

1 Edgar Flores, Esq.  
Nevada Bar No. 13120  
2 4811 W. Desert Inn Rd. Ste. B  
Las Vegas, NV 89102  
3 Tel: 702-475-7777  
*Attorney for Petitioner*

4  
5  
6 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

7  
8 **JUNIOR ALEXANDER RAMIREZ-  
RAMOS,**

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,  
13 Immigration and Customs Enforcement;  
14 **Pamela BONDI**, U.S. Attorney General; **John  
MATTOS**, Warden of Nevada Southern  
15 Detention Center, **Todd LYONS**, Acting  
Director of U.S. Immigration and Customs  
16 Enforcement; **DEPARTMENT OF JUSTICE**;  
and **Sirce OWEN**, Acting Director for Executive  
Office for Immigration Review,

17 Respondents.  
18  
19  
20  
21  
22  
23  
24

Case No.

**MOTION FOR PRELIMINARY  
INJUNCTION**

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.       INTRODUCTION<sup>1</sup>**

3           Petitioner Junior Alexander Ramirez-Ramos respectfully moves this Court for a  
4 preliminary injunction ordering Respondents to immediately release Petitioner, or, alternatively,  
5 schedule a bond hearing within seven days before an Immigration Judge (IJ) pursuant to 8 U.S.C.  
6 § 1226(a). On January 21, 2026, the IJ denied Petitioner's bond request for lack of jurisdiction  
7 under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (hereinafter *Matter of Hurtado*),  
8 without any individualized custody determination. See IJ Order (Ex. A). Petitioner is being  
9 detained under an unlawful application of 8 U.S.C. § 1225(b)(2)(A), in violation of the  
10 Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

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

19           The impact on the immigrant community from DHS's policy and *Matter of Hurtado* can  
20 hardly be overstated. In Nevada alone, hundreds of people are suddenly facing the prospect of  
21 being illegally detained for months or years with no bond hearing at all. In the months that the  
22 policies have been implemented, dozens of people seeking help have filed habeas petitions in

23 \_\_\_\_\_  
24 <sup>1</sup> Petitioner incorporates by reference all exhibits attached to the concurrently filed Petition for Writ of Habeas Corpus.

1 this District. These numbers will only continue to grow as U.S. Immigration and Customs  
2 Enforcement (ICE) surges its enforcement activities in Nevada and neighboring states.

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

## 6 **II. JURISDICTION**

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

## 14 **III. VENUE**

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

## 21 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

1 Petitioner is not required to exhaust administrative remedies prior to seeking relief under  
2 28 U.S.C. § 2241 where exhaustion would be futile. Exhaustion in immigration habeas cases is a  
3 prudential doctrine, not a jurisdictional requirement.

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

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

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

#### 14 **V. URGENCY AND IMMEDIATE RELIEF WARRANTED**

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

19 As the Supreme Court has emphasized, "Habeas corpus is perhaps the most important  
20 writ known to the constitutional law... affording as it does a swift and imperative remedy in all  
21 cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). The Ninth  
22 Circuit has likewise recognized that applications for release from unlawful custody "usurp the  
23  
24

1 attention and displace the calendar of the judge” who entertains them. *Yong v. I.N.S.*, 208 F.3d  
2 1116, 1120 (9th Cir. 2000).

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

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

## 10 VI. STATEMENT OF FACTS

11 Petitioner Junior Alexander Ramirez-Ramos is a 34-year-old native and citizen of  
12 Guatemala. See I-213 (Ex. B). He entered the United States without inspection and has resided in  
13 Nevada since approximately 2022. See Motion for Bond (Ex. D). He currently resides at   
14  NV, where he rents a room and has stable housing and community  
15 support. *Id.*

16 On October 17, 2025, he was arrested by the Henderson Police Department for a  
17 misdemeanor DUI and traffic-related offenses, and was then transferred to ICE custody on  
18 October 20, 2025. See I-213 (Ex. B). DHS issued a Notice to Appear on October 20, 2025,  
19 charging him under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). See NTA (Ex. C).

