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DETAINED

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **EASTERN DIVISION**

11 **Yanela Ghilary Huaman Villanueva,**

12 Petitioner,

13 vs.

14
15 **Ron Murray**, Warden Mesa Verde ICE
16 Processing Center; **Polly Kaiser**, Field Office
17 Director, U.S. Immigration and Customs
18 Enforcement; **Todd M. Lyons**, Acting Director,
19 U.S. Immigration and Customs Enforcement;
20 **Kristi Noem**, Secretary of United States
21 Department of Homeland Security; **Pam Bondi**,
22 Attorney General of the United States, in their
23 official capacities,

24 Respondents.

Case No.:

PETITIONERS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION

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1 For the reasons explained in the accompanying Petition for Writ of Habeas Corpus, Petitioner
2 hereby makes this *Ex Parte* Application for a Temporary Restraining Order and Order to Show
3 Cause Re: Preliminary Injunction, pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C.
4 §705. Petitioner entered the United States on December 16, 2022 and has been residing here since.
5 She was arrested when she appeared voluntarily at an Immigration and Customs Enforcement
6 (ICE) check-in in Bakersfield, in compliance with ICE's instructions. She was charged in removal
7 proceedings with having entered the United States without inspection and appeared for a bond
8 hearing at the Adelanto detention center. In that proceeding, the immigration judge found that she
9 lacked jurisdiction to consider bond redetermination hearings based on a new directive issued by
10 the Department of Homeland Security (DHS). The refusal to hold a bond hearing violates the
11 Immigration and Nationality Act (INA) and Due Process Clause. Petitioner now seeks a temporary
12 restraining order requiring that the immigration judge hold a bond hearing. Expedited relief is
13 necessary to prevent irreparable injury before a hearing on a preliminary injunction may be held.
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17 Petitioner requests that the Court issue a temporary restraining order and order to show cause
18 re: preliminary injunction in the form of the proposed order submitted concurrently with this
19 Application. This Application is based on the Petition for Writ of Habeas Corpus and the declaration
20 and exhibits in support of this Application.
21

22 I. INTRODUCTION

23
24 Petitioner seeks a Temporary Restraining Order that requires Respondents to release her
25 from custody or to provide her with an individualized bond hearing before an immigration judge
26 pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

27 Although Petitioner was present and residing in the United States for two and a half years at
28 the time of her immigration arrest, she was subjected to a new DHS policy issued on July 8, 2025

1 which instructs all ICE employees to consider anyone arrested within the United States and charged
2 with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an “applicant for admission” under
3 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The new DHS policy was
4 issued “in coordination with the Department of Justice (DOJ).” Exh. E. Petitioner is now detained
5 at the Mesa Verde ICE Processing Center and has been denied a bond hearing by an IJ based on this
6 new policy. Exh. A.

8 The denial of a bond hearing to Petitioner and her ongoing detention on the basis of the new
9 DHS policy violates the plain language of the INA, 8 U.S.C. § 1101 *et seq.* See *Lazaro Maldonado*
10 *Bautista et al v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM, Dkt # 14 (C.D. Ca. Jul. 28,
11 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at 16 (W.D. Wash.
12 Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 202 WL 1869299, at *9 (D. Mass. July
13 7, 2025)

15 Despite DHS policy’s assertions to the contrary, 8 U.S.C. § 225(b)(2)(A) does not apply to
16 individuals like Petitioner who previously entered and is now residing in the United States. Instead,
17 such individuals are subject to a different statute, § 1226(a), that allows for release on bond or
18 conditional parole. Section 1226(a) expressly applies to people who, like Petitioner, are charged as
19 removable for having entered the United States without inspection and being present without
20 admission. Respondents’ new legal interpretation set forth in the policy is plainly contrary to the
21 statutory framework and contrary to decades of agency practice applying § 1226(a) to people who,
22 like Petitioner, are present within the United States. Respondents’ new policy and the resulting
23 ongoing detention of Petitioner without a bond hearing is depriving Petitioner of statutory and
24 constitutional rights and unquestionably constitutes irreparable injury. Petitioner therefore seeks a
25 Temporary Restraining Order enjoining Respondents from continuing to detain her unless
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1 Petitioner is provided an individualized bond hearing before an immigration judge pursuant to 8
2 U.S.C. § 1226(a) within seven days of the TRO. Petitioner also seeks an Order prohibiting
3 Respondents from relocating Petitioner outside of the Central District pending final resolution of
4 this litigation.
5

