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**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA (LAS VEGAS)**

Baldemar MORA-ESPEJO

Petitioner,

vs.

Kristi NOEM, Acting Secretary of the
 United States Department of Homeland
 Security;

Pamela BONDI, Attorney General of the
 United States;

Jason KNIGHT, Salt Lake City Acting Field
 Office Director, Enforcement and Removal
 Operations, U.S. Immigration and Customs
 Enforcement;

John MATTOS, Warden at Southern
 Nevada Southern Detention Center.

Respondents.

Case No.

Agency N 

**COMBINED MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF PETITION FOR WRIT
 OF HABEAS AND EMERGENCY
 MOTION FOR TEMPORARY
 RESTRAINING ORDER**

Combined Memorandum of Points and Authorities in Support of Petition for Writ of Habeas and
 Emergency Motion for Temporary Restraining Order

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I. INTRODUCTION

Baldemar Mora-Espejo (“Petitioner”) seeks relief to remedy his unlawful detention. Petitioner was detained by Immigration and Customs Enforcement (“ICE”) on January 21, 2026, and he remains detained at the Nevada Southern Detention Center in Pahrump, Nevada.

Petitioner is a 24-year-old individual who entered the United States on or about December 2022 without inspection. Throughout his time in the United States, he has never been arrested and has no criminal history. Petitioner and his life partner are the parents of two U.S. citizen children, ages two and one, all of whom depend on him for care, support, and stability. Petitioner is deeply loved by his family and plays an essential role in their daily lives.

Prior to his detention, Petitioner was steadily employed as a masonry installer with Lorin Orvin Construction, where he had worked since March 2023. His life partner is a stay-at-home mother caring for their home and their children. Since Petitioner’s detention, she has struggled to meet basic household expenses and has been forced to rely on limited savings and financial assistance from friends and family, as she previously depended on Petitioner’s sole income for support. Petitioner’s detention has also caused his life partner severe anxiety and emotional distress due to ongoing concern for his well-being, in light of Petitioner’s history of mental health challenges.

Additionally, his child that is almost three years old, was recently taken to a pediatrician due to concerns about delayed speech development and missed milestones. The Petitioner and his

1 life partner are currently awaiting medical results, which has added to their stress and uncertainty
2 about their child's well-being.

3
4 Here, the Petitioner falls into the category of detainees to whom the Board of Immigration
5 Appeals ("BIA" or "Board") will not grant bond under *Matter of Yajure Hurtado*, 29 I. & N. Dec.
6 216 (BIA 2025). Therefore, requesting a bond redetermination hearing with the Immigration
7 Judge or filing an appeal with the BIA is a completely futile gesture.¹

8
9 Both the government's new policy and the Board's new interpretation of the statute is
10 fundamentally irrational, arbitrary and capricious, and a complete deprivation of Petitioner's right
11 to seek a bond redetermination and be released from custody. Due process requires that the
12 government provide Petitioner a bond redetermination hearing, and if successful be allowed to
13 post the bond, and also enjoining the government from filing an automatic stay under 8 C.F.R.
14 §1003.19(i)(2), unless it can show why a writ should not be issued. *Singh v. Holder*, 638 F.3d
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19 ¹On November 20, 2025, the U.S. District Court for the Central District of California issued a partial summary
20 judgment declaring the DHS policy affirmed by *Matter of Yajure Hurtado* is unlawful. *Bautista v. Santacruz*, 25-
21 CV-01873, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). Despite this nationwide ruling in *Bautista*, the
22 government continues to apply their unlawful policy as evidenced by EOIR Chief Immigration Judge Teresa L.
23 Riley's January 13, 2026's leaked email directing all immigration judges to continue treating *Hurtado* as binding
24 precedent. See *Ramirez v. Noem*, 2026 U.S. Dist. LEXIS 23793, *4-5, 2026 LX 36829.

