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6 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
7

8 **PASCACIO RAMIREZ-ROSALES,**

9 Petitioner,

10 v.

11 **Kristi NOEM**, Secretary, U.S. Department of
Homeland Security; **Thomas HOGAN**, Field
12 Office Director of Enforcement and Removal
Operations, Las Vegas Field Office,
Immigration and Customs Enforcement;
13 **Pamela BONDI**, U.S. Attorney General; **John**
MATTOS, Warden of Nevada Southern
14 Detention Center, **Todd LYONS**, Acting
Director of U.S. Immigration and Customs
15 Enforcement; **DEPARTMENT OF JUSTICE**;
16 and **Sirce OWEN**, Acting Director for Executive
Office for Immigration Review,

17 Respondents.
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Case No.

**MOTION FOR PRELIMINARY
INJUNCTION**

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION¹**

Petitioner Pascacio Ramirez-Rosales respectfully moves this Court for a preliminary injunction ordering Respondents to immediately release Petitioner, or, alternatively, schedule a bond hearing within seven days before an Immigration Judge (IJ) pursuant to 8 U.S.C. § 1226(a). Petitioner is being detained under an unlawful application of 8 U.S.C. § 1225(b)(2)(A), in violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

Sometime around mid-2025 the Department of Homeland Security (DHS) began to systemically misclassify immigration detainees in order to deny them bond hearings. This practice is contrary to decades of settled law and policy. On September 5, the government cemented the practice through the Board of Immigration Appeals' (BIA) precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (hereinafter *Matter of Hurtado*). That decision unlawfully compels all IJs to uniformly refuse to provide bond hearings to anyone who originally entered the country without inspection. The overwhelming majority of federal courts to consider this issue have rejected the government's position, including this Court.

The impact on the immigrant community from DHS's policy and *Matter of Hurtado* can hardly be overstated. In Nevada alone, hundreds of people are suddenly facing the prospect of being illegally detained for months or years with no bond hearing at all. In the months that the policies have been implemented, dozens of people seeking help have filed habeas petitions in this District. These numbers will only continue to grow as U.S. Immigration and Customs Enforcement (ICE) surges its enforcement activities in Nevada and neighboring states.

¹ Petitioner incorporates by reference all exhibits attached to the concurrently filed Petition for Writ of Habeas Corpus.

1 This motion is based on the points and authorities below, the habeas petition filed
2 concurrently, the evidentiary record already established in this and parallel proceedings in this
3 District, and all matters properly before the Court.

4 **II. JURISDICTION**

5 Petitioner is in the physical custody of Respondents and detained at the NSDC in
6 Pahrump, Nevada. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
7 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the U.S. Constitution
8 (Suspension Clause). This Court may grant relief under 28 U.S.C. § 2241, the Declaratory
9 Judgment Act (28 U.S.C. § 2201 et seq.), and the All Writs Act, 28 U.S.C. § 1651. The
10 jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar review of Petitioner's challenge to
11 the legality of his detention.

12 **III. VENUE**

13 Venue is proper in this District under 28 U.S.C. § 2241, 28 U.S.C. § 1391(b), and 28
14 U.S.C. § 1391(e)(1) because at the time this Petition was filed, Petitioner was detained within the
15 geographic jurisdiction of the District of Nevada (Las Vegas). Venue is also proper under 28
16 U.S.C. § 1391(e) because Respondents are officers, employees, and agencies of the United
17 States, and a substantial part of the events or omissions giving rise to the claims occurred in this
18 District. *See* 28 U.S.C. § 1391(e).

19 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 Petitioner is not required to exhaust administrative remedies prior to seeking relief under
21 28 U.S.C. § 2241 where exhaustion would be futile. Exhaustion in immigration habeas cases is a
22 prudential doctrine, not a jurisdictional requirement.

1 Any attempt by Petitioner to exhaust administrative remedies before the Board of
2 Immigration Appeals (BIA) would be futile because both IJs and the BIA are bound by the
3 BIA's precedential decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which
4 categorically precludes bond jurisdiction for individuals alleged to have entered without
5 inspection.

6 District courts in this District have expressly held that administrative exhaustion is
7 excused as futile under these circumstances. See *Jacobo Ramirez v. Noem*, No. 2:25-cv-02136-
8 RFB-MDC, 2025 WL 3270137, at *5–6 (D. Nev. Nov. 24, 2025).

9 Accordingly, because Petitioner's detention is compelled by binding agency precedent
10 and no administrative tribunal has authority to grant the relief requested, exhaustion is excused.

11 **V. URGENCY AND IMMEDIATE RELIEF WARRANTED**

12 The relief requested here implicates the same fundamental interests underlying habeas
13 corpus: the urgent protection of physical liberty. Federal courts have recognized that where
14 detention is allegedly unlawful and ongoing, immediate intervention is not only appropriate, but
15 imperative.