20 Petitioner filed a Motion for Bond Redetermination, submitting evidence of community  
21 ties, long-term residence, and lack of flight risk. See Motion for Bond (Ex. D). On January 21,  
22 2026, the IJ denied Petitioner’s bond request for lack of jurisdiction under *Matter of Hurtado*,  
23 without any individualized custody determination. See IJ Order (Ex. A).

## VII. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive relief to prevent “immediate and irreparable injury.” *Maldonado Vazquez*, 2025 WL 2676082, at \*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

1 cases where petitioners —like Mr. Ramirez-Ramos—sought custody redetermination (i.e. bond  
2 hearing) after the BIA adopted DHS’s reading of the INA and held IJs have no jurisdiction to  
3 hold a bond hearing for detained noncitizens. *See, e.g., Maldonado Vazquez*, 2025 WL 2676082,  
4 at \*11, 22-23; *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082  
5 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at  
6 \*1, 6-7 (D. Nev. Sept. 23, 2025); *Sanchez Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY (D.  
7 Nev. Sept. \_\_\_, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098, at  
8 \*1, 6 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025  
9 WL 2998094, at \*1, 5-6 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, No. 2:25-CV-  
10 01987-RFB-BNW, 2025 WL 3014023, at \*1, 7 (D. Nev. Oct. 27, 2025) *Arce-Cervera v. Noem*,  
11 No. 2:25-cv-01895-RFB-NJK, 2025 WL 3017866, at \*2, 8 (D. Nev. Oct. 28, 2025); *see also*  
12 *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at \*2, 13 (D. Nev. Aug. 14,  
13 2025); *Nolasco-Gomez v. Noem*, No. 2:25-CV-02217-RFB-DJA (D. Nev. Dec. 8, 2025); *Rodas*  
14 *v. Noem*, No. 2:25-CV-02216-RFB-BNW (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*,  
15 No. 2:25-CV-02218-RFB-MDC (D. Nev. Dec. \_\_\_, 2025); *Perdomo-Gonzalez v. Noem*, No.  
16 2:25-CV-02121-RFB-EJY (D. Nev. Dec. 8, 2025); *Garcia-Arauz v. Noem*, No. 2:25-CV-02117-  
17 RFB-EJY (D. Nev. Dec. \_\_\_, 2025); *Gonzalez Hernandez*, 2:25-cv-02486-RFB-NJK (D. Nev.  
18 Dec. 30, 2025); *Juarez Salvador v. Noem*, 2:26-cv-00043-RFB-BNW (D. Nev. Jan. 25, 2026);  
19 *Molina Posado v. Noem*, 2:26-cv-00050-RFB-BNW (D. Nev. Jan. 26, 2026) The same analysis  
20 and ruling should apply to this case.

21 **A. APPLICATION OF THE *WINTER* FACTORS**

22 **a. Likelihood of Success on the Merits**

23

24

1       Petitioner argues that he (i) is being misclassified in the statutory/regulatory scheme as  
2 no-bond detainees, when he is actually bond eligible; (ii) that his detention without a bond  
3 hearing violates constitutional due process protections; and (iii) that his detention pursuant to  
4 *Matter of Hurtado* is unlawful and therefore also violates the Administrative Procedure Act  
5 (APA). The government’s recent reinterpretation of § 1225(b)(2)(A) was adopted in *Matter of*  
6 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), but federal courts—including this District—have  
7 uniformly rejected it, “[t]hese individuals... were apprehended far from the border. They are not  
8 ‘arriving aliens’ and are properly subject to custody under § 1226(a).” *Escobar Salgado v.*  
9 *Mattos*, No. 2:25-cv-01872-RFB-EJY, at 5–6 (D. Nev. Nov. 17, 2025). *See infra* Part IX  
10 ARGUMENT.

