

1 **DANIEL F. LIPPMANN, ESQ.**

Nevada Bar No. 11636

2 Lipp Law LLC

2580 Sorrel Street

3 Las Vegas, Nevada 89146

Telephone – (702) 745-4700

4 *Counsel for Plaintiff and the Proposed Class*

5
6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9 Miguel Angel MALDONADO VAZQUEZ, on
10 behalf of himself as an individual and on
behalf of others similarly situated,

11 Plaintiff,

12 v.

13 Thomas E. FEELEY, et al.,

14 Defendants.

Case No. 25-1542

**NAMED PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

ORAL ARGUMENT REQUESTED

1 INTRODUCTION

2 Named Plaintiff Miguel Angel Maldonado Vazquez (“Mr. Maldonado Vazquez” or
3 “Plaintiff”) seeks a preliminary injunction requiring Defendants to lift the EOIR-43 stay and accept
4 the \$1,500 bond granted by the Las Vegas Immigration Judge (“IJ”), Glen Baker, or, in the
5 alternative, to provide an individualized custody hearing, where a new grant of bond will not be
6 suspended by the governments imposed automatic stay (EOIR-43) while they appeal to the Board
7 of Immigration Appeals (BIA) whether he should remain detained at the Nevada Southern
8 Detention Center (“NSDC”) in Pahrump, Nevada.

9 Although he has lived in the United States for approximately twenty years, the Las Vegas
10 Immigration Court, at DHS’s urging under its July 8, 2025, *Interim Guidance Regarding Detention*
11 *Authority for Applicants for Admission*, has in some cases treated Mr. Maldonado Vazquez and
12 others similarly situated as “recent arrivals” subject to mandatory detention under
13 8 U.S.C. § 1225(b)(2). In doing so, the Las Vegas Immigration Court and the Office of the
14 Principal Legal Advisor (“OPLA”) have denied, or effectively suspended, bond solely because
15 they entered the United States without inspection.

16 But § 1226(a)’s discretionary detention scheme, not § 1225(b)(2)’s border-focused
17 detention authority, governs Mr. Maldonado Vazquez’s custody, and thus he is entitled to release
18 when an IJ finds statutory jurisdiction and a lack of danger or flight risk. Section 1226’s plain
19 language makes this clear: DHS *may* detain a noncitizen “pending a decision on whether the
20 [noncitizen] is to be removed,” and the statute expressly applies to those inadmissible for entering
21 without inspection.

22 Despite this unambiguous language, DHS and OPLA, armed with the July 8 Memo, have
23 advanced a sweeping reinterpretation of § 1225(b)(2) to cover long-time U.S. residents arrested

1 far from any border. Yet § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's
2 borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking
3 to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It does not
4 reach individuals like Mr. Maldonado Vazquez, who are "already in the country" and detained
5 "pending the outcome of removal proceedings." *Id.* at 289.

6 The consequences of denying or suspending an opportunity to post bonds are profound.
7 Without effective release, Mr. Maldonado Vazquez and the proposed class members lose the
8 chance to reunite with family, maintain employment, and prepare their defense from outside
9 custody. Prolonged detention in remote, jail-like conditions sharply limits access to counsel and
10 evidence and exacerbates health risks. In the weeks since the issuance of the July 8, 2025, ICE
11 memo, most Las Vegas Immigration Judges have rejected the overbroad reading, finding § 1226(a)
12 jurisdiction for interior arrests and granting bonds where warranted. In Miguel's case, IJ Baker
13 already found § 1226(a) jurisdiction and ordered release on a \$1,500 bond; yet OPLA's EOIR-43,
14 appeal within ten days invoked 8 C.F.R. § 1003.19(i)(2) to automatically stay that order, ensuring
15 months-long detention while the Board of Immigration Appeals (BIA) deliberates.

16 Finally, the Court should not require administrative exhaustion. The record shows a
17 uniform OPLA practice in Nevada: appealing virtually every favorable § 1226(a) bond order in
18 these cases and triggering an automatic stay that prolongs detention for months. Bond appeals to
19 the Board of Immigration Appeals ("BIA") routinely exceed six months, inflicting the very harm
20 this action seeks to prevent. Many individuals are removed or abandon meritorious claims under
21 confinement pressures before any decision is issued. Only this Court can provide meaningful relief.