16 As the Supreme Court has emphasized, "Habeas corpus is perhaps the most important
17 writ known to the constitutional law... affording as it does a swift and imperative remedy in all
18 cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). The Ninth
19 Circuit has likewise recognized that applications for release from unlawful custody "usurp the
20 attention and displace the calendar of the judge" who entertains them. *Yong v. I.N.S.*, 208 F.3d
21 1116, 1120 (9th Cir. 2000).

22 These principles apply equally here. Petitioner seeks immediate relief from unlawful
23 detention under an interpretation of 8 U.S.C. § 1225(b)(2)(A) that has been rejected by this Court
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1 and others. Without preliminary intervention, Petitioner will continue to suffer irreparable harm
2 through ongoing loss of liberty, separation from family, and inability to pursue lawful
3 immigration relief.

4 The Court's equitable authority under Rule 65, combined with its jurisdiction under 28
5 U.S.C. §§ 1331 and 2241, provides ample grounds to act swiftly.

6 **VI. STATEMENT OF FACTS**

7 Petitioner Pascacio Ramirez Rosales is a 44-year-old native and citizen of Mexico, born
8 May 31, 1981. See I-213 (Ex. B). He entered the United States without inspection in
9 approximately the year 2000 and has lived continuously in Las Vegas, Nevada for over twenty-
10 five years. *Id.*

11 Petitioner is the father of three U.S. citizen children and has been steadily employed as a
12 restaurant worker for many years. He has filed federal income taxes and has deep family and
13 community ties in Nevada. *Id.*; Motion for Bond (Ex. D).

14 On December 21, 2025, ICE took Petitioner into custody following his release from local
15 custody in Pahrump, Nevada. See I-213 (Ex. B). DHS issued a Notice to Appear charging
16 Petitioner as removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). See NTA (Ex. C).
17 Petitioner filed a Motion for Bond Redetermination, submitting extensive evidence of eligibility
18 for release and lack of danger or flight risk. See Motion for Bond (Ex. D).

19 On January 15, 2026, the IJ denied bond solely for lack of jurisdiction under *Matter of*
20 *Hurtado*, without making any individualized custody determination. See IJ Order (Ex. A).

21 **VII. LEGAL STANDARD**

22 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive
23 relief to prevent "immediate and irreparable injury." *Maldonado Vazquez*, 2025 WL 2676082, at
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*6 (citing Fed R. Civ. P. 65(b)). A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must establish four elements: “(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that the public interest favors an injunction.” *Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing *Winter*, 555 U.S. at 20).

In the Ninth Circuit, a preliminary injunction may also issue under the “serious questions” test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine post-*Winter*). According to this test, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury, and that the injunction is in the public interest.” *Id.* at 1135. Courts in the Ninth Circuit evaluate “these factors on a sliding scale, such that a stronger showing of one element may offset a weaker showing of another.” *Recycle for Change v. City of Oakland*, 856 F.3d 666, 669 (9th Cir. 2017).

VIII. ARGUMENT

Petitioner satisfies all four factors for preliminary injunctive relief. Courts in this District have repeatedly granted preliminary injunctions in materially identical circumstances, including cases where petitioners —like Mr. Ramirez-Rosales—sought custody redetermination (i.e. bond hearing) after the BIA adopted DHS’s reading of the INA and held IJs have no jurisdiction to hold a bond hearing for detained noncitizens. *See, e.g., Maldonado Vazquez*, 2025 WL 2676082,

at *11, 22-23; *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at *1, 6-7 (D. Nev. Sept. 23, 2025); *Sanchez Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY (D. Nev. Sept. ___, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098, at *1, 6 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094, at *1, 5-6 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, No. 2:25-CV-01987-RFB-BNW, 2025 WL 3014023, at *1, 7 (D. Nev. Oct. 27, 2025) *Arce-Cervera v. Noem*, No. 2:25-cv-01895-RFB-NJK, 2025 WL 3017866, at *2, 8 (D. Nev. Oct. 28, 2025); *see also E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *2, 13 (D. Nev. Aug. 14, 2025); *Nolasco-Gomez v. Noem*, No. 2:25-CV-02217-RFB-DJA (D. Nev. Dec. 8, 2025); *Rodas v. Noem*, No. 2:25-CV-02216-RFB-BNW (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*, No. 2:25-CV-02218-RFB-MDC (D. Nev. Dec. ___, 2025); *Perdomo-Gonzalez v. Noem*, No. 2:25-CV-02121-RFB-EJY (D. Nev. Dec. 8, 2025); *Garcia-Arauz v. Noem*, No. 2:25-CV-02117-RFB-EJY (D. Nev. Dec. ___, 2025); *Gonzalez Hernandez*, 2:25-cv-02486-RFB-NJK (D. Nev. Dec. 30, 2025); *Juarez Salvador v. Noem*, 2:26-cv-00043-RFB-BNW (D. Nev. Jan. 25, 2026); *Molina Posado v. Noem*, 2:26-cv-00050-RFB-BNW (D. Nev. Jan. 26, 2026) The same analysis and ruling should apply to this case.

