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6 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
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8 **JESUS RAMOS-ROBLES,**

Petitioner,
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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**;
and **Sirce OWEN**, Acting Director for Executive
16 Office for Immigration Review,

17 Respondents.
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Case No.

**MOTION FOR PRELIMINARY
INJUNCTION**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION¹

Petitioner Jesus Ramos-Robles 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). On February 3, 2026, the IJ denied Petitioner's bond request for lack of jurisdiction under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) (hereinafter *Matter of Hurtado*). In the same order, the IJ made an alternative finding that, should jurisdiction be found to exist, bond in the amount of \$5,000, plus alternatives to detention at DHS's discretion, would be appropriate. See IJ Order (Ex. 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, 2025, the government cemented the practice through the Board of Immigration Appeals' (BIA) precedential decision in *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

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

1 being illegally detained for months or years with no bond hearing at all. In the months that the
2 policies have been implemented, dozens of people seeking help have filed habeas petitions in
3 this District. These numbers will only continue to grow as U.S. Immigration and Customs
4 Enforcement (ICE) surges its enforcement activities in Nevada and neighboring states.

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

8 **II. JURISDICTION**

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

16 **III. VENUE**

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

23 **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
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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 Jesus Ramos-Robles is a 37-year-old native and citizen of Mexico, born on
12 February 20, 1988. See Form I-213 (Ex. B). He entered the United States without inspection on
13 or about August 30, 2015, and has continuously resided in the United States since that time. *Id.*
14 Petitioner is married to a United States citizen, Michelle Ramos-Robles. The couple was legally
15 married on May 26, 2018, in Clark County, Nevada, and share a marital residence at 
16  Las Vegas, Nevada. See Motion for Bond (Ex. D).

17 On December 20, 2025, Petitioner was arrested by the Las Vegas Metropolitan Police
18 Department for misdemeanor Driving Under the Influence and Driving Without a Valid Driver’s
19 License. The charges remain pending, and Petitioner has no criminal convictions. See Form I-
20 213 (Ex. B).

21 On December 21, 2025, ICE lodged an immigration detainer and transferred Petitioner
22 from the Clark County Detention Center to ICE custody. *Id.* DHS issued a Notice to Appear
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1 dated December 21, 2025, charging Petitioner as removable under INA §§ 212(a)(6)(A)(i) and
2 212(a)(7)(A)(i)(I). See Notice to Appear (Ex. C).

3 Petitioner filed a Motion for Bond Redetermination, submitting evidence of his approved
4 I-130 Petition for Alien Relative, proof of residence, employment history, and extensive equities
5 demonstrating that he is neither a flight risk nor a danger to the community. See Motion for Bond
6 (Ex. D). On February 3, 2026, the Immigration Judge denied jurisdiction to consider Petitioner's
7 bond request under Matter of Yajure-Hurtado. In the same order, the IJ made an alternative
8 finding that, should jurisdiction be found to exist, bond in the amount of \$5,000, plus alternatives
9 to detention at DHS's discretion, would be appropriate. See IJ Order (Ex. A).

10 VII. LEGAL STANDARD

11 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive
12 relief to prevent "immediate and irreparable injury." *Maldonado Vazquez*, 2025 WL 2676082, at
13 *6 (citing Fed R. Civ. P. 65(b)). A preliminary injunction is "an extraordinary remedy that may
14 only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v.*
15 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a
16 plaintiff must establish four elements: "(1) a likelihood of success on the merits, (2) that the
17 plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the
18 balance of equities tips in its favor, and (4) that the public interest favors an injunction." *Wells*
19 *Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended
20 (Mar. 11, 2014) (citing *Winter*, 555 U.S. at 20).

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

7 **VIII. ARGUMENT**

8 Petitioner satisfies all four factors for preliminary injunctive relief. Courts in this District
9 have repeatedly granted preliminary injunctions in materially identical circumstances, including
10 cases where petitioners —like Mr. Ramos-Robles—sought custody redetermination (i.e. bond
11 hearing) after the BIA adopted DHS’s reading of the INA and held IJs have no jurisdiction to
12 hold a bond hearing for detained noncitizens. *See, e.g., Maldonado Vazquez*, 2025 WL 2676082,
13 at *11, 22-23; *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082
14 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at
15 *1, 6-7 (D. Nev. Sept. 23, 2025); *Sanchez Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY (D.
16 Nev. Sept. ___, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098, at
17 *1, 6 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025
18 WL 2998094, at *1, 5-6 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, No. 2:25-CV-
19 01987-RFB-BNW, 2025 WL 3014023, at *1, 7 (D. Nev. Oct. 27, 2025); *Arce-Cervera v. Noem*,
20 No. 2:25-cv-01895-RFB-NJK, 2025 WL 3017866, at *2, 8 (D. Nev. Oct. 28, 2025); *see also*
21 *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *2, 13 (D. Nev. Aug. 14,
22 2025); *Nolasco-Gomez v. Noem*, No. 2:25-CV-02217-RFB-DJA (D. Nev. Dec. 8, 2025); *Rodas*
23 *v. Noem*, No. 2:25-CV-02216-RFB-BNW (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*,