22 / / /

STATEMENT OF FACTS

I. Nevada Pattern Since July 8: OPLA's Use of EOIR-43 Automatic Stays to Nullify IJ Bond Grants

This case concerns the detention authority for people who entered the United States without inspection, were not apprehended upon arrival, and are not subject to any other detention authority, such as expedited removal under 8 U.S.C. § 1225(b)(1) or post-order detention under § 1231(a)(6). For decades, people in Mr. Maldonado Vazquez's position, long-term residents encountered in the interior-received bond hearings under 8 U.S.C. § 1226(a). Indeed, similarly situated individuals continue to be released on bond by Immigration Judges ("IJs") in other courts around the country.

Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), detention and bond authority for such respondents was found at 8 U.S.C. § 1252(a), which applied to anyone in deportation proceedings regardless of manner of entry, and authorized release on bond. Congress carried this same basic framework into the new § 1226(a), explaining that it "restates" prior authority. H.R. Rep. No. 104-469, pt. 1, at 229 (1996)¹. Separately, Congress created new detention regimes for recent arrivals, including expedited removal under § 1225(b)(1) and limited-scope "arriving alien" detention under § 1225(b)(2). Implementing regulations in 1997 confirmed that noncitizens who entered without inspection and were later apprehended in the interior would continue to be detained under § 1226(a). 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

The distinction between § 1226(a) and § 1225(b) detention is critical:

¹ Prior to IIRIRA, "exclusion" proceedings governed those arriving at a U.S. port of entry who had never effected an entry. See 8 U.S.C. § 1225 (1994) (inspection and detention of noncitizens "arriving at ports of the United States"); id. § 1226 (1994) (exclusion proceedings for "arriving" noncitizens detained for further inquiry). Individuals apprehended in the interior were instead placed in deportation proceedings under 8 U.S.C. § 1252(a) (1994).

- 1 • § 1226(a) provides the right to a bond hearing before a neutral IJ, where the respondent
2 may present evidence of community ties, stable residence, and other factors showing they
3 are not a danger or flight risk. See 8 C.F.R. § 1236.1(d); *Matter of Guerra*, 24 I. & N. Dec.
4 37, 40 (BIA 2006).
- 5 • § 1225(b) mandates detention without a bond hearing for certain arriving aliens, permitting
6 release only by DHS parole. See *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018);
7 8 U.S.C. § 1182(d)(5)(A).

8 For more than 25 years after IIRIRA, the Las Vegas Immigration Court, like most courts
9 nationwide, applied § 1226(a) to interior apprehensions of EWIs. But on July 8, 2025, DHS, “in
10 coordination with” DOJ/EOIR, issued *Interim Guidance Regarding Detention Authority for*
11 *Applicants for Admission*², declaring that **all** persons who entered without inspection are
12 “applicants for admission” detained under § 1225(b)(2), regardless of length of U.S. residence or
13 location of arrest.

14 Since July 8, most Las Vegas IJs have rejected this new overbroad reading, finding
15 § 1226(a) jurisdiction and granting bond in meritorious cases, including
16 Mr. Maldonado Vazquez’s. On July 31, 2025, IJ Glen Baker found § 1226(a) jurisdiction,
17 determined Mr. Maldonado Vazquez was neither a danger nor a flight risk, and set bond at
18 \$1,500.00 with ATD at DHS’s discretion.

19 In response, OPLA has adopted a uniform post-July 8 practice: filing Form EOIR-43 within
20 one business day, and the Notice of Appeal (“NOA”) within ten days to challenge both the IJ’s
21 jurisdictional finding and the grant of bond. Under 8 C.F.R. § 1003.19(i)(2), that filing
22 automatically stays the IJ’s release order, no separate showing of danger, flight risk, or likelihood

23 _____
24 ² ICE Memo, *Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025).

1 of success required, and prolongs detention for months while the Board of Immigration Appeals
2 (“BIA”) adjudicates the appeal.