A. APPLICATION OF THE *WINTER* FACTORS

a. Likelihood of Success on the Merits

Petitioner argues that he (i) is being misclassified in the statutory/regulatory scheme as no-bond detainees, when he is actually bond eligible; (ii) that his detention without a bond hearing violates constitutional due process protections; and (iii) that his detention pursuant to *Matter of Hurtado* is unlawful and therefore also violates the Administrative Procedure Act

1 (APA). The government’s recent reinterpretation of § 1225(b)(2)(A) was adopted in *Matter of*
2 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), but federal courts—including this District—have
3 uniformly rejected it, “[t]hese individuals... were apprehended far from the border. They are not
4 ‘arriving aliens’ and are properly subject to custody under § 1226(a).” *Escobar Salgado v.*
5 *Mattos*, No. 2:25-cv-01872-RFB-EJY, at 5–6 (D. Nev. Nov. 17, 2025). *See infra* Part IX
6 ARGUMENT.

7 For clarity, Petitioner’s request for bond was denied solely because the IJ concluded that
8 the Court lacked jurisdiction to conduct a bond hearing under *Matter of Yajure-Hurtado*. See IJ
9 Order (Ex. A). The IJ did not make any individualized determination that Petitioner posed a
10 danger to the community or a risk of flight, explaining instead that immigration courts are bound
11 by agency precedent and therefore lack authority to consider bond for individuals alleged to have
12 entered without inspection. *Id.* This detention is unlawful because Petitioner was arrested in the
13 interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a,
14 making § 1226(a)—not § 1225—the governing detention statute. Petitioner does not fall within
15 any category requiring mandatory detention under 8 U.S.C. § 1226(c), is not subject to expedited
16 removal under § 1225(b)(1), and does not have a final order of removal triggering § 1231.

17 Hence, there is every reason to believe that he will prevail on each of these claims, and
18 therefore a preliminary injunction should enter. *See Matsumoto v. Labrador*, 122 F.4th 787, 804
19 (9th Cir. 2024) (Likelihood of success on the merits is the most important factor in a preliminary
20 injunction analysis); *see also Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (likelihood of
21 success is especially important where a plaintiff seeks a preliminary injunction because of an
22 alleged constitutional violation).

1 By denying Petitioner any opportunity for individualized consideration for release on
2 bond, Respondents have violated the Immigration and Nationality Act, including 8 U.S.C. §
3 1226(a). Thus, Petitioner is detained under the wrong statutory authority, denied a bond hearing,
4 and has a strong likelihood of success on his habeas claim.

- 5 i. **Petitioner is likely to show that he is being misclassified in the**
6 **statutory/regulatory scheme as no-bond detainees, when he is**
7 **actually bond eligible.**

8 As this Court has recognized, nearly every court to have examined the issue has rejected
9 the government's recent attempts to misclassify people arrested inside the United States—people
10 exactly like Petitioner—as § 1225(b)(2) no-bond detainees. *See, e.g., Maldonado Vazquez*, 2025
11 WL 2676082, at *11 (“the Court holds, consistent with the overwhelming majority of district
12 courts in the Ninth Circuit and across the country that have thus far considered the issue, that §
13 1226, not § 1225, applies to Petitioner and others similarly situated.”); *Arce-Cervera*, 2025 WL
14 3017866, at *2 (“This Court is not alone in its finding, as the overwhelming majority of district
15 courts across the country that have considered DHS and the BIA's new statutory interpretation
16 have found it unlawful”); *Rodriguez Vasquez*, 2025 WL 2782499, at *27 (holding that the class
17 members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under
18 8 U.S.C. § 1225(b)(2)); *Guerrero Orellana*, 2025 WL 2809996, at *4-9 (holding that § 1226(a)
19 applied based on the statute's plain language, Congress's recent amendment to § 1226(c), the
20 Supreme Court's decision in *Jennings*, and established agency practice); *Pizarro Reyes v.*
21 *Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (“[T]he BIA's
22 decision to pivot from three decades of consistent statutory interpretation and call for
23 [petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been
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confronted with the same question of statutory interpretation.”); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *4 (D. Colo. Oct. 17, 2025) (noting the government “readily admit[s] that other district courts that have considered this same or similar issue ‘have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)’” (citation omitted)); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, F. Supp. 3d , 2025 WL 2935630, at *8 (N.D. Cal. Oct. 15, 2025) (“District courts throughout this district and across the country have rejected that argument” that § 1225(b)(2) covers petitioners); *Hernandez Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4 (M.D. Fla. Oct. 29, 2025) (“Courts around the country have since rejected the government's new interpretation. This Court now joins the consensus.” (citation omitted)).²

