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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Julian VASQUEZ GARCIA; Nicolas JIATAZ PATZAN; Alfredo VASQUEZ,

Petitioners,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Gregory J. ARCHAMBEAULT, Director, San Diego Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Jeremy CASEY, Warden, Imperial Regional Detention Facility; IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No. 3:25-cv-02180-DMS-MMP

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

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INTRODUCTION

Petitioners Julian Vasquez Garcia, Nicolas Jiataz Patzan, and Alfredo Vasquez seek a Temporary Restraining Order that requires Respondents to release them from custody or to provide them with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

Although each Petitioner was present and residing in the United States at the time of their immigration arrests, they have been subjected to a new DHS policy issued on July 8, 2025 which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. *See* Ex. J, ICE Interim Guidance Regarding Detention Authority for Applicants for Admission, July 8, 2025. The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *Id.* Each Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California and has been denied a bond hearing by an IJ based on this new policy. *See* Exs. C, E, H, IJ Bond Orders.

The denial of bond hearings to the Petitioners and their ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. Despite the new DHS policy's assertions to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals

like Petitioners who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on bond or conditional parole. Section 1226(a) expressly applies to people who, like Petitioners, are charged as removable for having entered the United States without inspection and being present without admission.

Respondents' new legal interpretation set forth in the policy is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioners who are present within the United States. Respondents' new policy and the resulting ongoing detention of Petitioners without a bond hearing is depriving Petitioners of statutory and constitutional rights and unquestionably constitutes irreparable injury.

Petitioners therefore seek a Temporary Restraining Order enjoining Respondents from continuing to detain them unless Petitioners are provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO.

Petitioners also seek an Order prohibiting Respondents from relocating Petitioners outside of the Central District pending final resolution of this litigation.

STATEMENT OF FACTS

Petitioner Julian Vasquez Garcia resides in Colton, California. On July 9, 2025, Petitioner was arrested in San Bernardino, California. He has no criminal record and no previous contact with immigration authorities. *See* Ex. B, DHS Form

I-213, Record of Deportable/Inadmissible Alien. He is now detained at the Imperial Regional Detention Facility in Calexico, California. ICE placed Vasquez Garcia in removal proceedings before the Imperial Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without admission in the United States. *See* Ex. A, Notice to Appear. Vasquez Garcia requested a bond hearing before an IJ. On August 21, 2025, an IJ denied the request and issued a decision that the court lacked jurisdiction to conduct a bond hearing because he was an applicant for admission. *See* Ex. C, IJ Bond Order.

Petitioner Nicolas Jiataz Patzan has resided in the United States for over twenty years. *See* Ex. F, Declaration of Attorney Emily Robinson. He has had no previous contact with immigration authorities. *Id.* He was convicted fifteen years ago for a misdemeanor DUI conviction. On June 12, 2025, Petitioner was arrested by immigration agents in Rosemead, California. *Id.* He is now detained at the Imperial Regional Detention Facility in Calexico, California. ICE placed Jiataz Patzan in removal proceedings before the Imperial Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without admission in the United States. *See* Ex. D, Notice to Appear. Jiataz Patzan requested a bond hearing before an IJ. On August 7, 2025, an IJ denied the request and issued a decision that the court lacked jurisdiction to conduct a bond hearing because he was an applicant for

admission. *See* Ex. E, IJ Bond Order.

Petitioner Alfredo Vasquez resides in California. On June 22, 2025, Vasquez was arrested in Torrance, California. *See* Ex. I, Declaration of Attorney Karla P. Navarrete. Upon information and belief, he has no previous contact with immigration authorities and no criminal history. *See* Ex. H, IJ Bond Order (stating that if the immigration court had jurisdiction, the IJ would have granted bond in amount of $5,000). He is now detained at the Imperial Regional Detention Facility in Calexico, California. ICE placed Vasquez in removal proceedings before the Imperial Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him with being inadmissible under *inter alia* 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without admission in the United States. *See* Ex. G, Notice to Appear. Vasquez requested a bond hearing before an IJ. On July 23, 2025, an IJ denied bond because he was an applicant for admission. *See* Ex. H, IJ Bond Order.

ARGUMENT

The requirements for granting a Temporary Restraining Order are "substantially identical" to those for granting a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). !

Petitioners must demonstrate that (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22

(2008). A sliding scale test may be applied and an injunction should be issued when there is a stronger showing on the balance of hardships, even if there are "serious questions on the merits … so long as the plaintiff also shows a likelihood of irreparable harm and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024). Petitioners satisfy the criteria and a TRO should be granted.

I. Petitioners Are Likely to Succeed on the Merits of Their Claims.

Petitioners are likely to succeed on their claims that their ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before an immigration judge is unlawful.