3 This tactic ensures that even when an IJ finds bond is warranted, release is nullified. Many
4 respondents remain detained for six months or longer before the BIA rules; others are removed or
5 abandon meritorious cases under the pressure of confinement. The automatic stay renders the
6 statutory right to a bond hearing an empty formality.

7 **Constitutionally Suspect Seizures**

8 For Mr. Maldonado Vazquez, and many proposed class members, these harms are
9 compounded from the outset by the manner of apprehension: unwarranted, racially charged vehicle
10 stops by ICE and Border Patrol agents in Las Vegas and elsewhere in the district, far from any port
11 of entry, without probable cause or judicial warrants, and while the individuals were engaged in
12 no criminal conduct. These interior seizures bear no nexus to § 1225(b)(2)’s border-inspection
13 framework, fall within § 1226(a)’s bond-eligible regime, and raise serious concerns under the
14 Fourth and Fifth Amendments. A recent California district court has enjoined similar
15 racially-motivated immigration stops as unconstitutional. See *Vasquez Perdomo v. Noem*,
16 No. 2:25-cv-05605-MEMF-SP (C.D. Cal. July 11, 2025).³

17 The result of this combined policy shift and enforcement practice is a uniform pattern in
18 Nevada:

- 19 1. **Misclassification** — treating long-term interior residents as § 1225(b)(2) “applicants for
20 admission.”

21
22
23 ³ *Vasquez Perdomo v. Noem*, No. 2:25-cv-05605-MEMF-SP, Dkt. 87, Order Granting Temporary Restraining Order
24 (C.D. Cal. July 11, 2025). Available at: <https://www.aclusocal.org/sites/default/files/vasquez-perdomo-v-noem-tro-granting.pdf>

1 2. **Bond nullification** — invoking the EOIR-43 automatic stay to suspend even granted
2 releases.

3 3. **Prolonged detention** — months-long BIA adjudications while the respondent remains
4 confined.

5 As an initial matter, appeals take several months, and sometimes even a year or more, to
6 complete. See **Exhibit A** ¶ 5 declaration of Aaron Korthuis, filed in *Rodriguez Vazquez v. Bostock*,
7 No. 3:25-cv-05240-TMC, (W.D. Wash. Apr. 24, 2025): “reporting FOIA data from the BIA
8 reflecting that the average case processing time for BIA appeals was 204 days in FY 2024.” Such
9 delays in civil-detention cases do not provide individuals with a meaningful chance to seek release.
10 As advocates recount, nearly all cases become moot by this point. The experience described in the
11 Korthuis declaration mirrors what is happening in Nevada: OPLA’s routine filing of EOIR-43
12 appeals immediately after IJ bond grants, coupled with months-long BIA delays, ensures
13 prolonged detention for people the court has already found eligible for release. This pattern
14 deprives class members of meaningful bond hearings, severs family and community ties, impairs
15 the defense of their removal cases, and entrenches unlawful detention, all in violation of the INA,
16 the APA’s “reasonable time” requirement, and the Constitution.

17 **II. Plaintiff Miguel Angel Maldonado Vazquez**

18 Plaintiff Miguel Angel Maldonado Vazquez (“Mr. Maldonado Vazquez”) is currently
19 detained at the Nevada Southern Detention Center (“NSDC”) in Pahrump, Nevada, despite an
20 Immigration Judge’s finding of jurisdiction under 8 U.S.C. § 1226(a) and a grant of release on
21 bond. Maldonado Vazquez Decl. ¶10. Mr. Maldonado Vazquez has resided in Las Vegas, Nevada,
22 since approximately 2005. Id. ¶ 3. He is married to Alicia Gomez, a long-time Nevada resident,
23 and is the father of three U.S.-citizen children, Miguel Jr. (18), Melissa (13), and Yahir (6), all of
24

1 whom live with him in Las Vegas. Id. ¶4. He has deep community ties, operates his own
2 landscaping business, files federal taxes, and has no criminal history in the United States or
3 elsewhere. Id. ¶¶ 4-5.

