibit H (Declaration of Karol S Bala Posadas).
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Beyond economic interests, Petitioner faces significant non-compensable harm regarding the health and welfare of Mrs. Bala Posadas, who suffers from overwhelming stress, anxiety, sleep disruption, persistent headaches, constant anger, tense back and shoulders, and a weakened immune system. Mrs. Bala Posadas relies on Petitioner as her primary emotional support and caregiver for their home and pets. The critical need for Petitioner's presence and support is underscored by Mrs. Bala Posada's deteriorating mental and physical health—exacerbated by her upcoming military deployment on March 10, 2026, for 6 months and 4 days—and dependence on him for maintaining stability while she

 See *Id.*

The deprivation of Petitioner's liberty acts as a punishment against a compliant individual who has consistently followed immigration laws and attended his scheduled USCIS appointment and immigration court hearings. Accordingly, the issuance of a TRO is necessary to prevent continuing physical and emotional injury to Petitioner and to halt the deterioration of his wife's mental health.

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

1 Cir. 2013). Because the policy preventing Petitioner from obtaining bond “is
2 inconsistent with federal law, ... the balance of hardships and public interest factors
3 weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F.
4 Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52
5 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction issued in
6 *Moreno II* and quoting approvingly district judge’s declaration that “it is clear that
7 neither equity nor the public’s interest are furthered by allowing violations of
8 federal law to continue”). This is because “it would not be equitable or in the
9 public’s interest to allow the [government] ... to violate the requirements of federal
10 law, especially when there are no adequate remedies available.” *Valle de Sol Inc. v.*
11 *Whitting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original)
12 (citation omitted). Indeed, Respondents “cannot suffer harm from an injunction that
13 merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th
14 Cir. 2013).

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

2 **D. Prudential Exhaustion is Not Required.**

3 Prudential exhaustion does not require Petitioner to endure irreparable harm
4 by being forced to exhaust an administrative remedy that does not exist. Where no
5 bond hearing has been afforded at all, ties to the community, compliance history,
6 and/or lack of dangerousness, exhaustion is impossible and therefore excused. As
7 recognized in *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004), exceptions to
8 the exhaustion requirement include situations where administrative remedies are
9 inadequate or not efficacious, or where irreparable injury would result from
10 requiring exhaustion.
11

12 In addition, a court may waive an exhaustion requirement when “requiring
13 resort to the administrative remedy may occasion undue prejudice to subsequent
14 assertion of a court action.” *McCarthy v. Madigan*, 503 U.S. 140, 146-47 (1992),
15 *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731,
16 739-41 (2001). “Such prejudice may result ... from an unreasonable or indefinite
17 time frame for administrative action.” *Id.* at 147 (citing cases). Here, the exceptions
18 regarding irreparable injury and agency delay apply and warrant waiving any
19 prudential exhaustion requirement.
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22 1. Futility

23 Futility is an exception to the prudential exhaustion requirement. Petitioner
24 has been subjected to the new DHS policy issued on July 8, 2025 instructing all
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1 ICE employees to consider anyone arrested within the United States and charged
2 with being inadmissible under §1182(a)(6)(A)(i) to be an “applicant for admission”
3 under §1225(b)(2)(A) and subject to mandatory detention. The DHS policy states it
4 was issued “in coordination with the Department of Justice (DOJ).” *See* Exhibit O
5 (ICE Interim Guidance). IJs function within the Executive Office for Immigration
6 Review which is a component of the DOJ.
7

8 Further, the most recent published BIA decision on this issue, i.e., *Matter of*
9 *Yajure Hurtado*, held that persons like Petitioner are subject to mandatory detention
10 as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where
11 EOIR and the Attorney General are defendants, DOJ has affirmed its position that
12 individuals like Petitioner are applicants for admission and subject to detention
13 under §1225(b)(2)(A). *See* Mot. To Dismiss, *Rodriguez Vazquez v. Bostock*, No.
14 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-31. Under these
15 facts, appeals to the BIA would be futile.
16

