

1 Stacy Tolchin (CA SBN #217431)
2 Law Offices of Stacy Tolchin
3 776 E. Green St., Ste. 210
4 Pasadena, CA 91101
5 Telephone: (213) 622-7450
6 Facsimile: (213) 622-7233
7 Email: Stacy@Tolchinimmigraton.com

8 Counsel for Petitioners

9 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

10 Jose Guadalupe SIXTOS CHAVEZ;
11 Juan Manuel HERNANDEZ DIAZ;
12 and Jesus HERRERA TORRES;

13 Petitioners,

14 v.

15
16 Kristi NOEM, Secretary, Department
17 of Homeland Security; Pam BONDI,
18 Attorney General; EXECUTIVE
19 OFFICE FOR IMMIGRATION
20 REVIEW; Todd LYONS, Executive
21 Associate Director of ICE Enforcement
22 and Removal Operations (ERO);
23 Gregory J. ARCHAMBEAULT,
24 Director, San Diego Filed Office,
25 Immigration and Customs
26 Enforcement; Christopher J. LAROSE,
27 Warden, Otay Mesa Detention Center.

28 Respondents.

No. 3:25-cv-02325-CAB-SBC

PETITIONERS' SIXTOS
CHAVEZ AND HERRERA
TORRES' SECOND *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

Hon. Cathy Ann Bencivengo
United States District Judge

1 For the reasons explained in the accompanying Memorandum of
2 Points and Authorities, Petitioners hereby make this Ex Parte Application for
3 a Temporary Restraining Order and Order to Show Cause Re: Preliminary
4 Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. §
5 705. Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres are
6 in pending removal proceedings and are charged with having entered the
7 United States without inspection and appeared for bond hearings at the Otay
8 Mesa detention center. They were ineligible for bond based on the Board of
9 Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec.
10 216 (BIA 2025). Tolchin Dec. Exhs. K, L.

11 However, Petitioner are members of the certified class in *Maldonado*
12 *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), which issued a
13 declaratory judgment that the policy of denying bond to individuals who entered
14 without inspection is unlawful and declared that class members are entitled to a
15 bond hearing under 8 U.S.C. § 1226(a) as a matter of law. Despite the court's
16 orders of partial summary judgment and class certification in *Maldonado*
17 *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), the immigrations
18 courts once again denied bond due to lack of jurisdiction in reliance on *Matter of*
19 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As Petitioner's are class
20 members in *Maldonado Bautista* and the declaratory judgment applies,
21 Petitioners' Application for Temporary Restraining Order should be granted and
22 the Court should order that they be provided a bond hearing under § 1226(a).
23 Expedited relief is necessary as Petitioners have already been detained for more
24 than four months and separated from their families.

25 Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres
26 request that the Court issue a temporary restraining order and order to show
27 case re: preliminary injunction in the form of the proposed order submitted
28 concurrently with this Application. This Application is based on the Petition

1 for Writ of Habeas Corpus, Memorandum of Points and Authorities, and the
2 declaration and exhibits in support thereof.

3 Respondents were advised on January 5, 2026 that Petitioners
4 would be filing this ex parte application and of the contents of this
5 application. Tolchin Decl. ¶ 3. See Local Rule 83.3(g).

6 Counsel for Respondents is as follows:

7 Erin Dimpleby
8 Office of the U.S. Attorney, Southern District of California
9 880 Front Street, Room 6293
10 San Diego, CA 92101
11 Phone: 619-546-6987
12 Email: erin.dimpleby@usdoj.gov

13 Dated: January 6, 2026

/s/ Stacy Tolchin

14 Stacy Tolchin

1 **I. INTRODUCTION**

2 Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres seek a
3 Temporary Restraining Order that requires Respondents be bound by Petitioner
4 Sixtos' alternative bond amount of \$2000 issued by the immigration judge on
5 January 2, 2026, and that Petitioner Herrera Torres be entitled to a bond hearing
6 before the immigration judge within seven days.