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

21       Hence, there is every reason to believe that he will prevail on each of these claims, and  
22 therefore a preliminary injunction should enter. *See Matsumoto v. Labrador*, 122 F.4th 787, 804  
23 (9th Cir. 2024) (Likelihood of success on the merits is the most important factor in a preliminary  
24

1 injunction analysis); *see also Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (likelihood of  
2 success is especially important where a plaintiff seeks a preliminary injunction because of an  
3 alleged constitutional violation).

4 By denying Petitioner any opportunity for individualized consideration for release on  
5 bond, Respondents have violated the Immigration and Nationality Act, including 8 U.S.C. §  
6 1226(a). Thus, Petitioner is detained under the wrong statutory authority, denied a bond hearing,  
7 and has a strong likelihood of success on his habeas claim.

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

11 As this Court has recognized, nearly every court to have examined the issue has rejected  
12 the government's recent attempts to misclassify people arrested inside the United States—people  
13 exactly like Petitioner—as § 1225(b)(2) no-bond detainees. *See, e.g., Maldonado Vazquez*, 2025  
14 WL 2676082, at \*11 (“the Court holds, consistent with the overwhelming majority of district  
15 courts in the Ninth Circuit and across the country that have thus far considered the issue, that §  
16 1226, not § 1225, applies to Petitioner and others similarly situated.”); *Arce-Cervera*, 2025 WL  
17 3017866, at \*2 (“This Court is not alone in its finding, as the overwhelming majority of district  
18 courts across the country that have considered DHS and the BIA's new statutory interpretation  
19 have found it unlawful”); *Rodriguez Vasquez*, 2025 WL 2782499, at \*27 (holding that the class  
20 members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under  
21 8 U.S.C. § 1225(b)(2)); *Guerrero Orellana*, 2025 WL 2809996, at \*4-9 (holding that § 1226(a)  
22 applied based on the statute's plain language, Congress's recent amendment to § 1226(c), the  
23 Supreme Court's decision in *Jennings*, and established agency practice); *Pizarro Reyes v.*

1 *Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at \*7 (E.D. Mich. Sept. 9, 2025) (“[T]he BIA’s  
 2 decision to pivot from three decades of consistent statutory interpretation and call for  
 3 [petitioner’s] detention under § 1225(b)(2)(A) is at odds with every District Court that has been  
 4 confronted with the same question of statutory interpretation.”); *Mendoza Gutierrez v. Baltasar*,  
 5 No. 25-CV-2720-RMR, 2025 WL 2962908, at \*4 (D. Colo. Oct. 17, 2025) (noting the  
 6 government “readily admit[s] that other district courts that have considered this same or similar  
 7 issue ‘have concluded that aliens who enter without inspection and then reside in the United  
 8 States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)’” (citation  
 9 omitted)); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, F. Supp. 3d, 2025 WL 2935630,  
 10 at \*8 (N.D. Cal. Oct. 15, 2025) (“District courts throughout this district and across the country  
 11 have rejected that argument” that § 1225(b)(2) covers petitioners); *Hernandez Lopez v. Hardin*,  
 12 No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at \*4 (M.D. Fla. Oct. 29, 2025) (“Courts  
 13 around the country have since rejected the government’s new interpretation. This Court now  
 14 joins the consensus.” (citation omitted)).<sup>2</sup>

15 There is therefore a strong likelihood that Petitioner will show that he, too, has been  
 16 misclassified, and is in fact a § 1226(a) detainee who is entitled to a bond hearing before an IJ.  
 17 See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)-(f). Petitioner was arrested in  
 18 the interior of the United States, specifically in Las Vegas, Nevada, on October 19, 2025, by the  
 19 Las Vegas Metropolitan Police Department and was subsequently taken into ICE custody on  
 20

21 <sup>2</sup>

22 See also *Guerrero Orellana*, 2025 WL 2809996, at \*5 (collecting cases); *Rodriguez Vasquez*, 2025 WL 2782499, at  
 23 \*1 n.3 (same); *Pizarro Reyes*, 2025 WL 2609425, at \*7 (same); *Ventura Martinez v. Trump*, No. 25-1445 (W.D. La.  
 24 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 October 20, 2025. See I-213 (Ex. B). Petitioner was not arrested at a port of entry or near the  
2 border. Petitioner has no convictions and no prior removal order. See I-213 (Ex. B).