1 1196, 1203 (9th Cir. 2011). Upon judicial review of the constitutionality of the BIA's new
2 interpretation of the INA, Petitioner clearly demonstrates that he is detained in violation of the
3 law.
4

5 Petitioner seeks to preliminarily enjoin DHS from continuing his detention, unless he is
6 provided a bond redetermination hearing under 8 U.S.C. §1226(a) and if successful allowed to
7 post a bond without the government filing an automatic stay under 8 C.F.R. §1003.19(i)(2).
8 Petitioner will suffer immediate and irreparable harm if this Court does not enjoin his continued
9 detention, given that his continued detention violates his due process rights. *See* Fed. R. Civ. P.
10 65(b)
11

12 Moreover, Petitioner will suffer irreparable harm, as "[i]t is well established that the
13 deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v.*
14 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
15 Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often
16 alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*,
17 739 F.2d 466, 472 (9th Cir. 1984). Here, Respondent's continued deprivation of Petitioner's
18 liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, every
19 day that Petitioner is detained is a day of freedom Petitioner cannot get back.
20
21

22 Petitioner meets the standard for a preliminary injunction. As shown in greater detail
23 below, it is likely he will succeed on the merits of his claim in this case. Due to the government's
24 policy and the BIA's new interpretation of the INA, he has been deprived of his right to seek a
25

1 bond redetermination and liberty in violation of due process. Petitioner will also be able to show
2 irreparable and immediate harm. Lastly, the balance of equities and public interest weighs in his
3 favor.
4

5 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

6 Petitioner is a 24-year-old native and citizen of Mexico. Exh. A (Sworn Declaration of
7 Alejandra Vasquez). Petitioner last entered the United States without inspection on or about
8 December 2022. *Id.* Petitioner resides with his long-term partner, to whom he is not married, and
9 their two U.S. citizen children, almost three years old and about to turn one. Exh. B (Family ties).
10 Petitioner's eldest child was recently taken to a pediatrician due to concerns about delayed speech
11 development and missed milestones. The Petitioner and his life partner are currently awaiting
12 medical results, which has added to their stress and uncertainty. Exh. C (Pediatric Records).
13 Petitioner has never been arrested and has no criminal history. Exh. D (Form I-213, Record of
14 Deportable Alien).
15
16

17 Prior to Petitioner's detention, his partner devoted herself full time to caring for their
18 young children as a stay-at-home mother, given their tender ages. See Exh. B Since Petitioner's
19 detention, however, she has struggled to meet basic household expenses and has been forced to
20 rely on limited savings and financial assistance from friends and family, as she previously
21 depended on Petitioner's income for support. *Id.* Prior to his detention, Petitioner was employed
22 as a masonry installer Lorin Orvin Construction beginning on or about May 2023. Exh. E
23 (Employment Verification Letter).
24
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26

1 In addition, Petitioner's detention has caused his partner severe anxiety and emotional
2 distress due to ongoing concern for his well-being, particularly in light of Petitioner's history of
3 depression and anxiety. See Exh A. Over the past four years, Petitioner has experienced severe
4 sadness, irritability, persistent fatigue, constant worry and difficulty concentrating and has been
5 unable to receive treatment due to lack of health insurance. Further on at least two occasions,
6 Petitioner suffered severe mental health breakdowns, during which he became extremely
7 confused, experienced shortness of breath, and required intervention. *Id.* Petitioner's detention
8 makes him particularly vulnerable and at risk of worsening his mental health conditions.
9

10
11 On January 21, 2026, Petitioner was apprehended by the Department of Homeland
12 Security during a "traffic stop". Thought he was not cited for any traffic violations, he was
13 arrested on warrant, and taken into custody. Shortly after his arrest, the Department of Homeland
14 Security served Petitioner with a Notice to Appear, thereby initiating removal proceedings
15 pursuant to INA § 240, 8 U.S.C. § 1229a. Exh. F (Notice to Appear). Petitioner is currently
16 detained at the Nevada Southern Detention Facility.
17

18 III. LEGAL BACKGROUND

19 "In our society liberty is the norm, and detention prior to trial or without trial is the
20 carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Civil detention
21 violates the Due Process Clause except "in certain special and narrow nonpunitive circumstances,
22 where a special justification, such as harm-threatening mental illness, outweighs the individual's
23 constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S.
24

678, 690 (2001) (citations omitted). In *Singh v. Holder*, 638 F.3d 1196, 1203-1204, the Ninth Circuit reiterated that the Supreme Court had determined that “civil commitment for *any* purpose constitutes a significant deprivation of liberty.” *Singh*, 638 F.3d at 1204. (internal citations omitted).