1 No. 2:25-CV-02218-RFB-MDC (D. Nev. Dec. ___, 2025); *Perdomo-Gonzalez v. Noem*, No.
2 2:25-CV-02121-RFB-EJY (D. Nev. Dec. 8, 2025); *Garcia-Arauz v. Noem*, No. 2:25-CV-02117-
3 RFB-EJY (D. Nev. Dec. ___, 2025); *Gonzalez Hernandez*, 2:25-cv-02486-RFB-NJK (D. Nev.
4 Dec. 30, 2025); *Juarez Salvador v. Noem*, 2:26-cv-00043-RFB-BNW (D. Nev. Jan. 25, 2026);
5 *Molina Posado v. Noem*, 2:26-cv-00050-RFB-BNW (D. Nev. Jan. 26, 2026) The same analysis
6 and ruling should apply to this case.

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

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

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

18 **ARGUMENT.**

19 For clarity, Petitioner's request for bond was denied solely because the IJ concluded that
20 the Court lacked jurisdiction to conduct a bond hearing under *Matter of Hurtado*. See IJ Order
21 (Ex. A). In fact, in the same order, the IJ made an alternative finding that, should jurisdiction be
22 found to exist, bond in the amount of \$5,000, plus alternatives to detention at DHS's discretion,
23 would be appropriate. *Id.* This detention is unlawful because Petitioner was arrested in the

1 interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a,
2 making § 1226(a)—not § 1225—the governing detention statute. Petitioner does not fall within
3 any category requiring mandatory detention under 8 U.S.C. § 1226(c), is not subject to expedited
4 removal under § 1225(b)(1), and does not have a final order of removal triggering § 1231.

5 Hence, there is every reason to believe that he will prevail on each of these claims, and
6 therefore a preliminary injunction should enter. *See Matsumoto v. Labrador*, 122 F.4th 787, 804
7 (9th Cir. 2024) (Likelihood of success on the merits is the most important factor in a preliminary
8 injunction analysis); *see also Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (likelihood of
9 success is especially important where a plaintiff seeks a preliminary injunction because of an
10 alleged constitutional violation).

11 By denying Petitioner any opportunity for individualized consideration for release on
12 bond, Respondents have violated the Immigration and Nationality Act, including 8 U.S.C. §
13 1226(a). Thus, Petitioner is detained under the wrong statutory authority, denied a bond hearing,
14 and has a strong likelihood of success on his habeas claim.

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

18 As this Court has recognized, nearly every court to have examined the issue has rejected
19 the government's recent attempts to misclassify people arrested inside the United States—people
20 exactly like Petitioner—as § 1225(b)(2) no-bond detainees. *See, e.g., Maldonado Vazquez*, 2025
21 WL 2676082, at *11 (“the Court holds, consistent with the overwhelming majority of district
22 courts in the Ninth Circuit and across the country that have thus far considered the issue, that §
23 1226, not § 1225, applies to Petitioner and others similarly situated.”); *Arce-Cervera*, 2025 WL
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3017866, at *2 (“This Court is not alone in its finding, as the overwhelming majority of district courts across the country that have considered DHS and the BIA’s new statutory interpretation have found it unlawful”); *Rodriguez Vasquez*, 2025 WL 2782499, at *27 (holding that the class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *Guerrero Orellana*, 2025 WL 2809996, at *4-9 (holding that § 1226(a) applied based on the statute’s plain language, Congress’s recent amendment to § 1226(c), the Supreme Court’s decision in *Jennings*, and established agency practice); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (“[T]he BIA’s decision to pivot from three decades of consistent statutory interpretation and call for [petitioner’s] detention under § 1225(b)(2)(A) is at odds with every District Court that has been 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

² 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.