There is therefore a strong likelihood that Petitioner will show that he, too, has been misclassified, and is in fact a § 1226(a) detainee who is entitled to a bond hearing before an IJ. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)-(f). Petitioner was arrested in the interior of the United States, specifically in Las Vegas, Nevada, on December 19, 2025, by the Las Vegas Metropolitan Police Department and was subsequently taken into ICE custody on December 21, 2025, following his release from local custody in Pahrump, Nevada. See I-213 (Ex. B). Petitioner was not arrested at a port of entry or near the border. Petitioner has no convictions, no prior removal order, and no pending criminal charges. See I-213 (Ex. B).

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See also *Guerrero Orellana*, 2025 WL 2809996, at *5 (collecting cases); *Rodriguez Vasquez*, 2025 WL 2782499, at *1 n.3 (same); *Pizarro Reyes*, 2025 WL 2609425, at *7 (same); *Ventura Martinez v. Trump*, No. 25-1445 (W.D. La. Oct. 22, 2025), ECF No. 17 at 5 n.1 (same); Kyle Cheney et al., *Judges Really Don't Like This Policy*, Politico (Oct. 31, 2025), <https://www.politico.com/newsletters/west-wing-playbook-remaking-government/2025/10/31/judges-really-dont-like-this-detention-policy-00631871> (describing how over 100 judges have ruled at least 200 times against the government's new mandatory detention policy).

1 DHS thereafter issued a Notice to Appear dated December 21, 2025, charging Petitioner
2 as removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). See NTA (Ex. C).

3 Petitioner has resided continuously in the United States since approximately the year
4 2000, living for decades in Las Vegas, Nevada, where he established deep family, employment,
5 and community ties. See I-213 (Ex. B). He is the father of three U.S. citizen children, has long-
6 term employment as a restaurant worker, and has maintained stable housing. *Id.*; Motion for
7 Bond (Ex. D).

8 Petitioner's statutory and regulatory arguments arise from the intersection of the three
9 mutually exclusive statutes that create the legal landscape for civil immigration detention.

10 First, at the border, individuals "seeking admission" who are placed into removal
11 proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).³ *See*
12 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and
13 ports of entry"); *see also Maldonado Vazquez*, 2025 WL 2676082, at *13 (describing § 1225's
14 limited temporal focus to "ports of entry" and "recent arrivals.").

15 Second, when a person is arrested inside the United States on civil immigration charges,
16 they are generally subject to the detention authority of 8 U.S.C. § 1226 during the pendency of
17 their removal proceedings. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as
18 relating to people "inside the United States" and "present in the country"); *see also Maldonado*
19 *Vazquez*, 2025 WL 2676082, at *14, (citing *Jennings*, 583 U.S. at 303) (describing § 1226 as
20 applying to "aliens already present in the United States"). Those who do not have disqualifying
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22 ³ These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Separately,
23 there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal
24 process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No.
25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025). This subset is not pertinent to Petitioner as he has
resided in the United States for several years and the government has not attempted to place him in Expedited
Removal.

1 criminal history are entitled to a bond hearing before an IJ to decide whether they should be
2 detained or released. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d); 1003.19(a), 1236.1(d). This
3 statute has long been interpreted to apply to people arrested inside the United States, even if they
4 initially entered the country without being admitted. *See, e.g.*, 62 Fed. Reg. 10312, 10323 (Mar.
5 6, 1997) (“Despite being applicants for admission, aliens who are present without having been
6 admitted or paroled (formerly referred to as aliens who entered without inspection) will be
7 eligible for bond and bond redetermination.”).

8 Third, if a person completes their removal proceedings and all appeals, and is ordered
9 removed, the person is subject to detention under 8 U.S.C. § 1231 while the government attempts
10 to remove them. *See generally Zadvydas v. Davis*, 533 U.S. 678, 688-89 (2001) (discussing
11 limitations on post-final order detention).