A. Mandatory and Discretionary Detention

Under these constitutional constraints, Congress has created a scheme for detention of noncitizens in removal proceedings. For decades, the Department and EOIR interpreted 8 U.S.C. § 1226(a) to authorize immigration judges to provide a custody redetermination hearing even though DHS could detain a noncitizen “pending a decision on whether [he] is to be removed from the United States.” 8 U.S.C. § 1226(a). In *Casas-Castrillon v. Dep’t of Homeland Security*, 535 F.3d 942, (9th Cir. 2008), the Ninth Circuit held that immigrants detained under §1226(a) are entitled to individualized bond hearings. 8 C.F.R. §1003.19(h)(3) provides that a noncitizen subject to detention must show by clear and convincing evidence that the noncitizen is not a danger to other persons or property and that the noncitizen is not a flight risk.

In contrast to § 1226(a), noncitizens who have been convicted of certain criminal convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 513 (2003). Congress added this provision by passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) to address concerns that criminal noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020). The new section mandated detention for noncitizens who were convicted of

1 aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at
2 518–20.

3
4 In January 2025, Congress added a new category of noncitizens who are subject to
5 mandatory detention with the Laken Riley Act, codified as 8 U.S.C. § 1226(c)(1)(E). The new
6 section mandated detention for noncitizens who: (1) are inadmissible under 8 U.S.C.
7 § 1182(a)(6)(A), 1182(a)(6)(C), or 1182(a)(7); and (2) are charged with, are arrested for, are
8 convicted of, admit having committed, or admit committing acts that constitute the elements of
9 any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any
10 crime that results in death or serious bodily injury to another person. § 1226(c)(1)(E).

11
12 Further, 8 U.S.C. § 1225(b) requires detaining noncitizens who (1) are subject to
13 expedited removal under § 1225(b)(1), or (2) are “seeking admission” at the border under
14 § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins at
15 the Nation’s borders and ports of entry).

16
17 **B. Automatic Stay of Custody Order Under 8 C.F.R. § 1003.19(i)(2)**

18 The Department has significant power in limiting the application of the IJ’s order. Under
19 8 C.F.R. § 1003.19(i)(2), the Department can file a notice of intent to appeal a noncitizen’s
20 custody determination (Form EOIR-43), which will automatically and unilaterally stay the IJ’s
21 order authorizing the noncitizen’s release on bond. This Court recently found that the automatic
22 stay is being systematically applied in cases where the Immigration Judge finds jurisdiction to
23 hold a bond hearing and where the Immigration Judge finds that individual is not a danger to the
24

community or a flight risk and grants a bond. This conduct would violate Petitioner's procedural and substantive due process.² *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sep. 17, 2025).

C. Applicability of Equitable Relief

Petitioner warrants a preliminary injunction because the IJ and BIA's new decision interpreting 1226(a) ordering his continued detention are unlawful, and detention has already imposed irreparable hardship. A preliminary injunction is appropriate if a plaintiff can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, a temporary restraining order ("TRO") or preliminary injunction is appropriate when, "a plaintiff demonstrates . . . that serious questions going to the

² Petitioner acknowledges that the government has not yet invoked the automatic stay in his case because he has not been afforded a bond hearing. Nonetheless, the extensive litigation across numerous federal district courts shows that the government is routinely applying this procedure. It would provide little benefit to Petitioner if, after successfully demonstrating to the Immigration Judge that he is neither a danger to the community nor a flight risk, the government were to impose an automatic stay, forcing him to return to this Court and continue litigating the matter. In the alternative, Petitioner respectfully requests that the Court order a status report or hold a status conference to oversee the progression of his case and to ensure that the automatic stay is not being invoked.

merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation omitted).