1 There is therefore a strong likelihood that Petitioner will show that he, too, has been
 2 misclassified, and is in fact a § 1226(a) detainee who is entitled to a bond hearing before an IJ.
 3 See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)-(f). Petitioner was arrested in
 4 the interior of the United States, specifically in Las Vegas, Nevada, on December 20, 2025, by
 5 the Las Vegas Metropolitan Police Department, and was subsequently taken into ICE custody on
 6 December 21, 2025, after transfer from the Clark County Detention Center. See Form I-213 (Ex.
 7 B). Petitioner was not arrested at a port of entry or near the border. Petitioner has no criminal
 8 convictions and no prior removal order. *Id.* DHS thereafter issued a Notice to Appear dated
 9 December 21, 2025, charging Petitioner as removable under INA §§ 212(a)(6)(A)(i) and
 10 212(a)(7)(A)(i)(I). See Notice to Appear (Ex. C).

11 Petitioner has resided continuously in the United States since on or about August 30,
 12 2015, living in Nevada, where he has established significant family, employment, and
 13 community ties. See Form I-213 (Ex. B). Petitioner is married to a United States citizen, has
 14 maintained stable housing at 4641 Glenn Davis Drive, Las Vegas, Nevada, and has a consistent
 15 employment history in construction and related labor. See Motion for Bond (Ex. D).

16 Petitioner's statutory and regulatory arguments arise from the intersection of the three
 17 mutually exclusive statutes that create the legal landscape for civil immigration detention. First,
 18 at the border, individuals "seeking admission" who are placed into removal proceedings are
 19 subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).³ See *Jennings v.*

20 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).

21 ³ These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Separately,
 22 there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal
 23 process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). See *Make the Road N.Y. v. Noem*, No.
 24 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 *Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to “borders and ports of
2 entry”); *see also Maldonado Vazquez*, 2025 WL 2676082, at *13 (describing § 1225’s limited
3 temporal focus to “ports of entry” and “recent arrivals.”).

4 Second, when a person is arrested inside the United States on civil immigration charges,
5 they are generally subject to the detention authority of 8 U.S.C. § 1226 during the pendency of
6 their removal proceedings. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as
7 relating to people “inside the United States” and “present in the country”); *see also Maldonado*
8 *Vazquez*, 2025 WL 2676082, at *14, (citing *Jennings*, 583 U.S. at 303) (describing § 1226 as
9 applying to “aliens already present in the United States”). Those who do not have disqualifying
10 criminal history are entitled to a bond hearing before an IJ to decide whether they should be
11 detained or released. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d); 1003.19(a), 1236.1(d). This
12 statute has long been interpreted to apply to people arrested inside the United States, even if they
13 initially entered the country without being admitted. *See, e.g.*, 62 Fed. Reg. 10312, 10323 (Mar.
14 6, 1997) (“Despite being applicants for admission, aliens who are present without having been
15 admitted or paroled (formerly referred to as aliens who entered without inspection) will be
16 eligible for bond and bond redetermination.”).

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

21 The present crisis has arisen because the government is now attempting to unlawfully
22 move thousands of people from one of these categories to the other. Specifically, the government
23 is attempting to misclassify bond-eligible § 1226 detainees arrested inside the United States as
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1 no-bond border detainees under § 1225(b)(2). This unlawful practice apparently began in a single
2 Immigration Court in Washington. *See Rodriguez Vasquez*, 779 F. Supp. 3d at 1244. Last
3 summer, DHS, “in coordination” with DOJ, began making this argument to Immigration Courts
4 nationwide.⁴ And finally, on September 5, 2025, the Board of Immigration Appeals adopted it as
5 a uniform policy for all Immigration Courts in the *Matter of Hurtado* decision. *See* 29 I&N Dec.
6 216 (B.I.A. 2025). Under DHS’s policy and *Matter of Hurtado*, Petitioner has been misclassified
7 as a § 1225(b)(2) no-bond detainee and had his bond revoked, solely because the government
8 alleges he entered the United States without being admitted. Petitioner is misclassified in the
9 same way and does not have access to any consideration for bond.

10 This Court, and many throughout the country, have rejected the government’s unlawful
11 reversal of nearly three decades of settled immigration practice. As this Court has explained, the
12 government’s interpretation 1) is “inconsistent with the plain, ordinary meaning of the phrase
13 ‘seeking admission’ to apply [§ 1225(b)(2)] to all noncitizens already present and residing in the
14 U.S.”; 2) goes against legislative history that “supports interpreting the INA as subjecting
15 noncitizens like Petitioner[s] to discretionary detention with the associated procedural
16 protections”; 3) is inconsistent with “Supreme Court precedent interpreting § 1225(b) and
17 finding it ‘applies primarily to aliens seeking entry into the United States (‘applicants for
18 admission’ in the language of the statute)’”; and 4) is inconsistent with existing regulations
19 governing IJs’ bond jurisdiction, as well as decades of agency practice. *Maldonado Vazquez*,
20 2025 WL 2676082, at *12-15. The new interpretation also contradicts Congress’s clear
21 understanding of the statutory framework as expressed this year with the passage of the Laken
22 Riley Act—a new statute that expressly contemplates the inclusion of people who entered

23 _____
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 without inspection within the scope of § 1226. *See id.* at *14 (citing *Diaz Martinez v. Hyde*, No.
2 25-11613, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (“if, as the Government
3 argue[s], . . . a noncitizen’s inadmissibility were alone already sufficient to mandate detention
4 under section 1225(b)(2)(A), then the 2025 amendment would have no effect”)).