7 This is Petitioners' second TRO. The Court initially denied their TRO and
8 Motion for Preliminary Injunction, finding that they are subject to mandatory
9 detention under 8 U.S.C. § 1225(b). *Chavez v. Noem*, No. 3:25-CV-02325-CAB-
10 SBC, 2025 WL 2730228, at *2 (S.D. Cal. Sept. 24, 2025); Dkt # 13. The
11 preliminary injunction decision is on appeal before the Ninth Circuit, and is being
12 held in abeyance for the Ninth Circuit to consider *Rodriguez Vazquez v. Bostock*,
13 No. 25-6842 (9th Cir.). Tolchin Dec, Exh. H. *See Sixtos Chavez v. Noem*, 25-7077
14 (9th Cir).

15 However, Petitioners are class members in *Maldonado Bautista v.*
16 *Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), which on December 18, 2025
17 issued a final judgment and amended class certification, declaring that noncitizens
18 who entered without inspection are entitled to a bond hearing under 8 U.S.C. §
19 1226(a). Dkt # 93, 94. Tolchin Dec. Exh. I. Petitioners are class members and
20 therefore that judgment applies. Further, it is the position of Respondents in other
21 parallel litigation that *Maldonado Bautista* requires bond hearings under § 1226(a)
22 to class members. Tolchin Dec. Exh. J.

23 As such, the Court should grant this second Application for TRO and order
24 that Petitioner Sixtos' alternative bond amount of \$2000 apply, and that Petitioner
25 Herrera Torres be entitled to a bond hearing before the immigration judge within
26 seven days.

1 **II. STATEMENT OF FACTS**

2 Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres are two
3 individuals who were arrested on August 22, 2025 by immigration officials and are
4 now detained at the Otay Mesa ICE Processing Center in San Diego, California.
5 They were placed into removal proceedings. Tolchin Dec. Exhs. A, D. Both were
6 charged with having entered the United States without inspection. 8 U.S.C. §
7 1182(a)(6)(A)(i). Tolchin Dec. Exhs. A, D.

8 Both Petitioners have been residing in the United States long term and have
9 established family and community ties, including United States citizen children.
10 Tolchin Dec. Exhs. C and E.

11 Petitioners requested bond hearing before an immigration judge. The
12 immigration judge initially granted a bond of \$7500 to Petitioner Jose Guadalupe
13 Sixtos Chavez. Tolchin Dec. Exh. B. But after the decision was entered, the Board
14 issued *Matter of Yajure Hurtado. Id.* As a result, the judge issued a written
15 decision denying Petitioner Sixtos Chavez bond due to lack of jurisdiction. Tolchin
16 Dec. Exh. B. Petitioner Jesus Herrera Torres's bond hearing was denied on
17 September 17, 2025 based on *Matter of Yajure Hurtado*. Tolchin Dec. Exh. D.

18 Petitioners filed a petition for writ of habeas corpus before this Court on
19 September 6, 2025. Dkt # 1. They also filed an Ex Parte Application for a
20 Temporary Restraining Order. Dkt # 2. On September 24, 2025, the Court denied
21 the application without a hearing, rendering the order unappealable. Dkt # 8.
22 Petitioners then filed a motion for preliminary injunction with the Court, which
23 was denied for the same reasons on November 6, 2025. Dkt # 13.

24 Petitioners appealed that decision to the Ninth Circuit. *See Sixtos Chavez v.*
25 *Noem*, 25-7077 (9th Cir). Their case is being held in abeyance for the Ninth Circuit
26 to consider *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.). Tolchin Dec.
27 Exh. H.

28 On December 18, 2025, the court in *Maldonado Bautista v. Santacruz*, 5:25-

1 CV-01873-SSS-BFM (C.D. Cal.), issued a final judgment and amended class
2 certification, declaring that noncitizens who entered without inspection are entitled
3 to a bond hearing under 8 U.S.C. § 1226(a). Dkt # 93, 94. Tolchin Dec. Exh. I..

4 The class is defined as:

5 All noncitizens in the United States without lawful status who (1) have
6 entered or will enter the United States without inspection; (2) were not or
7 will not be apprehended upon arrival; and (3) are not or will not be subject
8 to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time
9 the Department of Homeland Security makes an initial custody
determination.

10 *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt #93.
11 Tolchin Dec. Exh. I. The Court issued a declaratory judgment applying to the
12 nationwide class that noncitizens who entered the United States without inspection
13 are not subject to mandatory custody based on 8 U.S.C. §1225(b)(2), and that they
14 are eligible for bond hearings under 8 U.S.C. §1226(a). Tolchin Dec. Exh. I.