6 II. STATEMENT OF FACTS

7 Petitioner Yanela Ghilary Huaman Villanueva is a citizen of Peru who first entered the
8 United States on December 16, 2022. She has since resided in the United States, for two and a half
9 years. On July 2, 2025, she was arrested by immigration authorities as she voluntarily complied
10 with an ICE directive to appear in-person for a routine check-in. Petitioner is now detained at the
11 Mesa Verde ICE Processing Center in Bakersfield, California and has been placed into removal
12 proceedings. Exh. D. She was charged with having arrived in the United States at a time or place
13 other than as designated by the Attorney General and lacking possession of a valid unexpired
14 immigrant visa, reentry permit, border crossing card, or other valid entry document required by
15 the INA. 8 U.S.C. § 1182(a)(6)(A)(i) – (7)(a)(1). Exh. D. Petitioner requested a bond hearing before
16 an immigration judge. On August 18, 2025, the immigration judge denied Petitioner’s request for
17 a bond hearing, finding that under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the immigration
18 court lacked jurisdiction to consider that request. Petitioner has now been detained in immigration
19 custody without a right to bond for approximately one month.
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23 III. ARGUMENT

24 The requirements for granting a Temporary Restraining Order are “substantially identical”
25 to those for granting a preliminary injunction. *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240
26 F.3d 832, 839 n.7 (9th Cir. 2001). Petitioner must demonstrate that (1) she is likely to succeed on
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1 the merits of her claim; (2) she is likely to suffer irreparable harm in the absence of preliminary
2 relief; (3) the balance of equities tips in her favor; and (4) an injunction is in the public interest.
3 *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). A sliding scale test may be applied and an
4 injunction should be issued when there is a stronger showing on the balance of hardships, even if
5 there are “serious questions on the merits ... so long as the plaintiff also shows a likelihood of
6 irreparable harm and that the injunction is in the public interest.” *All. for the Wild Rockies v.*
7 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-Lolo-Bitterroot Citizen Task Force*
8 *v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024). Petitioner satisfies the criteria, and a TRO should
9
10 be granted.

11
12 A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HER CLAIM

13 “Likelihood of success on the merits is a threshold inquiry and is the most important factor”
14 in a temporary restraining order or preliminary injunction analysis. *Simon v. City & Cnty. Of San*
15 *Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (quoting *Env’t Prot. Info. Ctr. V. Carlson*, 968 F.3d
16 985, 989 (9th Cir. 2020)). Petitioner is likely to succeed on her claim that her ongoing detention by
17 Respondents under 8 U.S.C. § 1225(b)(2) and the denial of a bond hearing before an immigration
18 judge is unlawful. The text, context, and legislative and statutory history of the Immigration and
19 Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs her detention.
20
21

22 1. The Text Of § 1226(a) and § 1225(b)(2) Demonstrate That Petitioner Is Not Subject To
23 Mandatory Detention.

24 First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. By its
25 own terms, § 1226(a) applies to anyone who is detained “pending a decision on whether the
26 [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226 explicitly
27 confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. §
28

1 1227(a), but also noncitizens, such as Petitioner, who are inadmissible pursuant to 8 U.S.C. §
2 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories
3 of noncitizens from being released—including certain categories of inadmissible noncitizens—and
4 subjects them instead to mandatory detention. See, e.g., § 1226(c)(1)(A), (C).

5
6 If Respondents' position that § 1226(a) did not apply to inadmissible noncitizens such as
7 Petitioner who is present without admission in the United States was correct, there would be no
8 reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute
9 would only have needed to address people who are deportable for certain offenses. Notably, recent
10 amendments to § 1226 dramatically reinforce that this section covers people like Petitioner who
11 DHS alleges to be present without admission. The Laken Riley Act (LRA) added language to §
12 1226 that directly references people who are inadmissible because they are present without
13 admission. See LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA
14 amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground
15 for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid
16 documentation to enter the United States) and who have been arrested, charged with, or convicted
17 of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. §
18 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that §
19 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is *only*
20 charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of
21 § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. See *Rodriguez*
22 *Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at*14 (W.D. Wash. June 6,
23 2025), explaining these amendments explicitly provide that § 1226(a) covers people like Petitioner
24 because the “‘specific exceptions’ [in the LRA] for inadmissible noncitizens who are arrested,
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1 charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens
2 not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz*
3 *Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government
4 argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention
5 under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238,
6 at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)
7 (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
8 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not
9 otherwise cover the excepted conduct).