5 “By its plain text, § 1225(b)(2) applies where several conditions are met: (1) an
6 ‘examining immigration officer’ in the context of ‘inspection’ (2) determines that an individual
7 is an ‘applicant for admission’ who is (3) ‘seeking admission.’” *See Maldonado Vazquez*, 2025
8 WL 2676082, at *12. A person apprehended inside the United States is not undergoing an
9 “examination,” which “is a specific legal process one undergoes while trying to enter the
10 country.” *Romero*, 2025 WL 2403827, at *9 (citing 8 C.F.R. § 235.1). And a person “seeking
11 admission” is necessarily taking a “present-tense action” to attempt to enter the country, not
12 somebody already inside. *See id.* at *9-10; *see also Maldonado Vasquez*, 2025 WL 2676082, at
13 *13 (“It is inconsistent with the plain, ordinary meaning of the phrase ‘seeking admission’ to
14 apply this section to all noncitizens already present and residing in the U.S., regardless of
15 whether they are taking any affirmative acts that constitute ‘seeking admission.’”); *Lopez Benitez*
16 *v. Francis*, No. 25 CIV. 5937 (DEH), F. Supp. 3d , 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13,
17 2025) (“As § 1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking
18 admission’ to the United States, it cannot, according to its ordinary meaning, apply to
19 [petitioner], because he has already been residing in the United States for several years.”).

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

16 ii. **Petitioner is likely to show that his detention without**
17 **consideration of bond violates constitutional due process**
18 **protections.**

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

22 “In our society liberty is the norm, and detention prior to trial or without trial is the
23 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Fifth
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1 Amendment's Due Process Clause specifically forbids the Government from "depriv[ing]" any
2 "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V. There is no
3 question that these protections extend to noncitizens present in the United States. *See e.g., Trump*
4 *v. J.G.G.*, 604 U.S. 670, 673 145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("It is well established
5 that the Fifth Amendment entitles aliens to due process of law' in the context of removal
6 proceedings . . .") (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533
7 U.S. 678, 693, (2001) ("[T]he Due Process Clause applies to all 'persons' within the United
8 States, including aliens, whether their presence here is lawful, unlawful, temporary, or
9 permanent."); *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (holding the "Fifth
10 Amendment entitles aliens to due process of law in deportation proceedings."). Consequently,
11 the Supreme Court has "repeatedly . . . recognized that civil commitment for any purpose
12 constitutes a significant deprivation of liberty that requires due process protection," including an
13 individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting
14 cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural
15 protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S.
16 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S.
17 346, 357 (1997) (same for commitment of sex offenders).

18 To determine whether detention violates procedural due process, courts apply the three-
19 part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Rodriguez Diaz v. Garland*,
20 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and applying the *Mathews* test to a
21 constitutional challenge to detention pursuant to 8 U.S.C. § 1226(a)). Under *Mathews*, courts
22 weigh the following three factors: (1) "the private interest that will be affected by the official
23 action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used,

1 and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
2 Government’s interest, including the function involved and the fiscal and administrative burdens
3 that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.
4 All three factors weigh in favor of Petitioner.

5 The first *Mathews* factor considers the private interest affected by DHS and DOJ
6 misclassifying people as being subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See*
7 *Mathews*, 424 U.S. at 335. Here, Petitioner’s interest in being free from imprisonment is “the
8 most elemental of liberty interests.” *Maldonado Vazquez*, 2025 WL 2676082, at *18 (citing
9 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “[T]his factor weighs heavily against the
10 government whenever it is invoked.” *Id.* The mandatory detention imposed on Petitioner
11 infringes on his fundamental right to freedom from executive detention, especially because his is
12 bond-eligible pursuant to § 1226, but also due to “the harms attendant to [their] incarceration,
13 including being separated from [their] famil[ies] and young children, losing the ability to
14 [work] . . . and earn an income which [their] famil[ies] depend[] on, mental and emotional
15 distress, and difficulty communicating with [their] counsel and gathering evidence in preparation
16 for [their] removal proceedings.” *See Id.* Petitioner’s liberty is unquestionably at stake. He is a
17 37-year-old native and citizen of Mexico with no criminal convictions, who has resided
18 continuously in the United States since on or about August 30, 2015, primarily in Nevada, where
19 he has established significant family, employment, and community ties. See Form I-213 (Ex. B).