3 DHS thereafter issued a Notice to Appear dated October 20, 2025, charging Petitioner as  
4 removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). See NTA (Ex. C).

5 Petitioner has resided continuously in the United States since approximately 2022, living  
6 in Nevada, where he has established family, employment, and community ties. See I-213 (Ex.  
7 B). He is the father of three children who are nationals of Guatemala, has been employed as a  
8 laborer in landscaping and construction-related work, and has maintained stable housing in  
9 Henderson, Nevada. *Id.*; Motion for Bond (Ex. D).

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

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

17 Second, when a person is arrested inside the United States on civil immigration charges,  
18 they are generally subject to the detention authority of 8 U.S.C. § 1226 during the pendency of  
19 their removal proceedings. See *Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as  
20 relating to people "inside the United States" and "present in the country"); see also *Maldonado*

21  
22 <sup>3</sup> 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 *Vazquez*, 2025 WL 2676082, at \*14, (citing *Jennings*, 583 U.S. at 303) (describing § 1226 as  
2 applying to “aliens already present in the United States”). Those who do not have disqualifying  
3 criminal history are entitled to a bond hearing before an IJ to decide whether they should be  
4 detained or released. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d); 1003.19(a), 1236.1(d). This  
5 statute has long been interpreted to apply to people arrested inside the United States, even if they  
6 initially entered the country without being admitted. *See, e.g.*, 62 Fed. Reg. 10312, 10323 (Mar.  
7 6, 1997) (“Despite being applicants for admission, aliens who are present without having been  
8 admitted or paroled (formerly referred to as aliens who entered without inspection) will be  
9 eligible for bond and bond redetermination.”).

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

14 The present crisis has arisen because the government is now attempting to unlawfully  
15 move thousands of people from one of these categories to the other. Specifically, the government  
16 is attempting to misclassify bond-eligible § 1226 detainees arrested inside the United States as  
17 no-bond border detainees under § 1225(b)(2). This unlawful practice apparently began in a single  
18 Immigration Court in Washington. *See Rodriguez Vasquez*, 779 F. Supp. 3d at 1244. Last  
19 summer, DHS, “in coordination” with DOJ, began making this argument to Immigration Courts  
20 nationwide.<sup>4</sup> And finally, on September 5, 2025, the Board of Immigration Appeals adopted it as  
21 a uniform policy for all Immigration Courts in the *Matter of Hurtado* decision. *See* 29 I&N Dec.  
22 216 (B.I.A. 2025). Under DHS’s policy and *Matter of Hurtado*, Petitioner has been misclassified

23 \_\_\_\_\_  
24 <sup>4</sup> 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 as a § 1225(b)(2) no-bond detainee and had his bond revoked, solely because the government  
2 alleges he entered the United States without being admitted. Petitioner is misclassified in the  
3 same way and does not have access to any consideration for bond.

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

21 “By its plain text, § 1225(b)(2) applies where several conditions are met: (1) an  
22 ‘examining immigration officer’ in the context of ‘inspection’ (2) determines that an individual  
23 is an ‘applicant for admission’ who is (3) ‘seeking admission.’” *See Maldonado Vazquez*, 2025  
24

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

13 Lastly, to the extent the government might propose deference to *Matter of Hurtado*, there  
14 is no longer any requirement to defer to the administrative agency’s interpretation, even if the  
15 statute were ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024);  
16 *Pablo Sequen*, 2025 WL 2935630, at \*9 (“Because ‘agencies have no special competence in  
17 resolving statutory ambiguities,’ ‘the BIA decision is entitled to little deference.’ (citation  
18 omitted)). It appears that nearly every court that has examined this issue since the BIA’s decision  
19 on September 5 has rejected *Matter of Hurtado* as unavailing in light of the contrary conclusion  
20 compelled by tools of statutory interpretation. *See, e.g., Rodriguez Vazquez*, 2025 WL 2782499,  
21 at \*26 (“In *Matter of Hurtado*, the BIA adopts many of Defendants’ arguments on the text of  
22 section 1225, canons of interpretation, legislative history, and prior agency practice. For the  
23 reasons already explained in this Order, the Court is not persuaded by the Board’s analysis.”);  
24