4 On July 7, 2025, while driving to work, Mr. Maldonado Vazquez was subjected to an
5 unwarranted, racially charged vehicle stop in Las Vegas by Immigration and Customs
6 Enforcement (ICE) and Border Patrol officers, far from any port of entry, without probable cause,
7 and without a judicial warrant. Id. ¶ 6-7; see also **Exhibit B**, I-213 at 2. He was engaged in no
8 criminal activity at the time. This seizure violated the Fourth Amendment and initiated removal
9 proceedings in which DHS alleged inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i). It also
10 tainted all subsequent detention proceedings, making the government's attempt to apply
11 § 1225(b)(2) particularly egregious in light of the ongoing constitutional injury.

12 Following his arrest, ICE did not set bond, and Mr. Maldonado Vazquez requested a
13 custody redetermination before the Las Vegas Immigration Court. Id. ¶9. On July 31, 2025,
14 Immigration Judge Glen Baker found that § 1226(a), not § 1225(b)(2), governed his detention,
15 concluded that he is neither a danger to the community nor a flight risk, and ordered his release on
16 a \$1,500.00 bond with alternatives to detention at DHS's discretion. See **Exhibit C**, Written Bond
17 Order (Baker) at 1-2.

18 OPLA filed Form EOIR-43 within one business day of the grant of bond, affirming the
19 department's intent to challenge both the jurisdictional determination and the grant of bond, and
20 subsequently following through with filing the NOA on August 12, 2025, within the ten-day period
21 as required by regulation. Id. ¶ 11-12. **Exhibit D**, EOIR-43 and EOIR-26. Under
22 8 C.F.R. § 1003.19(i)(2), that filing automatically stayed the IJ's release order. As of the filing of
23 this motion, Mr. Maldonado Vazquez remains incarcerated solely because of OPLA's appeal, even
24

1 though an Immigration Judge has already found that the statute authorizes his release and that he
2 meets the criteria for bond.

3 His continued detention under an automatic stay imposes immediate and compounding
4 harms: it separates him from his U.S.-citizen children, his spouse, deprives his family of their
5 primary breadwinner, impairs his ability to prepare his defense from outside custody, and prolongs
6 the injury caused by the unconstitutional stop that precipitated his arrest.

7 ARGUMENT

8 To obtain a preliminary injunction, Mr. Maldonado Vazquez must demonstrate that (1) he
9 is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of
10 preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public
11 interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Mr. Maldonado
12 Vazquez raises only “serious questions going to the merits,” the Court can nevertheless grant relief
13 if the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are
14 satisfied. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

15 **I. Mr. Maldonado Vazquez satisfies all the factors required for a preliminary injunction.**

16 **A. He is likely to succeed on the merits of his argument that he is detained under § 1226(a), not § 1225(b)(2).**

17 Mr. Maldonado Vazquez is likely to prevail on his claim that his detention is governed by
18 8 U.S.C. § 1226(a). He has lived in the United States for approximately twenty years, was
19 apprehended during a racially charged interior vehicle stop far from any port of entry and has never
20 sought admission at the border. The text, structure, legislative history, and consistent pre-July 8
21 agency practice confirm that § 1226(a) — not § 1225(b)(2) — governs such detention.

22 **1. The text of §§ 1226 and 1225 demonstrates he is not subject to mandatory detention.**

By its own terms, § 1226(a) applies to “any alien [who] may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). It explicitly includes not only deportable noncitizens, but also those deemed inadmissible. While § 1226(a) permits release on bond, § 1226(c) carves out narrow categories of inadmissible and deportable individuals for mandatory detention, including, after the March 2025 Laken Riley Act amendments, certain § 1182(a)(6) (entry without inspection) and § 1182(a)(7) (no entry documents) cases involving enumerated crimes. 8 U.S.C. § 1226(c)(1)(E).

By expressly placing some § 1182(a)(6) and (a)(7) cases in § 1226(c), Congress reaffirmed that the default for all others in those categories is § 1226(a). Reading § 1225(b)(2) to sweep them all regardless of location or time since entry would render § 1226(c)(1)(E) meaningless, a result the canon against superfluity forbids. See *Corley v. United States*, 556 U.S. 303, 314 (2009) (courts must construe statutes “so that effect is given to all ... provisions”); *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023).