12 The present crisis has arisen because the government is now attempting to unlawfully
13 move thousands of people from one of these categories to the other. Specifically, the government
14 is attempting to misclassify bond-eligible § 1226 detainees arrested inside the United States as
15 no-bond border detainees under § 1225(b)(2). This unlawful practice apparently began in a single
16 Immigration Court in Washington. *See Rodriguez Vasquez*, 779 F. Supp. 3d at 1244. Last
17 summer, DHS, “in coordination” with DOJ, began making this argument to Immigration Courts
18 nationwide.⁴ And finally, on September 5, 2025, the Board of Immigration Appeals adopted it as
19 a uniform policy for all Immigration Courts in the *Matter of Hurtado* decision. *See* 29 I&N Dec.
20 216 (B.I.A. 2025). Under DHS’s policy and *Matter of Hurtado*, Petitioner has been misclassified
21 as a § 1225(b)(2) no-bond detainee and had his bond revoked, solely because the government
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24 ⁴ See Interim Guidance Regarding Detention Authority for Applicants for Admission,
<https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applicationsfor-admission>.

1 alleges he entered the United States without being admitted. Petitioner is misclassified in the
2 same way and does not have access to any consideration for bond.

3 This Court, and many throughout the country, have rejected the government's unlawful
4 reversal of nearly three decades of settled immigration practice. As this Court has explained, the
5 government's interpretation 1) is "inconsistent with the plain, ordinary meaning of the phrase
6 'seeking admission' to apply [§ 1225(b)(2)] to all noncitizens already present and residing in the
7 U.S."; 2) goes against legislative history that "supports interpreting the INA as subjecting
8 noncitizens like Petitioner[s] to discretionary detention with the associated procedural
9 protections"; 3) is inconsistent with "Supreme Court precedent interpreting § 1225(b) and
10 finding it 'applies primarily to aliens seeking entry into the United States ('applicants for
11 admission' in the language of the statute)"; and 4) is inconsistent with existing regulations
12 governing IJs' bond jurisdiction, as well as decades of agency practice. *Maldonado Vazquez*,
13 2025 WL 2676082, at *12-15. The new interpretation also contradicts Congress's clear
14 understanding of the statutory framework as expressed this year with the passage of the Laken
15 Riley Act—a new statute that expressly contemplates the inclusion of people who entered
16 without inspection within the scope of § 1226. *See id* at *14 (citing *Diaz Martinez v. Hyde*, No.
17 25-11613, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government
18 argue[s], . . . a noncitizen's inadmissibility were alone already sufficient to mandate detention
19 under section 1225(b)(2)(A), then the 2025 amendment would have no effect")).

20 "By its plain text, § 1225(b)(2) applies where several conditions are met: (1) an
21 'examining immigration officer' in the context of 'inspection' (2) determines that an individual
22 is an 'applicant for admission' who is (3) 'seeking admission.'" *See Maldonado Vazquez*, 2025
23 WL 2676082, at *12. A person apprehended inside the United States is not undergoing an
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1 “examination,” which “is a specific legal process one undergoes while trying to enter the
2 country.” *Romero*, 2025 WL 2403827, at *9 (citing 8 C.F.R. § 235.1). And a person “seeking
3 admission” is necessarily taking a “present-tense action” to attempt to enter the country, not
4 somebody already inside. *See id.* at *9-10; *see also Maldonado Vasquez*, 2025 WL 2676082, at
5 *13 (“It is inconsistent with the plain, ordinary meaning of the phrase ‘seeking admission’ to
6 apply this section to all noncitizens already present and residing in the U.S., regardless of
7 whether they are taking any affirmative acts that constitute ‘seeking admission.’”); *Lopez Benitez*
8 *v. Francis*, No. 25 CIV. 5937 (DEH), F. Supp. 3d , 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13,
9 2025) (“As § 1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking
10 admission’ to the United States, it cannot, according to its ordinary meaning, apply to
11 [petitioner], because he has already been residing in the United States for several years.”).

12 Lastly, to the extent the government might propose deference to *Matter of Hurtado*, there
13 is no longer any requirement to defer to the administrative agency’s interpretation, even if the
14 statute were ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024);
15 *Pablo Sequen*, 2025 WL 2935630, at *9 (“Because ‘agencies have no special competence in
16 resolving statutory ambiguities,’ ‘the BIA decision is entitled to little deference.’ (citation
17 omitted)). It appears that nearly every court that has examined this issue since the BIA’s decision
18 on September 5 has rejected *Matter of Hurtado* as unavailing in light of the contrary conclusion
19 compelled by tools of statutory interpretation. *See, e.g., Rodriguez Vazquez*, 2025 WL 2782499,
20 at *26 (“In *Matter of Hurtado*, the BIA adopts many of Defendants’ arguments on the text of
21 section 1225, canons of interpretation, legislative history, and prior agency practice. For the
22 reasons already explained in this Order, the Court is not persuaded by the Board’s analysis.”);
23 *Pizarro Reyes*, 2025 WL 2609425, at *7 (“[T]he BIA’s decision to pivot from three decades of
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1 consistent statutory interpretation and call for [petitioner’s] detention under § 1225(b)(2)(A) is at
 2 odds with every District Court that has been confronted with the same question of statutory
 3 interpretation.”); *Pablo Sequen*, 2025 WL 2935630, at *9 (“The BIA’s reasoning fails to
 4 persuade because, as explained above, its interpretation of § 1225(b)(2) needlessly renders the
 5 phrase ‘seeking admission’ superfluous, vitiates the discretionary-detention regime created by §
 6 1226(a), and nullifies much of § 1226(c). Any persuasive power the BIA’s decision might have
 7 is further undercut by its inconsistency with the BIA’s earlier pronouncements.”).