1 *Pizarro Reyes*, 2025 WL 2609425, at \*7 (“[T]he BIA’s decision to pivot from three decades of  
 2 consistent statutory interpretation and call for [petitioner’s] detention under § 1225(b)(2)(A) is at  
 3 odds with every District Court that has been confronted with the same question of statutory  
 4 interpretation.”); *Pablo Sequen*, 2025 WL 2935630, at \*9 (“The BIA’s reasoning fails to  
 5 persuade because, as explained above, its interpretation of § 1225(b)(2) needlessly renders the  
 6 phrase ‘seeking admission’ superfluous, vitiates the discretionary-detention regime created by §  
 7 1226(a), and nullifies much of § 1226(c). Any persuasive power the BIA’s decision might have  
 8 is further undercut by its inconsistency with the BIA’s earlier pronouncements.”).

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

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

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

1 States, including aliens, whether their presence here is lawful, unlawful, temporary, or  
2 permanent.”); *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (holding the “Fifth  
3 Amendment entitles aliens to due process of law in deportation proceedings.”). Consequently,  
4 the Supreme Court has “repeatedly . . . recognized that civil commitment for any purpose  
5 constitutes a significant deprivation of liberty that requires due process protection,” including an  
6 individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting  
7 cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural  
8 protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S.  
9 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S.  
10 346, 357 (1997) (same for commitment of sex offenders).

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

21 The first *Mathews* factor considers the private interest affected by DHS and DOJ  
22 misclassifying people as being subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See*  
23 *Mathews*, 424 U.S. at 335. Here, Petitioner’s interest in being free from imprisonment is “the  
24

1 most elemental of liberty interests.” *Maldonado Vazquez*, 2025 WL 2676082, at \*18 (citing  
2 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “[T]his factor weighs heavily against the  
3 government whenever it is invoked.” *Id.* The mandatory detention imposed on Petitioner  
4 infringes on his fundamental right to freedom from executive detention, especially because his is  
5 bond-eligible pursuant to § 1226, but also due to “the harms attendant to [their] incarceration,  
6 including being separated from [their] famil[ies] and young children, losing the ability to  
7 [work] . . . and earn an income which [their] famil[ies] depend[] on, mental and emotional  
8 distress, and difficulty communicating with [their] counsel and gathering evidence in preparation  
9 for [their] removal proceedings.” *See Id.* Petitioner’s liberty is unquestionably at stake. He is a  
10 34-year-old native and citizen of Guatemala with no criminal convictions, who has resided in the  
11 United States since approximately 2022, primarily in Nevada, where he has established family,  
12 employment, and community ties. See I-213 (Ex. B).

13 Petitioner was arrested in the interior of the United States, not at or near any border or  
14 port of entry. On October 17, 2025, he was arrested by the Henderson Police Department, and on  
15 October 20, 2025, he was taken into ICE custody following his release from local custody in  
16 Nevada. See I-213 (Ex. B). Petitioner has no prior removal order, no criminal convictions, and  
17 was cooperative with law enforcement. *Id.* He is the father of three children who are nationals of  
18 Guatemala, has been employed as a laborer in landscaping and construction-related work, and  
19 has maintained stable housing in Henderson, Nevada. See I-213 (Ex. B); Motion for Bond (Ex.  
20 D).

21 The second *Mathews* factor is “the risk of an erroneous deprivation of [Petitioner’s]  
22 interest through the procedures used, and the probable value, if any, of additional or substitute  
23 procedural safeguards.” *Mathews*, 424 U.S. at 335. A blanket application of mandatory detention  
24

1 to all people that enter without inspection creates an extreme risk of erroneous and arbitrary  
2 confinement. This is clearly demonstrated by the circumstances of Petitioner where an IJ refused  
3 to look beyond DHS' and DOJ's policies and denied bond solely based on lack of jurisdiction.