10
11
12 Despite the clear statutory language, DHS issued a new policy on July 8, 2025, instructing
13 all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are
14 present without admission - to be an "applicant for admission" and therefore subject to mandatory
15 detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See* Ex. E, "Interim Guidance Regarding
16 Detention Authority for Applicants for Admission", ICE, July 8, 2025. The new policy was
17 implemented "in coordination with" DOJ. *Id.* And on September 5, 2025, in a decision from the
18 Board of Immigration Appeals (BIA), the Executive Office of Immigration Review (EOIR)
19 adopted this same position. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner
20 has been denied a bond hearing before an IJ pursuant to this new policy. Ex. A.

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22
23 The new policy is also inconsistent with the canon against superfluities. Under this "most
24 basic [of] interpretive canons, . . . '[a] statute should be construed so that effect is given to all of its
25 provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v.*
26 *United States*, 556 U.S. 303, 314(2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542
27 U.S. 88, 101(2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("[C]ourt[s]

1 ‘must interpret the statute as a whole, giving effect to each word and making every effort not to
2 interpret a provision in a manner that renders other provisions of the same statute inconsistent,
3 meaningless or superfluous.’” (citation omitted)). But by concluding that the mandatory detention
4 provision of §1225(b)(2) applies to Petitioner, DHS and EOIR violate this rule.
5

6 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read to apply to
7 everyone who is in the United States “who has not been admitted.” Section 1226(a) covers those
8 who are present within and residing within the United States and who are not at the border seeking
9 admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, §
10 1225 is concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S. 281, 297
11 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the Government must determine
12 whether a[] [noncitizen] seeking to enter the country is admissible,” *id.* at 287. Paragraphs (b)(1)
13 and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns
14 “expedited removal of inadmissible arriving [noncitizens]”—encompasses only the “inspection” of
15 certain “arriving” noncitizens and other recent entrants the Attorney General designates, and only
16 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C. §
17 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to
18 an examining immigration officer or do not have adequate documents to enter the United States.
19 Thus, subsection (b)(1)’s text demonstrates that it is focused only on people arriving at a port of
20 entry or who have recently entered the United States and not those already residing here. Section
21 1225(b)(1)(A)(iii)(II) clarifies that “[a]n alien described in this clause is an alien who is not described
22 in subparagraph (F), who has not...been physically present in the United States continuously for the
23 2-year period.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Because the government’s own records make
24 clear that Petitioner entered the United States more than two years ago, 8 U.S.C. § 1225(b)(1) does
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1 not apply to her.

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

19 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of noncitizens] *arriving*
20 from contiguous territory,” i.e. those who are “*arriving* on land.” 8 U.S.C. § 1225(b)(2)(C)
21 (emphasis added). This language further underscores Congress’s focus in § 1225 on those who are
22 arriving into the United States—not those already residing here. Similarly, the title of § 1225 refers
23 to the “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*, 599 U.S. 110,
24 120–21 (2023) (emphasis added) (relying on section title to help construe statute).

27 Finally, the entire statute is premised on the idea that an inspection occurs near the border and
28 shortly after arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8 U.S.C.

1 § 1225(b)(2)(A), (b)(4), or officer conducting “inspection[s]” of people “arriving in the United
2 States,” *id.* §1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015)
3 (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”).
4