8 ii. **Petitioner is likely to show that his detention without**
 9 **consideration of bond violates constitutional due process**
 10 **protections.**

11 Even if the government could permissibly interpret 8 U.S.C. §§ 1225 and 1226 to deny
 12 Petitioner a bond hearing—though it cannot—holding him in custody without providing him any
 13 individualized opportunity to seek release on bond still violates due process requirements.

14 “In our society liberty is the norm, and detention prior to trial or without trial is the
 15 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Fifth
 16 Amendment’s Due Process Clause specifically forbids the Government from “depriv[ing]” any
 17 “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V. There is no
 18 question that these protections extend to noncitizens present in the United States. *See e.g., Trump*
 19 *v. J.G.G.*, 604 U.S. 670, 673 145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“‘It is well established
 20 that the Fifth Amendment entitles aliens to due process of law’ in the context of removal
 21 proceedings . . .”) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533
 22 U.S. 678, 693, (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United
 23 States, including aliens, whether their presence here is lawful, unlawful, temporary, or
 24

1 permanent.”); *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (holding the “Fifth
2 Amendment entitles aliens to due process of law in deportation proceedings.”). Consequently,
3 the Supreme Court has “repeatedly . . . recognized that civil commitment for any purpose
4 constitutes a significant deprivation of liberty that requires due process protection,” including an
5 individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting
6 cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural
7 protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S.
8 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S.
9 346, 357 (1997) (same for commitment of sex offenders).

10 To determine whether detention violates procedural due process, courts apply the three-
11 part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Rodriguez Diaz v. Garland*,
12 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and applying the *Mathews* test to a
13 constitutional challenge to detention pursuant to 8 U.S.C. § 1226(a)). Under *Mathews*, courts
14 weigh the following three factors: (1) “the private interest that will be affected by the official
15 action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used,
16 and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
17 Government’s interest, including the function involved and the fiscal and administrative burdens
18 that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.
19 All three factors weigh in favor of Petitioner.

20 The first *Mathews* factor considers the private interest affected by DHS and DOJ
21 misclassifying people as being subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See*
22 *Mathews*, 424 U.S. at 335. Here, Petitioner’s interest in being free from imprisonment is “the
23 most elemental of liberty interests.” *Maldonado Vazquez*, 2025 WL 2676082, at *18 (citing
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1 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “[T]his factor weighs heavily against the
2 government whenever it is invoked.” *Id.* The mandatory detention imposed on Petitioner
3 infringes on his fundamental right to freedom from executive detention, especially because his is
4 bond-eligible pursuant to § 1226, but also due to “the harms attendant to [their] incarceration,
5 including being separated from [their] famil[ies] and young children, losing the ability to
6 [work] . . . and earn an income which [their] famil[ies] depend[] on, mental and emotional
7 distress, and difficulty communicating with [their] counsel and gathering evidence in preparation
8 for [their] removal proceedings.” *See Id.* Petitioner’s liberty is unquestionably at stake. He is a
9 44-year-old native and citizen of Mexico with no criminal convictions, who has lived
10 continuously in the United States for more than twenty-five years, primarily in Las Vegas,
11 Nevada, where he has longstanding family, employment, and community ties. See I-213 (Ex. B).

12 Petitioner was arrested in the interior of the United States, not at or near any border or
13 port of entry. On December 19, 2025, he was arrested by the Las Vegas Metropolitan Police
14 Department, and on December 21, 2025, he was taken into ICE custody following his release
15 from local custody in Pahrump, Nevada. See I-213 (Ex. B). Petitioner has no prior removal
16 order, no pending criminal charges, and was cooperative with law enforcement. *Id.* He is the
17 father of three U.S. citizen children, has maintained steady long-term employment as a restaurant
18 worker, and provides critical financial and emotional support to his family. See I-213 (Ex. B);
19 Motion for Bond (Ex. D).