Pursuant to the Federal Rules of Civil Procedure, a TRO may be issued if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certified in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b).

IV. ARGUMENT

A. This Court Has Jurisdiction.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

i. 8 U.S.C. § 1226(e) does not preclude jurisdiction.

While Section 1226(e) of the INA precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section 1226(e) "does not preclude challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 138 S. Ct. at 841.

Moreover, Section 1226(e) does not limit habeas review over constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional claims and questions of law—whether the automatic stay provision in this case and the BIA’s new interpretation of the INA violate the Petitioner’s right to procedural due process and substantive due process after denying him the ability to post a bond—Section 1226(e) does not preclude this Court’s jurisdiction to review Petitioner’s habeas petition.

ii. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.

Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review to the appropriate federal court of appeals, which would be the Ninth Circuit here. However, where a petitioner is not seeking review of a removal order or is challenging their detention or a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (“§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.”).

iii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.

Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot hear “any cause of claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of this

1 section to three discrete actions that an Attorney General may take: (1) the decision or action to
2 commence proceedings, (2) the decision or action to adjudicate cases, and (3) the decision or
3 action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
4 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is not a challenge to
5 one of the three discrete events listed in *Reno*.
6

7 **B. Administrative Exhaustion Is Futile and Should Be Waived.**

8 Generally, if the exhaustion requirement is statutory, "it may be mandatory and
9 jurisdictional, but courts have discretion to waive a prudential requirement." *Laing v. Ashcroft*,
10 370 F. 3d 994, 998 (9th Cir. 2004). Furthermore, this court has already recognized that "[n]either
11 the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to
12 exhaust administrative remedies before filing petitions for habeas corpus. *Id.* (citing *Castro-*
13 *Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS
14 182412, *27; 2025 LX 460110; 2025 WL 2676082 (D. Nev. Sep. 22, 2025).
15
16

17 Instead, the court may require prudential exhaustion under *Puga v. Chertoff*, 488 F.3d 812,
18 815 (9th Cir. 2007). Prudential exhaustion may be waived if "administrative remedies are
19 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,
20 irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*,
21 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988; 2017 U.S. App.
22 LEXIS 19021, *22; 2017 WL 3887819.
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1 Applying the three *Puga* factors, this court should waive the prudential exhaustion
2 requirement. Similarly to the Petitioner in *Arce-Cervera v. Noem*, the Court should “incorporate
3 its prior findings...that administrative exhaustion is excused as futile.”
4 *Arce-Cervera v. Noem*, 2025 U.S. Dist. LEXIS 212397, *15; 2025 LX 426887; 2025 WL 3017866.
5

6 There is widespread agreement among the federal courts that *Matter of Yajure Hurtado*’s
7 new interpretation violates the INA and is unconstitutional. This Court recently found in *Vazquez*
8 *v. Feeley* that § 1226, not § 1225, applies to noncitizens such as the Petitioner. That decision, along
9 with about three hundred federal court decisions,³ have emphasized that the Department’s
10 interpretation of § 1225 is erroneous for several reasons, such as (1) the plain meaning of the INA
11 provisions in the context of recent amendments, (2) legislative history, and (3) longstanding
12 agency practice. This Court found that “the phrases ‘applicants for admission’ and ‘seeking
13 admission,’ taken together, are limited in temporal scope, and cannot be read to apply indefinitely
14 to all noncitizens residing in the U.S. for years or decades.” *Vazquez v. Feeley*, 2025 WL 2676082,
15 at *13; *Ramirez v. Noem*, No. 25-CV-02136, 2025 WL 3270137, at *2 (D. Nev. Nov. 24, 2025).
16 Several district courts in the Ninth Circuit and throughout the country have found equally. *See*,
17 *e.g.*, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v.*
18 *Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda*
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25 ³ *Ramirez v. Noem*, 2026 U.S. Dist. LEXIS 23793, *3, 2026 LX 36829.