5 The new DHS and EOIR policy and the IJ orders denying bond to Petitioner on this basis
6 ignore all this and instead focus on the definition of “applicant for admission” at § 1225(a)(1) (*see*
7 Exh. A) which defines an “applicant for admission” as a person who is “present in the United States
8 who has not been admitted or who arrives in the United States,” 8 U.S.C. § 1225(a)(1). But as the
9 Ninth Circuit has explained, “when deciding whether language is plain, [courts] must read the
10 words in their context and with a view to their place in the overall statutory scheme.” *San Carlos*
11 *Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted).
12 Here, that context underscores that the definition in (a)(1) is limited by other aspects of the statute
13 to those who undergo an initial inspection at or near a port of entry shortly after arrival—and that it
14 does not apply to those who are arrested in the interior of the United States, months or years or
15 decades later.
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18 Significantly, in deeming that all noncitizens who entered without inspection are necessarily
19 encompassed by the mandatory detention provision at § 1225(b)(2), the DHS and EOIR policy
20 ignores that the provision does not simply address applicants for admission. Instead, the language
21 “applicant for admission” in (b)(2)(A) is further qualified by clarifying the subparagraph applies
22 only to those “seeking admission”—in other words, those who have applied to be admitted or
23 paroled. The new policy and the IJ’s implementation of the policy ignores this text, just as it ignores
24 the statutory language in § 1226 that expressly encompasses persons who have entered the United
25 States and are present without admission. Thus, Petitioner prevails regardless of the scope of §
26 1225(a)(1)’s definition of “applicant for admission.” This is because classification as an “applicant
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1 for admission,” is not sufficient to render someone subject to mandatory detention under §
2 1225(b)(2). The “applicant for admission” must *also* be “seeking admission,” and that is clearly not
3 the case for Petitioners.

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5 2. The Legislative History Further Supports the Application of § 1226(a) to Petitioner’s
6 Detention

7 The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
8 (IIRIRA), Pub. L. No. 104–208, Div. C, §§ 302–03 110 Stat. 3009–546, 3009–582 to 3009–583,
9 3009–585, also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies
10 to Petitioners. In passing the Act, Congress was focused on the perceived problem of recent arrivals
11 to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at
12 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about
13 subjecting all people present in the United States after an unlawful entry to mandatory detention if
14 arrested. This is important, as prior to IIRIRA, people like Petitioner were not subject to mandatory
15 detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for
16 deportation proceedings, which applied to all persons physically present within the United States).
17 Had Congress intended to make such a monumental shift in immigration law (potentially subjecting
18 millions of people to mandatory detention), it would have explained so or spoken more clearly. *See*
19 *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the
20 matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely “restates
21 the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to
22 arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States.*” H.R.
23 Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

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27 3. The Record and Longstanding Agency Practice Reflect that § 1226 Governs Petitioner’s
28 Detention

DHS’s long practice of considering people like the Petitioner as detained under §1226(a)

1 further supports this reading of the statute. Typically, in cases like Petitioner’s, DHS issues a Form
2 I-286, Notice of Custody Determination, or Form I-200 stating that the person is detained under §
3 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is consistent with
4 longstanding practice. For decades, and across administrations, DHS has acknowledged that §
5 1226(a) applies to individuals who are present without admission after entering the United States
6 unlawfully, but who were later apprehended within the United States long after their entry. Such a
7 longstanding and consistent interpretation “is powerful evidence that interpreting the Act in [this]
8 way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J.,
9 dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part
10 on “over 60 years” of government interpretation and practice to reject government’s new proposed
11 interpretation of the law at issue). Indeed, agency regulations have long recognized that people like
12 Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
13 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In fact, EOIR
14 confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing
15 immigration courts and implementing § 1226 decades ago. Specifically, EOIR explained that
16 “[d]espite being applicants for admission, [noncitizens] who are present without having been
17 admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be
18 eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323.3

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23 In sum, § 1226 governs this case. Section 1225 and its mandatory detention provision
24 apply only to individuals arriving in the United States as specified in the statute, while § 1226
25 applies to those who have previously entered without admission and are now present and residing
26 in the United States.
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1 B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A TRO.