20 The second *Mathews* factor is “the risk of an erroneous deprivation of [Petitioner’s]
21 interest through the procedures used, and the probable value, if any, of additional or substitute
22 procedural safeguards.” *Mathews*, 424 U.S. at 335. A blanket application of mandatory detention
23 to all people that enter without inspection creates an extreme risk of erroneous and arbitrary
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1 confinement. This is clearly demonstrated by the circumstances of Petitioner where an IJ refused
2 to look beyond DHS' and DOJ's policies and denied bond solely based on lack of jurisdiction.

3 The third and final *Mathews* factor considers the "Government's interest, including the
4 function involved and the fiscal and administrative burdens that the additional or substitute
5 procedural requirement would entail." *Mathews*, 424 U.S. at 335. Put simply, "the government
6 has no legitimate interest in detaining individuals who have been determined not to be a danger
7 to the community and whose appearance at future immigration proceedings can be reasonably
8 ensured by a lesser bond or alternative conditions." *Maldonado Vazquez*, 2025 WL 2676082, at
9 *20 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). There is no government
10 interest in continued detention under these circumstances, especially without the minimal
11 procedure of a bond hearing where the government is free to raise any arguments it believes to
12 justify continued detention. The government function and fiscal and administrative burden will
13 be no different than what existed before mid-2025 when this sudden shift in application and
14 interpretation of the current law by DHS and later adopted by *Matter of Hurtado*.

15 iii. **Petitioner is likely to show that his detention pursuant to**
16 ***Matter of Hurtado* is unlawful under the Administrative**
17 **Procedure Act.**

18 Petitioner may not be detained without a bond hearing with strong procedural protections
19 for the additional reason that such detention violates the APA. Agency action found to be
20 arbitrary, capricious, or otherwise not in accordance with law "shall" be held unlawful and set
21 aside. 5 U.S.C. § 706(2). The government is currently holding Petitioner in detention without the
22 possibility of bond pursuant to the BIA's decision in *Matter of Hurtado*, which instructs all IJs to
23 unlawfully misclassify noncitizens like Petitioner who have allegedly entered without inspection
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1 as mandatory § 1225(b)(2) detainees. The IJ concluded she lacked jurisdiction under BIA policy
2 citing *Matter of Hurtado*. See IJ Order (Ex. A).

3 As explained above, Petitioner's misclassification as required by *Matter of Hurtado*
4 violates his statutory right to a bond hearing and offends due process. See, e.g., *Maldonado*
5 *Vazquez*, 2025 WL 2676082 at *23 (granting preliminary injunction to putative class
6 representative and rejecting *Matter of Hurtado*); cf. *Brito v. Barr*, 415 F. Supp. 3d 258, 268 (D.
7 Mass. 2019) ("Because the Court has already concluded that the BIA's policy of placing the
8 burden of proof on the alien in § 1226(a) bond hearings is unconstitutional, the Court also holds
9 that the BIA policy is a violation of the APA."), vacated in part on other grounds by *Brito v.*
10 *Garland*, 22 F.4th 240 (1st Cir. 2021).

11 Similarly, Petitioner's detention pursuant to *Matter of Hurtado* is arbitrary and
12 capricious. See *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
13 U.S. 29, 43 (1983) (agency action is arbitrary and capricious if the agency fails to "articulate a
14 satisfactory explanation for its action" or "entirely fail[s] to consider an important aspect of the
15 problem"); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (agencies may not
16 depart from prior policies without displaying awareness of the change and providing good
17 reasons for it). Petitioner's detention pursuant to *Matter of Hurtado* therefore violates the APA.

18 **b. IRREPARABLE HARM**

19 To make a showing of irreparable harm, a petitioner must demonstrate likely irreparable
20 injury in the absence of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
21 (2008). "It is well established that the deprivation of constitutional rights 'unquestionably
22 constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Unlawful detention inflicts irreparable harm.
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1 The loss of liberty—even temporarily—is not compensable by monetary damages. See:
2 *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) ([P]hysical confinement carries harm
3 that cannot be remedied after the fact.) see also *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70
4 (9th Cir. 2011) ([P]rolonged detention, especially where unauthorized, constitutes irreparable
5 harm.)

6 Petitioner’s continued incarceration inflicts precisely this type of irreparable harm. He
7 has lived in the United States for more than twenty-five years and has established deep and
8 meaningful family, employment, and community ties in Las Vegas, Nevada. See I-213 (Ex. B).
9 Petitioner has been steadily employed as a restaurant worker, has maintained stable housing, and
10 has supported his family for decades. *Id.*; Motion for Bond (Ex. D).