Nevertheless, under DHS’s July 8, 2025, *Interim Guidance Regarding Detention Authority for Applicants for Admission*⁴ and OPLA’s litigation posture in Nevada, individuals like Mr. Maldonado Vazquez are re-cast as § 1225(b)(2) “applicants for admission” subject to mandatory detention and ineligible for bond, even when, as here, an IJ has already found § 1226(a) jurisdiction and granted release.

2. Section 1225’s text and context confirm it is border-focused

As the Supreme Court has recognized, § 1225 is concerned “primarily” with those “seeking entry ... at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*,

⁴ ICE Memo, Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025).

1 583 U.S. 281, 287 (2018). Paragraphs (b)(1) and (b)(2) reflect this: (b)(1) governs expedited
2 removal of certain “arriving” aliens and other *recent entrants* designated by the Attorney General;
3 (b)(2) covers other inspection-stage cases not subject to expedited removal. Both presuppose
4 apprehension in the context of an “inspection” for admission, not a warrantless seizure in the
5 interior decades after entry.

6 Mr. Maldonado Vazquez does not fit within those parameters. He was “already in the
7 country” and detained “pending the outcome of removal proceedings.” *Id.* at 289. The
8 government’s attempt to shoehorn him into § 1225(b)(2) ignores statutory limits, long-standing
9 regulatory implementation (62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)), and recent federal court
10 precedent rejecting identical arguments. See *Rodriguez Vazquez v. Bostock*, supra. (preliminarily
11 enjoining application of § 1225(b)(2) to long-time residents arrested in the interior); *Gomes v.*
12 *Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025).

13 **3. The record and longstanding practice reflect that § 1226 governs**
14 **Mr. Maldonado Vazquez’s detention.**

15 DHS’s own historical practice confirms that individuals in Mr. Maldonado Vazquez’s
16 position are detained under § 1226(a). For decades, and across administrations, when ICE
17 apprehended long-term residents in the interior who had entered without inspection, it issued a
18 Form I-286, Notice of Custody Determination, or a Form I-200, both citing § 1226(a) as the
19 governing detention authority. See, e.g., Daniel Lippmann Decl. ¶, Ex. (reflecting prior custody
20 determinations under § 1226(a) for similarly situated individuals). This settled interpretation “is
21 powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski v.*
22 *United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); see also *Bankamerica Corp. v.*
23 *United States*, 462 U.S. 122, 130 (1983) (long-standing agency interpretation is entitled to weight).

1 Nothing in 8 C.F.R. § 1003.19(h), the regulation defining IJ bond jurisdiction, purports to
2 divest the court of authority in these circumstances. To the contrary, when EOIR promulgated the
3 implementing rules in 1997, it expressly confirmed that “[d]espite being applicants for admission,
4 [noncitizens] who are present without having been admitted or paroled (formerly referred to as
5 [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.”
6 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

7 In sum, § 1226 governs here. Section 1225 applies only to those arriving in the United
8 States at a port of entry or within the narrow “recent arrival” categories Congress specified; § 1226
9 applies to people, like Mr. Maldonado Vazquez, who long ago entered without inspection, built
10 their lives here, and were later apprehended in the interior.

11 **B. Mr. Maldonado Vazquez will suffer irreparable harm absent an injunction.**

12 To obtain preliminary relief, a movant must show they are “likely to suffer irreparable harm
13 in the absence of preliminary relief.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008). Irreparable harm is
14 harm for which “no adequate legal remedy” exists. *Ariz. Dream Act Coal. v. Brewer*,
15 757 F.3d 1053, 1068 (9th Cir. 2014).

16 Here, despite an IJ’s finding of § 1226(a) jurisdiction and a grant of release on a \$1,500.00
17 bond, OPLA’s filing of an EOIR-43 automatically stayed Mr. Maldonado Vazquez’s release. He
18 remains confined at NSDC, a “loss of liberty that is...irreparable.” *Moreno Galvez v. Cuccinelli*,
19 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020), *aff’d* in part, vacated in part on other grounds sub
20 nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *Rodriguez v. Robbins*,
21 715 F.3d 1127, 1145 (9th Cir. 2013).