15 Petitioners sought new bond hearings before the immigration judge in light
16 of these rulings. On December 30, 2025, the immigration judge denied bond due to
17 lack of jurisdiction for Petitioner Herrera Torres. Tolchin Dec. Exh. K.

18 On December 31, 2025, the immigration judge denied bond due to lack of
19 jurisdiction but issued an alternative bond order for Petitioner Sixtos Chavez.
20 Tolchin Dec. Exh. L.

21 **III. ARGUMENT**

22 The requirements for granting a Temporary Restraining Order are
23 “substantially identical” to those for granting a preliminary injunction. *Stuhlberg*
24 *Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

25 Petitioners must demonstrate that (1) they are likely to succeed on the merits
26 of their claims; (2) they are likely to suffer irreparable harm in the absence of
27 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
28

1 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
2 (2008). A sliding scale test may be applied and an injunction should be issued
3 when there is a stronger showing on the balance of hardships, even if there are
4 “serious questions on the merits ... so long as the plaintiff also shows a likelihood
5 of irreparable harm and that the injunction is in the public interest.” *All. for the*
6 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
7 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
8 2024).

9 Petitioners satisfy the criteria and a TRO should be granted.

10
11 A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF
12 THEIR CLAIMS.

13 Petitioners are likely to succeed on their claims that their ongoing detention
14 by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before
15 an immigration judge is unlawful. Regardless of the Court’s denial of their prior
16 Application for TRO and Motion for Preliminary Injunction, the classwide
17 declaratory judgment issued in *Maldonado Bautista v. Santacruz* applies and
18 requires that Petitioners are entitled to bond under § 1226(a).

19 The court’s December 18, 2025 orders in *Maldonado Bautista v. Santacruz*,
20 5:25-CV-01873-SSS-BFM (C.D. Cal.), (Tolchin Dec. Exh. I), expressly invalidate
21 the argument that §1225(b)(2) applies to those who entered without inspection and
22 applies to the nationwide class. The court rejected the argument that noncitizens
23 who entered the United States without inspection are ineligible for bond based on 8
24 U.S.C. §1225(b)(2), and found that they were eligible for bond hearings under 8
25 U.S.C. §1226(a). *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM
26 (C.D.Cal.), Dkt #93. The Court found that those who entered the United States
27 without inspection were not applicants for admission under 8 U.S.C. §1225(b)(2).

28 The Court stated:

1 In response, Respondents argue Petitioners are “applicants for admission”
2 because § 1225(b)(2) is a “catchall provision” that applies to all applicants
3 for admission not covered by § 1225(b)(1). [Opp. at 21, (citing *Jennings*,
4 583 U.S. at 287)]. According to Respondents, “applicants for admission”
5 “fall into one of two categories, those covered by § 1225(b)(1) and those
6 covered by § 1225(b)(2).” [Opp. at 21 (citing *Jennings*, 583 U.S. at 297)].
7 Such an argument relies on the assumption that “applicants for admission”
8 encompasses *all* noncitizens coming into and already in the United States. If
9 this assumption is true, then Respondents are correct. But this cannot be
10 correct.

11 Respondents’ argument is at odds with the plain language of the INA.
12 Neither party contends with the definition section of the INA, which readily
13 resolves this dispute over statutory interpretation.

14 Dkt #93 at 15 (Exh. I). This is a rejection of the Board’s decision in *Matter of*
15 *Yajure Hurtado*, 29 I&N Dec.216, 229 (BIA 2025) (“The Immigration Judge
16 properly held that he lacked authority to hear the respondent's request for a bond as
17 the respondent is an applicant for admission and is subject to mandatory detention
18 under section 235(b)(2)(A) of the INA, 8 U.S.C. §1225(b)(2)(A)...”). As such, the
19 legal ruling that a noncitizen who entered without inspection is subject to
20 §1225(b)(2) was rejected in *Maldonado Bautista*.

21 That legal ruling now applies nationwide to all noncitizens who entered
22 without inspection and meet the class definition which was certified in *Maldonado*
23 *Bautista*. Tolchin Dec. Exh. I. The class is defined as:

24 All noncitizens in the United States without lawful status who (1) have
25 entered or will enter the United States without inspection; (2) were not or
26 will not be apprehended upon arrival; and (3) are not or will not be subject
27 to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time
28 the Department of Homeland Security makes an initial custody
determination.