11 Petitioner has no criminal convictions and no prior removal order. See I-213 (Ex. B). He
12 is the father of three U.S. citizen children, who depend on him for financial and emotional
13 support, and his detention has caused severe hardship to his family. *Id.*; Motion for Bond (Ex.
14 D). Petitioner’s prolonged and unjustified detention—based solely on the government’s
15 misapplication of 8 U.S.C. § 1225(b)(2)(A)—is causing irreparable harm that cannot be
16 remedied through monetary relief. This ongoing deprivation of liberty is precisely the type of
17 constitutional injury the Due Process Clause forbids and which preliminary injunctive relief is
18 designed to prevent.

19 **c. BALANCE OF EQUITIES TIPS SHARPLY IN PETITIONER’S**
20 **FAVOR**

21 The Ninth Circuit has recognized that “neither equity nor the public’s interest are
22 furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832
23 (9th Cir. 2022) (holding that the district court did not abuse its discretion in finding the balance
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1 of hardships weighed in favor of petitioners who credibly alleged that the government was
2 violating the INA). Indeed, the Supreme Court has confirmed that “our system does not permit
3 agencies to act unlawfully even in pursuit of desirable ends.” *Ala. Ass’n of Realtors v. HHS*, 594
4 U.S. 758, 766 (2021); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952)
5 (affirming district court’s preliminary injunction of an illegal executive order even though a
6 wartime president said his order was “necessary to avert a national catastrophe”). Here, there is a
7 significant public interest in ensuring the government obeys the law and provides bond hearings
8 to Petitioner and other noncitizens detained under 8 U.S.C. § 1226(a), as the government has for
9 decades. *See Maldonado Vazquez*, 2025 WL 2676082, at *23 (“And because the Court has found
10 it is likely that Respondents are unlawfully detaining Petitioner under § 1225(b)(2), ‘neither
11 equity or the public interest are furthered’ by allowing Respondents’ violation of the INA to
12 continue—quite the opposite.”); *id.* (“The public interest benefits from an injunction that ensures
13 that individuals are not deprived of their liberty and held in immigration detention because of . . .
14 a likely unconstitutional process.” (citing *Hernandez*, 872 F.3d at 996)); *Rodriguez Vasquez*, 779
15 F. Supp. 3d at 1263 (holding that “the balance of equities tips sharply towards [petitioner]”
16 because “neither equity nor the public’s interest are furthered by detaining [petitioner] without
17 the opportunity for release on bond” as he had been unlawfully detained under § 1225(b)(2)).

18 The government has no legitimate interest in detaining an individual under the wrong
19 statute, without any individualized finding of flight risk or danger. Petitioner, by contrast,
20 suffers the most severe deprivation—a loss of liberty—based on a legal error. Numerous courts
21 have held that the balance of harms in unlawful immigration detention heavily favors release or
22 bond process. *See Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

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1 Any hardship to the government is minimal. For decades, the government has provided
2 bond hearings to individuals in the Petitioner's exact same circumstances, and the government
3 cannot identify any harm caused by following the correct interpretation of the INA. Indeed,
4 because the government can already detain people who cannot meet their burden of showing lack
5 of flight risk or danger, *see Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) ("The burden is
6 on the [noncitizen] to show to the satisfaction of the Immigration Judge that he or she merits
7 release on bond."), its new misclassification policy serves only to jail people who the
8 government can show no reason to detain, and there is no government interest in purposeless
9 detention.

10 There is a compelling public interest in ensuring that Federal agencies do not exceed their
11 statutory authority, detention is not imposed without due process; class-wide and court-declared
12 injunctive and declaratory relief is honored. As this Court noted in *Escobar Salgado*, "[f]ederal
13 district courts are the only forum available to vindicate their statutory and constitutional rights."
14 *Escobar Salgado*, at 9. The public interest strongly favors an injunction requiring the
15 government to follow established law and constitutional principles.

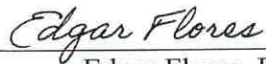
16 For these reasons, the balance of hardships and the public interest sharply favor
17 Petitioner. Accordingly, the Court should find that he is entitled to preliminary relief.

18 **IX. CONCLUSION**

19 WHEREFORE, Petitioner prays that this Court grant the following relief: Assume
20 jurisdiction over this matter; issue a Preliminary Injunction prohibiting Respondents from
21 continuing to detain Petitioner under 8 U.S.C. 1225(b)(2)(A); and order Respondents to within
22 one day, release Petitioner from custody; or alternatively, require that an IJ either schedule a
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1 bond hearing within seven (7) days, or in the alternative, order Petitioner's immediate release
2 from detention.

3
4 DATED this 9th of February, 2026.

5 

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION FOR A PRELIMINARY INJUNCTION** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on February 9, 2026. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

- ☒ CM/ECF
☐ Electronic Mail; or
☐ US Mail or Carrier Service



Jerardo Nataren
An employee of Edgar Flores Law