1 *et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v.*
2 *Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v.*
3 *Kaiser*, No. 25-CV-06924, 2025 WL 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v.*
4 *Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025).

6 Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of
7 migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to
8 noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court
9 found that Congress had a similar intent when it passed the IRRIRA and recognizes the backdrop
10 of precedential cases that highlight a distinction between noncitizens arriving at the border and
11 those who have resided in the country for an extended period of time. *Id.* at *15. The Court also
12 recognized that the Laken Riley Act was passed against a “backdrop of longstanding agency
13 practice applying § 1226(a) to inadmissible noncitizens already residing in the country.” *Id.* at
14 *16. Using traditional interpretive tools, courts should construe statutes to work in harmony with
15 what has come before. *Id.*

18 More importantly, each day that Petitioner remains in unconstitutional detention
19 constitutes irreparable harm, which itself provides good cause to excuse the exhaustion
20 requirement. Accordingly, this Court should adopt the reasoning of the majority of federal district
21 courts, which have waived exhaustion on the basis of such irreparable injury. *See, e.g., Feeley v.*
22 *Vazquez*, 2025 WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910
23 (E.D. Cal. Sep. 23, 2025); *Sanchez Roman v. Noem*, No. 25-CV-01684, 2025 WL 2710211 (D.

1 Nev. Sep. 23, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530
2 (C.D. Cal. Sep. 8, 2025).

3
4 Without intervention, Petitioner will remain detained for months or years until the
5 Immigration Judge makes a decision, and the BIA or the Circuit Court issues a final decision on
6 the merits of his relief from removal.

7 **C. Petitioner Is Likely to Succeed in Showing That His Detention Violates Due**
8 **Process or There Is a Serious Question**

9
10 A temporary restraining order is appropriate if a petitioner can show that: (1) he is “likely
11 to succeed on the merits”; (2) he “is likely to suffer irreparable harm in the absence of preliminary
12 relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the public
13 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit’s
14 alternative “sliding scale” approach, a temporary restraining order is appropriate if “a plaintiff
15 demonstrates . . . that serious questions going to the merits were raised and the balance of
16 hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
17 1127, 1134-35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner’s due process claims
18 satisfy these standards.

19
20 Petitioner asserts that his detention violates his due process because the BIA’s new
21 interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section
22 1226(a) is incorrect and violates the INA.
23

1 To determine whether Petitioner's continued detention violates his procedural due
2 process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976).
3 Here the court weighs the following factors: (1) "the private interest that will be affected by the
4 official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures
5 used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3)
6 "the Government's interest, including the function involved and the fiscal and administrative
7 burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S.
8 at 335.
9

10
11 In this case, Petitioner's private interest is his freedom— "the most elemental of liberty
12 interests—the interest in being free from physical detention by one's own government." *Hamdi*
13 *v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
14 ("Freedom from imprisonment—from government custody, detention, or other forms of physical
15 restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs heavily in
16 Petitioner's favor, as the government's new policy and the BIA's precedential decision, in *Matter*
17 *of Yajure Hurtado* interpreting §1225(b)(2) is applicable to Petitioner, not section 1226(a), and
18 holding that Immigration Judges have no authority to hold bond hearings for these individuals
19 like Petitioner, deprives him of his fundamental liberty interest in freedom from incarceration.
20

21
22 Detention has been particularly devastating for Petitioner due to his mental health history.
23 The isolation, uncertainty, and stress of prolonged detention have significantly exacerbated these
24 conditions, leaving Petitioner overwhelmed, fearful, and emotionally destabilized. What may be
25

1 merely difficult for others is, for Petitioner, an oppressive and harmful environment that places
2 him at heightened risk given his mental health challenges.

3
4 By contrast, the government's interest in continuing to detain Petitioner throughout the
5 entirety of his removal proceedings and judicial review is not comparably weighty, particularly
6 where detention serves no individualized purpose and operates as an automatic consequence of a
7 statutory interpretation rather than a reasoned determination of flight risk or danger.