Maldonado Bautista v. Santacruz, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt #93.
Tolchin Dec. Exh. I. Petitioners are members of this class, as they are alleged to
have entered the United States without inspection in the Notice to Appear and are

1 not otherwise precluded from bond.

2 Further, the December 18, 2025 consolidated order confirms that the court’s
3 order on partial summary judgment applies to the nationwide class. The court
4 stated explicitly “[w]hen considering class certification with the Court’s reasoning
5 as to the proper interpretation of the INA, the Court extends the same declaratory
6 relief and vacatur granted to Petitioners to the Bond Eligible Class as a whole.”

7 Dkt #93. As such, the court’s ruling on partial summary judgment that noncitizens
8 who entered without inspection are eligible for bond hearings before the
9 immigration judge under §1226(a) applies nationwide. *Id.*

10 Therefore, the continued denials relying on *Yajure Hurtado* after December
11 18, 2025 are legally incorrect. This is acknowledged by Respondents themselves,
12 who agree that classmembers are entitled to bond under § 1226(a). Tolchin Dec.
13 Exh. J . It is also acknowledged by this Court which has found that as a matter of
14 law, classmembers are entitled to bond hearings based on the *Maldonado Bautista*
15 class certification and declaratory judgment. *Ramirez Caracosa v. Noem*, No.
16 25CV3446-LL-MMP, 2026 WL 26061, at *2 (S.D. Cal. Jan. 5, 2026) (“The
17 *Bautista* court has entered final judgement as to the Bond Eligible Class. *Bautista*,
18 ECF No. 94. Accordingly, Respondents acknowledge that Petitioner is detained
19 under 8 U.S.C. § 1226(a) and are entitled to an order from this Court directing a
20 bond hearing be held pursuant to 8 U.S.C. § 1226(a).” ECF No. 7. The Court
21 agrees.”); *Ramirez Caracosa v. Noem*, No. 25CV3446-LL-MMP, 2026 WL 26063,
22 at *2 (S.D. Cal. Jan. 5, 2026) (same); *Acuna v. Larose*, No. 25CV3464-LL-KSC,
23 2026 WL 30838, at *2 (S.D. Cal. Jan. 5, 2026) (same); *Farah v. Casey*, No. 25-
24 CV-3858-AGS-VET, 2026 WL 16884, at *1 (S.D. Cal. Jan. 2, 2026) (same).

1 B. PETITIONERS WILL SUFFER IRREPARABLE HARM IN THE
2 ABSENCE OF A TRO.

3 In the absence of a TRO, Petitioners will continue to be unlawfully detained
4 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.
5 Petitioners have now been detained for more than four months.

6 “Freedom from imprisonment—from government custody, detention, or
7 other forms of physical restraint—lies at the heart of the liberty” that the Due
8 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
9 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
10 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
11 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
12 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
13 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
14 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
15 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
16 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
17 government's current policies [which fail to consider financial ability to pay
18 immigration bonds] are likely unconstitutional—and thus that members of the
19 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
20 the absence of the injunction—that Plaintiffs have also carried their burden as to
21 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
22 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
23 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
24 Petitioners’ continued detention without an initial bond hearing would cause
25 immediate and irreparable injury, as this violates statutory rights afforded under §
26 1226(a).”)

27 C. THE BALANCE OF EQUITIES TIPS IN PETITIONERS’ FAVOR
28 AND A TRO IS IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered

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

18
19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court should grant Petitioners’ Application
21 for a Temporary Restraining Order and Order to Show Cause and order that
22 Petitioners Jose Guadalupe Sixtos Chavez be released on bond based on the
23 immigration judge’s alternative order of a \$2000 bond, and that Petitioner Herrera
24 Torres be provided an individualized bond hearing before an immigration judge
25 pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO, with instructions
26 that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider
27 bond.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 6, 2026

Respectfully Submitted,
S/Stacy Tolchin
Stacy Tolchin
Law Offices of Stacy Tolchin
776 E. Green St., Ste. 210
Pasadena, CA 91101
Telephone: (213) 622-7450
Facsimile: (213) 622-7233
Email:
Stacy@Tolchinimmigration.com

Counsel for Petitioner