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

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

19 Petitioner may not be detained without a bond hearing with strong procedural protections  
20 for the additional reason that such detention violates the APA. Agency action found to be  
21 arbitrary, capricious, or otherwise not in accordance with law "shall" be held unlawful and set  
22 aside. 5 U.S.C. § 706(2). The government is currently holding Petitioner in detention without the  
23 possibility of bond pursuant to the BIA's decision in *Matter of Hurtado*, which instructs all IJs to  
24

1 unlawfully misclassify noncitizens like Petitioner who have allegedly entered without inspection  
 2 as mandatory § 1225(b)(2) detainees. The IJ concluded she lacked jurisdiction under BIA policy  
 3 citing *Matter of Hurtado*. See IJ Order (Ex. A).

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

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

#### 19 **b. IRREPARABLE HARM**

20 To make a showing of irreparable harm, a petitioner must demonstrate likely irreparable  
 21 injury in the absence of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22  
 22 (2008). “It is well established that the deprivation of constitutional rights ‘unquestionably  
 23 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)

(quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Unlawful detention inflicts irreparable harm. The loss of liberty—even temporarily—is not compensable by monetary damages. See: *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) ([P]hysical confinement carries harm that cannot be remedied after the fact.) see also *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) ([P]rolonged detention, especially where unauthorized, constitutes irreparable harm.)

Petitioner’s continued incarceration inflicts precisely this type of irreparable harm. He has resided in the United States since approximately 2022 and has established meaningful family, employment, and community ties in Nevada. See I-213 (Ex. B). Petitioner has been employed as a laborer in landscaping and construction-related fields, has maintained stable housing in Henderson, and supports his family emotionally and financially. *Id.*; Motion for Bond (Ex. D).

Petitioner has no criminal convictions and no prior removal order. See I-213 (Ex. B). He is the father of three children who are nationals of Guatemala, who rely on him for financial and emotional support, and his detention has caused significant hardship to his family. *Id.*; Motion for Bond (Ex. D).

Petitioner’s prolonged and unjustified detention—based solely on the government’s misapplication of 8 U.S.C. § 1225(b)(2)(A)—is causing irreparable harm that cannot be remedied through monetary relief. This ongoing deprivation of liberty is precisely the type of constitutional injury the Due Process Clause forbids and which preliminary injunctive relief is designed to prevent.

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

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

21 The government has no legitimate interest in detaining an individual under the wrong  
22 statute, without any individualized finding of flight risk or danger. Petitioner, by contrast,  
23 suffers the most severe deprivation—a loss of liberty—based on a legal error. Numerous courts  
24

1 have held that the balance of harms in unlawful immigration detention heavily favors release or  
2 bond process. See *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

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

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

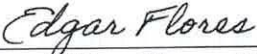
18 For these reasons, the balance of hardships and the public interest sharply favor  
19 Petitioner. Accordingly, the Court should find that he is entitled to preliminary relief.

## 20 **IX. CONCLUSION**

21 WHEREFORE, Petitioner prays that this Court grant the following relief: Assume  
22 jurisdiction over this matter; issue a Preliminary Injunction prohibiting Respondents from  
23 continuing to detain Petitioner under 8 U.S.C. 1225(b)(2)(A); and order Respondents to within  
24

1 one day, release Petitioner from custody; or alternatively, require that an IJ either schedule a  
2 bond hearing within seven (7) days, or in the alternative, order Petitioner's immediate release  
3 from detention.

4  
5 DATED this 10th of February, 2026.

6 

7 Edgar Flores, Esq.  
8 Nevada Bar No. 13120  
9 4811 W. Desert Inn Rd. Ste. B  
10 Las Vegas, NV 89102  
11 Tel: 702-475-7777  
12 Attorney for Petitioner

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
Type text here

**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 10, 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