2 Petitioner asserts that she possesses a protected liberty interest under the Due Process
3 Clause, which prohibits the federal government from depriving any individual of “life, liberty, or
4 property, without due process of law.” U.S. Const. Amend. V. This protection extends to
5 noncitizens facing detention since “[i]n our society liberty is the norm, and detention prior to trial
6 or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755
7 (1987).
8

9
10 The Supreme Court has long recognized that the deportation of noncitizens already in
11 the United States without a hearing before a neutral arbiter violates due process. *Yamataya v.*
12 *Fisher*, 189 U.S. 86, 101 (1903) (reasoning that, to “bring them in harmony with the constitution,”
13 the immigration statutory regime requires there be a hearing before a noncitizen is deported); *Wong*
14 *Yang Sung v. McGrath*, 339 U.S. 33, 49, modified, 339 U.S. 908 (1950) (finding that “without
15 such a hearing, there would be no constitutional authority for deportation”); *Zadvydas v. Davis*,
16 533 U.S. 678, 693 (2001) (ruling that the Due Process Clause protects “all ‘persons’ within the
17 United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary
18 or permanent.” Immigration detentions do not meet the standards of due process when they do not
19 further the government’s legitimate goals of ensuring the noncitizen’s appearance at removal
20 proceedings and preventing harm to the community. *Id.* Nothing in Petitioner’s record indicates
21 that she is a flight risk or a danger to the community. Because Petitioner was not even afforded the
22 opportunity to prove she is not a flight risk nor a danger to society, her continued confinement
23 violates her due process rights.
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In the absence of a TRO, Petitioner will continue to be unlawfully detained by

1 Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ, in violation of her
2 Due Process rights. Petitioner has now been without a bond hearing for two months. “Freedom
3 from imprisonment—from government custody, detention, or other forms of physical restraint—
4 lies at the heart of the liberty” that the Due Process Clause protects. *Id.* Detention constitutes “a
5 loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181
6 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom.*
7 *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It “is well established that the deprivation
8 of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
9 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-
10 02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (“Thus,
11 it follows inexorably from our conclusion that the government’s current policies [which fail to
12 consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that
13 members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in
14 the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable
15 harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv- 01873-SSS-BFM (C.D. Calif.
16 July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that
17 the potential for Petitioners’ continued detention without an initial bond hearing would cause
18 immediate and irreparable injury, as this violates statutory rights afforded under §1226(a).”)
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25 C. THE BALANCE OF EQUITIES TIPS IN PETITIONER’S FAVOR, AND A TRO IS IN
26 THE PUBLIC INTEREST

27 Because the government is a party, these two factors are considered together. *Nken v. Holder*,
28 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in her

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

14 D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED

15 Prudential exhaustion does not require Petitioner to be forced to endure the very harm she is
16 seeking to avoid by appealing the IJ bond orders to the Board of Immigration Appeals and waiting
17 many months for a decision from the BIA. “[T]here are a number of exceptions to the general rule
18 requiring exhaustion, covering situations such as where administrative remedies are inadequate or
19 not efficacious, . . . [or] irreparable injury will result . . .” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th
20 Cir. 2004) (citation omitted). In addition, a court may waive the exhaustion requirement when
21 “requiring resort to the administrative remedy may occasion undue prejudice to subsequent
22 assertion of a court action.” *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), *superseded by*
23 *statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001). “Such
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1 prejudice may result . . . from an unreasonable or indefinite time frame for administrative action.”
2 *Id.* At 147 (citing cases). Here, the exceptions regarding irreparable injury and agency delay apply
3 and warrant waiving any prudential exhaustion requirement.
4

5 1. Futility

6 Futility is an exception to the prudential exhaustion requirement. Petitioner has been
7 subjected to the new DHS policy issued on July 8, 2025 instructing all ICE employees to consider
8 anyone arrested within the United States and charged with being inadmissible under §
9 1182(a)(6)(A)(i) to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore
10 subject to mandatory detention. The DHS policy states it was issued “in coordination with the
11 Department of Justice (DOJ).” *See* Exh. A. IJs function within the Executive Office for
12 Immigration Review which is a component of the Department of Justice. Petitioner has been denied
13 a bond hearing by an IJ based on this new policy. *See* Exh. A. Further, a September 5, 2025 BIA
14 decision on this issue held that persons like Petitioner are subject to mandatory detention as
15 applicants for admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Finally, in the
16 *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has
17 affirmed its position that individuals like Petitioner are applicants for admission and subject to
18 detention under §1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-
19 05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31. *See also* *Maldonado Bautista et al. v.*
20 *Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting
21 Temporary Restraining Order, Dkt. 14 at 11 (in a case with identical facts and legal arguments, the
22 Court stated it “was unconvinced that the administrative process would self-correct in light of the
23 DHS Guidance Notice.” The Court also noted “DHS’s unequivocal commitment to the contested
24 legal authority in [the] matter[.]”) Under these facts, appeals to the BIA would be futile.
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1 2. Irreparable injury