17 2. Irreparable Injury

18 Irreparable injury is an exception to any prudential exhaustion requirement.
19 Because Petitioner is denied parole/bond and ordered mandatorily detained, each
20 day he remains in detention is one in which his statutory and constitutional rights
21 have been violated. Similarly situated district courts have repeatedly recognized this
22 fact. As one court has explained, “because of delays inherent in the administrative
23 process, BIA review would result in the very harm that the bond hearing was
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1 designed to prevent: prolonged detention without due process.” *Hechavarria v.*
2 *Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks
3 omitted). Indeed, “if Petitioner is correct on the merits of his habeas petition, then
4 Petitioner has already been unlawfully deprived of a [lawful] Perez bond hearing[,]
5 [and] ... each additional day that Petitioner is detained without a [lawful] bond
6 hearing would cause him harm that cannot be repaired.” *Villalta v. Sessions*, No.
7 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal
8 quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d
9 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these
10 points. *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon*
11 *v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420
12 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Session*, 313 F. Supp. 3d
13 993, 1003-04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-
14 JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*,
15 No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020);
16 *Birru v. Barr*, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr.
17 17, 2020); *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7
18 (N.D. Cal. Dec. 24, 2018).

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22 Petitioner asserts both statutory and constitutional claims and has a
23 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
24 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
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1 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80) (1992)).

2 Moreover, the irreparable injury Petitioner faces extends beyond a chance at
3 physical liberty. These are several “irreparable harms imposed on anyone subject
4 to immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar
5 medical and psychiatric care in ICE detention facilities.” *Id.*
6

7 3. Agency Delay

8 Third, BIA’s delays in adjudicating bond appeals warrant excusing any
9 exhaustion requirement. A court’s ability to waive exhaustion based on delay is
10 especially broad here given the interests at stake. As the 9th Circuit has explained,
11 Supreme Court precedent “permits a court under certain prescribed circumstances
12 to excuse exhaustion where ‘a claimant’s interest in having a particular issue
13 resolved promptly is so great that deference to the agency’s judgment [of a lack of
14 finality] is inappropriate.’” *Klein v. Sullivan*, 978 S.2d 520, 523 (9th Cir. 1992)
15 (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)).
16 Surely, as noted above, Petitioner’s interest here in physical liberty is a
17 “fundamental” one. *Hernandez*, 872 F.3d at 993. Moreover, the Supreme Court has
18 explained that “[r]elief [when seeking review of detention] must be speedy if it is
19 to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).
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22 Despite this fundamental interest and the Supreme Court’s admonition that
23 only speedy relief is meaningful, BIA takes over half a year in most cases to
24 adjudicate an appeal of a decision denying bond. In these cases, noncitizens in
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1 removal proceedings often remain locked up in a detention facility with conditions
2 “similar ... to those in many prisons and jails” and separated from family.”
3 *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g., Hernandez*, 872
4 F.3d at 996.

5
6 District courts facing situations similar to the one at issue here acknowledged
7 that the BIA’s months-long review is unreasonable and results in ongoing injury to
8 the detained individual. *See, e.g., Perez*, 445 F. Supp. 3d at 286.

9 Indeed, as one district judge observed, “the vast majority of ... cases ... have
10 ‘waived exhaustion ... where several additional months may pass before the BIA
11 renders a decision on appending appeal [of a custody order].” *Montoya Echeverria*,
12 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301, at *5); *see*
13 *also Hechavarria*, 358 F. Supp. 3d at 237-38 (citing *McCarthy* and BIA delays as
14 reason to waive prudential exhaustion requirement).

15 16 IV. CONCLUSION

17 For these reasons, the Court should grant Petitioner’s Application for a
18 Temporary Restraining Order and Order to Show Cause, hold that § 1226(a)
19 governs his detention, and order his immediate release to his established address
20 (subject to appropriate conditions of supervision) or, at a minimum, a prompt bond
21 hearing before a neutral adjudicator.
22

23 DATED: December 29, 2025

Respectfully Submitted,
24 /s/Gita B. Kapur
Gita B. Kapur
25 Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner, certifies that this brief contains 7,858 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 29, 2025

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11 UNITED STATES DISTRICT COURT
12
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 MUHAMMET FATIH PERCIN,

15 Petitioner,

16 v.

17 Ernesto SANTACRUZ JR., Acting
18 Director, Los Angeles Field Office,
19 Immigration and Customs Enforcement,
20 Enforcement and Removal Operations;
21 Todd LYONS, Acting Director,
22 Immigration and Customs Enforcement;
23 Kristi NOEM, Secretary, U.S. Department
24 of Homeland Security; U.S.
25 DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S.
Attorney General; Fereti SEMAIA,
Warden of ICE Desert View Facility,

Respondents.

Case No.

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

PETITIONER'S DHS NO:

A 