The text, context, and legislative and statutory history of the Immigration and Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs their detention.

A. The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioners are not subject to mandatory detention.

First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioners. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioners, who are inadmissible pursuant to 8 U.S.C. §

1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C).

If Respondents' position that § 1226(a) did not apply to inadmissible noncitizens such as Petitioners who are present without admission in the United States were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 reinforce that this section covers people like Petitioners who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In

other words, if someone is *only* charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Rodriguez Vazquez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide that § 1226(a) covers people like Petitioners because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar); *Ceja Gonzalez v. Noem,* No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025) Order Granting Ex Parte Application for TRO and OSC, Dkt. 12 at 7 ("If Respondents are correct that Congress meant for § 1225 to govern all aliens present in the United States who had not been admitted, it would render the exception made under § 1226(c)(1)(E) unnecessary. This does not stand to reason for, as Respondents aptly note, 'a statute should be construed so that effect is given to all its provisions.'" (citations omitted.) *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559

U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Despite the clear statutory language, DHS issued a new policy on July 8, 2025 instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an "applicant for admission" and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See* Ex. J, "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025. The new policy was implemented "in coordination with" the Department of Justice. *Id.* And on May 22, 2025, in an unpublished decision from the Board of Immigration Appeals, EOIR adopted this same position. *See* Ex. K, BIA Decision, Case No. XXX-XXX-269, May 22, 2025. Petitioners have each been denied a bond hearing before an IJ pursuant to this new policy. *See* Exs. C, E, H, IJ Bond Orders for Petitioners.

The new policy is also inconsistent with the canon against superfluities. Under this "most basic [of] interpretive canons, . . . '[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)

("[C]ourt[s] 'must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" (citation omitted)). But by concluding that the mandatory detention provision of § 1225(b)(2) applies to Petitioners, DHS and EOIR violate this rule.

In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted." Section 1226(a) covers those who are present within and residing within the United States and who are not at the border seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287.

Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate

documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioners, who have already entered and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those who can be said to be "seeking admission" within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e. those who are "*arriving* on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving into the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible *arriving*" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

The new DHS and EOIR policy and the IJ orders denying bond to Petitioners on this basis ignore all this and instead focus on the definition of "applicant for admission" at § 1225(a)(1) (*see* Ex. J, "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025; Exs. C, E, H, IJ Bond Orders for Petitioners) which defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the

United States," 8 U.S.C. § 1225(a)(1). But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that context underscores that the definition in (a)(1) is limited by other aspects of the statute to those who undergo an initial inspection at or near a port of entry shortly after arrival—and that it does not apply to those who are arrested in the interior of the United States months or years or decades later.

Significantly, in deeming that all noncitizens who entered without inspection are necessarily encompassed by the mandatory detention provision at § 1225(b)(2), the DHS and EOIR policy ignores that the provision does not simply address applicants for admission. Instead, the language "applicant for admission" in (b)(2)(A) is further qualified by clarifying the subparagraph applies only to those "seeking admission"—in other words, those who have applied to be admitted or paroled. The new policy and the IJs' implementation of the policy ignores this text, just as it ignores the statutory language in § 1226 that expressly encompasses persons who have entered the United States and are present without admission. Thus, Petitioners' prevail regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission," is not sufficient to render someone subject to mandatory detention under § 1225(b)(2).

The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioners.

B. The legislative history further supports the application of § 1226(a) to Petitioners' detention.

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies to Petitioners. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioners were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely

"restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States*." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

C. The record and longstanding agency practice reflect that § 1226 governs Petitioners' detention.

DHS's long practice of considering people like the Petitioners as detained under §1226(a) further supports this reading of the statute. Typically, in cases like that of the Petitioners, DHS issues a Form I-286, Notice of Custody Determination, or Form I-200 stating that the person is detained under § 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is consistent with longstanding practice. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

Indeed, agency regulations have long recognized that people like Petitioners are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the regulatory basis for the immigration court's jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. Specifically, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323.3

In sum, § 1226 governs this case. Section 1225 and its mandatory detention provision applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission and are now present and residing in the United States.

II. Petitioners Will Suffer Irreparable Harm in the Absence of a TRO.

In the absence of a TRO, Petitioners will continue to be unlawfully detained by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ. The three Petitioners have now been detained without a bond hearing for between forty-eight and seventy-five days.

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due

Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) ("Thus, it follows inexorably from our conclusion that the government's current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm."); *Maldonado Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a).")

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III. The Balance of Equities Tips in Petitioners' Favor and a TRO is in the Public Interest.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established that the public interest factor weighs in their favor because their claims assert that the new policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioners from obtaining bond "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

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IV. Prudential Exhaustion is Not Required.