8
9 In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to
10 be free from incarceration, the court must review if the application of the new government policy
11 affirmed by *Matter of Yajure Hurtado* increases that risk. Here, Petitioner will most certainly be
12 at risk of erroneous deprivation of his liberty because he has not been afforded a bond
13 redetermination hearing where he could demonstrate that he is not a danger to the community or
14 a risk of flight, and be allowed to post a bond resulting in his release. Recently, this court found
15 a similarly situated Petitioner, that "continued detention of Petitioner without a constitutionally
16 adequate bond hearing violates Petitioner's procedural and substantive due process rights." *Arce-*
17 *Cervera v. Noem*, 2025 U.S. Dist. LEXIS 212397, *16, 2025 LX 426887, 2025 WL 3017866 (D.
18 Nev. Oct. 28, 2025).

19
20 As to the last factor, the government's interest and burden of additional or substitute
21 procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private
22 liberty interests and risk of erroneous deprivation against the government's interest in applying
23

1 *Matter of Yajure Hurtado*, which includes the use of additional or substitute procedural
2 requirements.

3 While Petitioner recognizes that the government has an important interest in ensuring that
4 persons in removal proceedings do not commit crimes or abscond from the law during their
5 proceedings, that interest has not been tested. The Immigration Judge has yet to conduct an
6 individualized assessment of Petitioner's criminal record and personal history to make the
7 assessment if Petitioner poses a danger to the community or a risk of flight. Moreover, as other
8 courts have recognized, perhaps there are other non-legitimate interests in keeping Petitioner in
9 mandatory detention—which paradoxically creates unnecessary financial and administrative
10 burdens for the government itself. See *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *41-
11 42; 2025 LX 303800; 2025 WL 2337099 (citing *Vasquez Perdomo v. Noem*, F. Supp. 3d, No.
12 2:25-cv-056050, 2025 WL 1915964, at *5 (C.D. Cal. July 11, 2025) (noting “[t]he government's
13 only apparent interest in taking Rosado into custody, [*42] which actually places an additional
14 fiscal and administrative burden on the government, is to fulfill a quota of arrests, i.e., 3,000
15 immigration arrests per day, set by the current administration.”). Indeed, keeping Petitioner
16 detained is far more expensive than allowing him to be released on bond. See *Vazquez v. Feeley*,
17 2025 U.S. Dist. LEXIS 182412, *61; 2025 LX 460110; 2025 WL 2676082 (citing *Hernandez v.*
18 *Sessions*, 872 F.3d 976, 996; 2017 U.S. App. LEXIS 19021, *40; 2017 WL 3887819) (“The costs
19 to the public of immigration detention are "staggering": \$158 each day per detainee, amounting
20 to a total daily cost of \$6.5 million. Supervised release programs cost much less by comparison:
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1 between 17 cents and 17 dollars each day per person.”) Therefore, this factor weighs in favor of
2 finding that Petitioner’s due process rights have been violated. Since all three factors of the
3 *Mathews* test weigh in favor of Petitioner, he has established a likelihood of success on the merits.
4

5 **D. Petitioner Will Suffer Irreparable Harm If He Is Not Released from Detention.**

6 Petitioner will suffer two significant harms if a temporary restraining order is not issued
7 in this matter: (1) the present and ongoing violation of Petitioner’s constitutional rights resulting
8 from his unlawful detention and (2) the severe and continuing harms that flow from Petitioner’s
9 continued unlawful detention, including the breakdown of family ties, loss of income and
10 employment, threat of losing their residence, deterioration of Petitioner’s family’s physical and
11 mental health, and an exacerbation of Petitioner’s existing mental health struggles.
12