20 Petitioner was arrested in the interior of the United States, not at or near any border or
21 port of entry. On December 20, 2025, he was arrested by the Las Vegas Metropolitan Police
22 Department, and on December 21, 2025, he was taken into ICE custody following his transfer
23 from the Clark County Detention Center in Nevada. See Form I-213 (Ex. B). Petitioner has no
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1 prior removal order, no criminal convictions, and was cooperative with law enforcement. *Id.* He
2 is married to a United States citizen, has maintained stable housing at 4641 Glenndavis Drive,
3 Las Vegas, Nevada, and has been employed in construction and related labor. See Form I-213
4 (Ex. B); Motion for Bond (Ex. D).

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

11 The third and final *Mathews* factor considers the “Government’s interest, including the
12 function involved and the fiscal and administrative burdens that the additional or substitute
13 procedural requirement would entail.” *Mathews*, 424 U.S. at 335. Put simply, “the government
14 has no legitimate interest in detaining individuals who have been determined not to be a danger
15 to the community and whose appearance at future immigration proceedings can be reasonably
16 ensured by a lesser bond or alternative conditions.” *Maldonado Vazquez*, 2025 WL 2676082, at
17 *20 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). There is no government
18 interest in continued detention under these circumstances, especially without the minimal
19 procedure of a bond hearing where the government is free to raise any arguments it believes to
20 justify continued detention. The government function and fiscal and administrative burden will
21 be no different than what existed before mid-2025 when this sudden shift in application and
22 interpretation of the current law by DHS and later adopted by *Matter of Hurtado*.

1 iii. **Petitioner is likely to show that his detention pursuant to**
2 ***Matter of Hurtado* is unlawful under the Administrative**
3 **Procedure Act.**

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

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

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

4 **b. IRREPARABLE HARM**

5 To make a showing of irreparable harm, a petitioner must demonstrate likely irreparable
6 injury in the absence of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
7 (2008). “It is well established that the deprivation of constitutional rights ‘unquestionably
8 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Unlawful detention inflicts irreparable harm.
10 The loss of liberty—even temporarily—is not compensable by monetary damages. See:
11 *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) ([P]hysical confinement carries harm
12 that cannot be remedied after the fact.) see also *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70
13 (9th Cir. 2011) ([P]rolonged detention, especially where unauthorized, constitutes irreparable
14 harm.)

15 Petitioner’s continued incarceration inflicts precisely this type of irreparable harm. He
16 has resided continuously in the United States since on or about August 30, 2015, and has
17 established meaningful family, employment, and community ties in Nevada. See Form I-213
18 (Ex. B). Petitioner has been employed in construction and related labor, has maintained stable
19 housing at 4641 Glenndavis Drive, Las Vegas, Nevada, and supports his household emotionally
20 and financially. See Form I-213 (Ex. B); Motion for Bond (Ex. D).

21 Petitioner has no criminal convictions and no prior removal order. See Form I-213 (Ex.
22 B). He is married to a United States citizen, and his continued detention has caused significant
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1 emotional, financial, and practical hardship to his family by depriving them of his presence,
2 income, and support. See Motion for Bond (Ex. D).

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

8 **c. BALANCE OF EQUITIES TIPS SHARPLY IN PETITIONER'S**
9 **FAVOR**

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

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

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

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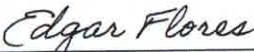
1 district courts are the only forum available to vindicate their statutory and constitutional rights.”
2 *Escobar Salgado*, at 9. The public interest strongly favors an injunction requiring the
3 government to follow established law and constitutional principles.

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

6 **IX. CONCLUSION**

7 WHEREFORE, Petitioner prays that this Court grant the following relief: assume
8 jurisdiction over this matter; issue a Preliminary Injunction prohibiting Respondents from
9 continuing to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A); and order Respondents, within
10 one (1) day, to release Petitioner from custody; or, alternatively, require that an Immigration
11 Judge either schedule a bond hearing within seven (7) days pursuant to 8 U.S.C. § 1226(a), or,
12 consistent with the Immigration Judge’s alternative finding, order Petitioner’s immediate release
13 upon posting bond in the amount of \$5,000, or such other conditions as the Court deems just and
14 proper.

15
16 DATED this 10th of February, 2026.

17 
18 _____
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22 Las Vegas, NV 89102
23 Tel: 702-475-7777
24 *Attorney for Petitioner*

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