22 That deprivation is compounded by the unconstitutional, racially-charged vehicle stop that
23 precipitated his arrest, itself an independent injury under the Fourth and Fifth Amendments.

1 Prolonged civil detention “requires a timely hearing” before a neutral decisionmaker. *Gerstein v.*
2 *Pugh*, 420 U.S. 103, 112 (1975); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55–56 (1991). By
3 nullifying an IJ’s release order without any further showing, the automatic-stay regime strips him
4 of that safeguard.

5 The harm is not abstract. Mr. Maldonado Vazquez is separated from his spouse, and three
6 U.S. Citizen children, depriving them of his daily care and financial support from his landscaping
7 business. Such “separation from family members” is a recognized irreparable harm. *Leiva-Perez*
8 *v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam). His wife now bears sole
9 responsibility for the household, while the family loses income needed for rent, food, and other
10 necessities. Economic hardship of this kind further supports injunctive relief. *Gonzalez Rosario v.*
11 *USCIS*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018).

12 Detention also impairs his ability to defend against removal: confinement in Pahrump
13 hinders meetings with counsel, communication with witnesses, and collection of evidence. These
14 access-to-counsel barriers are especially acute for those held after unlawful interior seizures.

15 Finally, confinement in a jail-like facility has taken a toll on his physical and mental health
16 — stress, anxiety, and degraded conditions that “will not be remedied by an award of damages.”
17 *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988). Under *Baird v. Bonta*,
18 81 F.4th 1036, 1048 (9th Cir. 2023), in cases raising constitutional claims, a likelihood of success
19 typically establishes irreparable harm. Mr. Maldonado Vazquez has shown both.

20 **C. The balance of hardships and public interest weigh heavily in**
21 **Mr. Maldonado Vazquez’s favor.**

22 When “the Government is the opposing party,” the balance-of-hardships and
23 public-interest inquiries “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).
24 Mr. Maldonado Vazquez faces weighty hardships: loss of liberty despite an IJ’s finding of no

1 danger and no flight risk, separation from his spouse and three young children, acute stress and
2 anxiety, and diminished ability to defend against removal while confined. See *supra*. Sec. I.B. The
3 Government, by contrast, faces only the administrative burden of allowing a single detained
4 individual to post the \$1,500.00 bond an IJ has already ordered, or of conducting a prompt custody
5 hearing without resort to the EOIR-43 automatic stay.

6 “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with such a
7 conflict between financial concerns and preventable human suffering.” *Hernandez v. Sessions*,
8 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).
9 Moreover, where the policy preventing release “is inconsistent with federal law ... the balance of
10 hardships and public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez*
11 *v. Cuccinelli* (“*Moreno I*”), 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019), *aff’d in part*,
12 52 F.4th 821, 832 (9th Cir. 2022) (approving district court’s conclusion “that neither equity nor the
13 public’s interest are furthered by allowing violations of federal law to continue”). As the Ninth
14 Circuit has repeatedly recognized, “it would not be equitable or in the public’s interest to allow
15 the [government] ... to violate the requirements of federal law, especially when there are no
16 adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013).
17 Defendants “cannot suffer harm from an injunction that merely ends an unlawful practice.”
18 *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

19 Accordingly, the equities and public interest overwhelmingly favor injunctive relief
20 ensuring that Defendants comply with federal law and afford Mr. Maldonado Vazquez a bond
21 release or a new hearing untainted by the post-July 8 EOIR-43 automatic-stay practice.