Prudential exhaustion does not require Petitioners to be forced to endure the very harm they are seeking to avoid by appealing the IJ bond orders to the Board of Immigration Appeals and waiting many months for a decision from the BIA. "[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result . . ." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court may waive an exhaustion requirement when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action." *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001). "Such prejudice may result . . . from an unreasonable or indefinite time frame for administrative action." *Id.* at 147 (citing cases). Here, the exceptions regarding irreparable injury and agency delay apply and warrant waiving any prudential exhaustion requirement.

A. Futility

Futility is an exception to the prudential exhaustion requirement. Petitioners have been subjected to the new DHS policy issued on July 8, 2025 instructing all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The

DHS policy states it was issued "in coordination with the Department of Justice (DOJ)." *See* Ex. J. IJs function within the Executive Office for Immigration Review which is a component of the Department of Justice. Each Petitioner has been denied a bond hearing by an IJ based on this new policy. *See* Exs. C, E, H.

Further, the most recent unpublished BIA decision on this issue held that persons like Petitioners are subject to mandatory detention as applicants for admission. *See* Ex. K, BIA Decision, Case No. XXX-XXX-269, May 22, 2025. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioners are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31. *See also Maldonado Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 11 (in a case with identical facts and legal arguments, the Court stated it "was unconvinced that the administrative process would self-correct in light of the DHS Guidance Notice." The Court also noted "DHS's unequivocal commitment to the contested legal authority in [the] matter[.]") Under these facts, appeals to the BIA would be futile.

B. Irreparable injury

Irreparable injury is an exception to any prudential exhaustion requirement. Because Petitioners were denied bond and ordered mandatorily detained, each day

they remain in detention is one in which their statutory and constitutional rights have been violated. Similarly situated district courts have repeatedly recognized this fact. As one court has explained, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, "if Petitioner is correct on the merits of his habeas petition, then Petitioner has *already* been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be repaired." *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these points.[1]

Petitioners assert both statutory and constitutional claims and have a "fundamental" interest in a bond hearing, as "freedom from imprisonment is at the

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[1] *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v. Barr,* 434 F.Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr,* No. 20-CV-02917-JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr. 17, 2020); *Lopez Reyes v. Bonnar,* No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec. 24, 2018).

'core of the liberty protected by the Due Process Clause.'" *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

Moreover, the irreparable injury Petitioners face extends beyond a chance at physical liberty. There are several "irreparable harms imposed on anyone subject to immigration detention[.]" *Hernandez*, 872 F.3d at 995. These include "subpar medical and psychiatric care in ICE detention facilities." *Id.*

C. Agency delay

Third, the BIA's delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A court's ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the Ninth Circuit has explained, Supreme Court precedent "permits a court under certain prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.'" *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)). Of course, as noted above, Petitioners' interest here in physical liberty is a "fundamental" one. *Hernandez*, 872 F.3d at 993. Moreover, the Supreme Court has explained that "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this fundamental interest and the Supreme Court's admonition that only speedy relief is meaningful, the BIA takes over half a year in most cases to

adjudicate an appeal of a decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up in a detention facility with conditions "similar . . . to those in many prisons and jails" and separated from family. *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g.*, *Hernandez*, 872 F.3d at 996.

District courts facing situations similar to the one at issue here acknowledged that the BIA's months-long review is unreasonable and results in ongoing injury to the detained individual. *See, e.g.*, *Perez*, 445 F. Supp. 3d at 286.

Indeed, as one district judge observed, "the vast majority of . . . cases . . . have 'waived exhaustion . . . where several additional months may pass before the BIA renders a decision on a pending appeal [of a custody order]." *Montoya Echeverria*, 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301, at *5); *see also Hechavarria*, 358 F. Supp. 3d at 237–38 (citing *McCarthy* and BIA delays as reason to waive prudential exhaustion requirement).

Additionally, the issues presented in this petition are questions of statutory interpretation which are "unlikely to require agency consideration to generate a proper record to reach a proper decision." *Maldonado Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 11.

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CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' Application for a Temporary Restraining Order and Order to Show Cause.

DATED: August 25, 2025

Respectfully submitted,

By: s/ Niels W. Frenzen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 25, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by email to the following individuals:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Julian VASQUEZ GARCIA;
Nicolas JIATAZ PATZAN;
Alfredo VASQUEZ,
Petitioners,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Gregory J. ARCHAMBEAULT, Director, San Diego Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Jeremy CASEY, Warden, Imperial Regional Detention Facility; IMMIGRATION AND CUSTOMS ENFORCEMENT; and DEPARTMENT OF HOMELAND SECURITY,
Respondents.

Case No. 3:25-cv-02180-DMS-MMP

PETITIONERS' EXHIBITS IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

INDEX OF EXHIBITS