13 **i. Constitutional Violations**

14 “It is well established that the deprivation of constitutional rights ‘unquestionably
15 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
16 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that “[a]n
17 alleged constitutional infringement will often alone constitute irreparable harm.” *Goldie’s*
18 *Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated*
19 *General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th
20 Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement
21 alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) (“When an alleged
22 deprivation of a constitutional right is involved, most courts hold that no further showing of
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1 irreparable injury is necessary.”). Further, as the Eleventh Circuit has held, the “unnecessary
2 deprivation of liberty clearly constitutes irreparable harm.” *United States v. Bogle*, 855 F.2d 707,
3 710-11 (11th Cir. 1998). Here, Petitioner’s continued deprivation of liberty without a bond
4 hearing under §1226(a) violates Petitioner’s due process rights and constitutes irreparable injury.
5 Indeed, each day of confinement is a day of freedom forever taken from Petitioner.
6

7 In the correctional setting, the stakes are high, and any delay or denial of care can convert
8 an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical care
9 in jails and prisons is a well-documented systemic failure. Incarcerated persons often endure
10 delays, missed appointments, staffing shortages, and willful indifference by correctional medical
11 staff.⁴ Therefore it is not speculative to fear that Petitioner’s health will deteriorate rapidly while
12 he remains detained.
13

14 Petitioner maintains a close and interdependent relationship with his long-term partner
15 and their young U.S. citizen children. Prior to Petitioner’s detention, his partner dedicated herself
16 full time to caring for their children as a stay-at-home mother, given their tender ages. Since
17 Petitioner’s detention, however, she has struggled to meet basic household expenses and has been
18 forced to rely on limited savings and loans from friends and family, as she previously depended
19 solely on Petitioner’s financial support. As a result, she has been compelled to seek employment
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25 ⁴ Homer Venters, The Health Crisis of U.S. Jails and Prisons, *New Eng. J. Med.* 2259 (2022),
<https://www.nejm.org/doi/full/10.1056/NEJMms2211252>

1 while leaving their young children in the care of a relative. Petitioner's continued detention has
2 separated him from his partner, his children, and his role as a provider and caregiver, causing
3 profound emotional and financial hardship to the family unit.
4

5 Further, Petitioner has a history of mental health crises. Over the past four years, he has
6 grappled with depression and anxiety and has experienced at least two serious mental health
7 breakdowns requiring intervention.
8

9 In short, Petitioner's detention has destabilized his family, inflicted ongoing emotional
10 and financial harm, and placed Petitioner at serious risk of further mental health deterioration.
11 These injuries are concrete, ongoing, and irreparable, and they worsen with each passing day that
12 Petitioner remains detained without constitutionally adequate process.

13 **E. Equitable Considerations and Public Interest Favor Petitioner's Release.**

14 The last two factors under *Winter* "merge when the Government is the opposing party."
15 *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S.
16 LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner.
17 Petitioner faces irreparable harm to his constitutional rights, to his health and other harms that
18 flow from ongoing detention.
19

20 Moreover, the government's interest in Petitioner's continued detention is minimal and
21 pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here,
22 Petitioner remains in custody indeterminately without a bond hearing to determine if he is danger
23 to the community or a flight risk. His continued detention not only violates his constitutional
24

1 rights but also causes direct suffering to him, his family and his community. As the Ninth Circuit
2 has regularly held, there is no harm to the government when a court prevents the government
3 from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.
4 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

6 Finally, the temporary restraining order sought here is in the public interest. The public
7 has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826
8 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right
9 has been violated, because all citizens have a stake in upholding the Constitution.”); *Phelps-Roper*
10 *v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (“[I]t is always in the public interest to protect
11 constitutional rights.”). Moreover, the public has an interest in accurate determinations in all legal
12 proceedings, including in the decision of whether to detain individuals during their immigration
13 cases. The public is also served by avoiding excessive expense on detention and ensuring that the
14 government does not expend its resources to detain individuals unnecessarily.

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V. CONCLUSION

WHEREFORE, and for the foregoing reasons, Petitioner maintains that his continued detention is unlawful. He respectfully asks this Court to issue a temporary restraining order directing the government to provide him with a bond hearing within seven (7) days under INA § 1226(a), and to enjoin the government from denying bond on the ground that he is detained under § 1225(b)(2). If the government fails to provide the required bond hearing, Petitioner further requests his immediate release.

Dated: February 12, 2026

/S/ SYLVIA L. ESPARZA

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