22 **II. Prudential exhaustion is not required.**

1 Defendants may argue that Mr. Maldonado Vazquez must first pursue BIA review of
2 OPLA's EOIR-43 appeal. But prudential exhaustion does not require him to endure the very harm
3 he seeks to avoid — prolonged detention under an unlawful statutory theory and an automatic stay
4 — while waiting months for a BIA decision. “[T]here are a number of exceptions to the general
5 rule requiring exhaustion, covering situations such as where administrative remedies are
6 inadequate or not efficacious . . . [or] irreparable injury will result . . .” *Laing v. Ashcroft*,
7 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Courts may waive exhaustion when
8 “requiring resort to the administrative remedy may occasion undue prejudice to subsequent
9 assertion of a court action,” including where “an unreasonable or indefinite timeframe for
10 administrative action” would cause harm. *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992).

11 **A. Irreparable injury**

12 The first exception applies squarely here. Each day Mr. Maldonado Vazquez remains in
13 custody under a stayed bond order is another day his statutory rights are denied and he is separated
14 from his family. Federal courts have recognized that “because of delays inherent in the
15 administrative process, BIA review would result in the very harm that the bond hearing was
16 designed to prevent: prolonged detention without due process.” *Hechavarria v. Whitaker*,
17 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019). “[I]f Petitioner is correct on the merits, then Petitioner
18 has already been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day
19 that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be
20 repaired.” *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal.
21 Oct. 2, 2017); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar).

22 Civil detention “violates due process outside of ‘certain special and narrow nonpunitive
23 circumstances.’” *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (quoting *Zadvydas v.*

1 *Davis*, 533 U.S. 678, 690 (2001)). While Mr. Maldonado Vazquez asserts statutory claims, he also
2 has a “fundamental” liberty interest in release where an IJ has already found § 1226(a) jurisdiction
3 and no danger or flight risk. *Hernandez*, 872 F.3d at 993 (“freedom from imprisonment is at the
4 ‘core of the liberty protected by the Due Process Clause’”) (quoting *Foucha v. Louisiana*,
5 504 U.S. 71, 80 (1992)).

6 The irreparable harms extend well beyond the deprivation of physical liberty:

7 • Family separation — Mr. Maldonado Vazquez is deprived of daily contact and
8 support for his spouse and three U.S. citizen children, a recognized injury under equitable
9 principles.

10 • Economic hardship — The loss of income from his small landscaping business
11 jeopardizes the family’s ability to meet basic needs, including rent, food, and utilities.

12 • Barriers to counsel — His geographic isolation in Pahrump severely limits access
13 to legal representation and impedes preparation of his defense.

14 • Psychological and medical impacts — Prolonged confinement has caused
15 significant stress and anxiety, compounded by degraded detention conditions and the constitutional
16 injury stemming from the initial unlawful stop.

17 These injuries are immediate and ongoing. They cannot be remedied by damages after the
18 fact and therefore warrant both waiver of prudential exhaustion and urgent injunctive relief.

19 **B. Agency Delay**

20 Second, the BIA’s chronic delays in adjudicating bond appeals independently warrant
21 excusing any exhaustion requirement. The court’s ability to waive exhaustion based on delay is
22 especially broad here given the liberty interests at stake. As the Ninth Circuit has explained,
23 Supreme Court precedent “permits a court under certain prescribed circumstances to excuse
24

1 exhaustion where ‘a claimant’s interest in having a particular issue resolved promptly is so great
2 that deference to the agency’s judgment [of a lack of finality] is inappropriate.’” *Klein v. Sullivan*,
3 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*,
4 424 U.S. 319, 330 (1976)). Here, Mr. Maldonado Vazquez’s interest in physical liberty is
5 “fundamental.” *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017). And as the Supreme
6 Court has made clear, “[r]elief [when seeking review of detention] must be speedy if it is to be
7 effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

8 Despite this mandate, the BIA takes, on average, well over half a year to resolve custody
9 appeals. EOIR’s own FOIA data confirms an **average of 204 days** for bond-appeal adjudications
10 in FY 2024 — with “dozens of cases” taking multiple years. See Korthuis Decl. ¶¶ 5–6. In the
11 meantime, noncitizens remain locked in ICE detention facilities under conditions “similar ... to
12 those in many prisons and jails” and separated from their families. *Jennings v. Rodriguez*,
13 583 U.S. 281, 329 (2018) (Breyer, J., dissenting); see also *Hernandez*, 872 F.3d at 996. For
14 Mr. Maldonado Vazquez, this means months of incarceration after an IJ has already ordered
15 release on bond, solely because OPLA invoked an automatic stay via EOIR-43.

16 Federal law in the criminal context underscores the unreasonableness of such delay. The
17 Supreme Court upheld the federal pretrial detention scheme in part because it “provide[s] for
18 immediate appellate review of the detention decision.” *United States v. Salerno*,
19 481 U.S. 739, 752 (1987). There, probable cause has already been established, yet magistrate
20 judges rule “immediately” at first appearance, 18 U.S.C. § 3142(f), with prompt district-court
21 review, *id.* § 3145(a)–(b), and expedited consideration in the court of appeals, *id.* § 3145(c); *United*
22 *States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572–73 (9th Cir. 1987); *United States v. Walker*,

1 808 F.2d 1309, 1311 (9th Cir. 1986); 9th Cir. R. 9-1.1. Even a 30-day delay in criminal pretrial
2 detention review has been deemed excessive.

3 By contrast, waiting six months, a year, or more for BIA review of an IJ's custody order,
4 or of an IJ's determination that no bond hearing will even be held, is indefensible. The Ninth
5 Circuit has signaled that prompt review protections afforded in the criminal-detention context
6 should inform civil-immigration detention. See *Gonzalez v. U.S. Immigration & Customs*
7 *Enforcement*, 975 F.3d 788, 798, 823–26 (9th Cir. 2020) (requiring a “prompt” probable-cause
8 determination by a neutral magistrate). The same Fifth Amendment principles that protect criminal
9 defendants apply here. See *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001).

10 District courts confronting similar facts have held that such delay justifies waiving
11 exhaustion. See, e.g., *Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020) (finding BIA delays
12 unreasonable and waiving exhaustion); *Montoya Echeverria v. Barr*, No. 20-cv-02917-JSC,
13 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020) (same); *Hechavarria v. Whitaker*,
14 358 F. Supp. 3d 227, 237–38 (W.D.N.Y. 2019) (citing *McCarthy v. Madigan*,
15 503 U.S. 140, 147 (1992), and BIA delay). As *Montoya Echeverria* observed, “the vast majority”
16 of courts have waived exhaustion where “several additional months may pass before the BIA
17 renders a decision on a pending appeal [of a custody order].”

18 Here, either prong for waiver applies. The record shows a uniform OPLA practice in
19 Nevada of appealing virtually every favorable § 1226(a) bond order in these cases and invoking
20 the automatic stay, fully aware that the BIA's backlog will prolong detention well beyond any
21 “reasonable time” under the APA. Defendants should not benefit from their own strategic
22 exploitation of EOIR-43 to nullify IJ release orders, nor from an appellate process so delayed that
23 it eviscerates the statutory and constitutional protections at stake.

CONCLUSION

For the foregoing reasons, Mr. Maldonado Vazquez respectfully requests that this Court grant his motion for a preliminary injunction. Specifically, Plaintiff asks the Court to (1) order Defendants to lift the EOIR-43 automatic stay and accept the \$1,500.00 bond previously granted by Immigration Judge Glen Baker; or, in the alternative, (2) order a prompt, individualized custody hearing under 8 U.S.C. § 1226(a) at which any grant of release will not be nullified by the government's invocation of the automatic-stay regulation while appeal is pending.

Plaintiff further requests that the Court enjoin Defendants from continuing to apply 8 U.S.C. § 1225(b)(2) to him or to similarly situated class members apprehended in the interior — many through unconstitutional stops, and to prohibit the use of EOIR-43 to prolong detention for months in the absence of a timely BIA decision. Such relief is necessary to prevent ongoing violations of the INA, the Administrative Procedure Act, and the Constitution, and to protect the fundamental liberty interests at stake.

Respectfully submitted this 25th day of August, 2025.

/s/Daniel F. Lippmann
DANIEL F. LIPPMANN, ESQ.
LIPP LAW LLC
2580 Sorrel St.
Las Vegas, Nevada 89146
Tel: (702) 745-4700
Counsel for Plaintiff and the Proposed Class