2 Irreparable injury is an exception to any prudential exhaustion requirement. Because Petitioner was
3 denied bond and ordered mandatorily detained, each day she remains in detention is one in which
4 her statutory and constitutional rights have been violated. Similarly situated district courts have
5 repeatedly recognized this fact. As one court has explained, “because of delays inherent in the
6 administrative process, BIA review would result in the very harm that the bond hearing was
7 designed to prevent: prolonged detention without due process.” *Hechavarria v. Whitaker*, 358 F.
8 Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, “if Petitioner is
9 correct on the merits of [her] habeas petition, then Petitioner has *already* been unlawfully deprived
10 of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained without a
11 [lawful] bond hearing would cause [her] harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-
12 CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and
13 brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018)
14 (similar). Other district courts have echoed these points.¹

15 Petitioner asserts both statutory and constitutional claims and has a “fundamental” interest in
16 a bond hearing, as “freedom from imprisonment is at the ‘core of the liberty protected by the Due
17 Process Clause.’” *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80

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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)

1 (1992)). Moreover, the irreparable injury Petitioner faces extends beyond a chance at physical
2 liberty. There are several “irreparable harms imposed on anyone subject to immigration detention[.]”
3 *Hernandez*, 872 F.3d at 995. These include “subpar medical and psychiatric care in ICE detention
4 facilities.” *Id.* See also *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (identifying the ability to live at
5 home, work, and “be with family and friends and to form the other enduring attachments of normal life”
6 as fundamental privileges denied to individuals held in detention).
7

8 3. Agency Delay

9 The BIA’s delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A
10 court’s ability to waive exhaustion based on delay is especially broad here given the interests at
11 stake. As the Ninth Circuit has explained, Supreme Court precedent “permits a court under certain
12 prescribed circumstances to excuse exhaustion where ‘a claimant’s interest in having a particular
13 issue resolved promptly is so great that deference to the agency’s judgment [of a lack of finality] is
14 inappropriate.’” *Klein v. Sullivan*, 978 F.2d 520, (9th Cir. 1992) (alteration in original) (quoting
15 *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)). Of course, as noted above, Petitioner’s interest
16 here in physical liberty is a “fundamental” one. *Hernandez*, 872 F.3d at 993. Moreover, the
17 Supreme Court has explained that “[r]elief [when seeking review of detention] must be speedy if it
18 is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).
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21 Despite this fundamental interest and the Supreme Court’s admonition that only speedy
22 relief is meaningful, the BIA takes over half a year in most cases to adjudicate an appeal of a
23 decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up
24 in a detention facility with conditions “similar . . . to those in many prisons and jails” and separated
25 from family. *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); see also, e.g., *Hernandez*, 872 F.3d
26 at 996.
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1 District courts facing situations similar to the one at issue here acknowledged that the BIA's
2 months-long review is unreasonable and results in ongoing injury to the detained individual. *See,*
3 *e.g., Perez*, 445 F. Supp. 3d at 286. Indeed, as one district judge observed, “the vast majority of . . .
4 cases . . . have ‘waived exhaustion . . . where several additional months may pass before the BIA
5 renders a decision on a pending appeal [of a custody order].” *Montoya Echeverria*, 2020 WL
6 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301, at *5); *see also Hechavarria*, 358 F.
7 Supp. 3d at 237–38 (citing *McCarthy* and BIA delays as reason to waive prudential exhaustion
8 requirement).

9
10 Additionally, the issues presented in this petition are questions of statutory interpretation
11 which are “unlikely to require agency consideration to generate a proper record to reach a proper
12 decision.” *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
13 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 11.
14

15 16 17 E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

18 Finally, nothing in the Immigration and Nationality Act precludes this Court from granting
19 the TRO.

20
21 The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial review of all
22 questions of law . . . including interpretation and application of constitutional and statutory
23 provisions, arising from any action taken . . . to remove an alien from the United States” to the
24 appropriate federal court of appeals, does not apply because that section applies only to review of
25 removal orders, and Petitioners do not seek review of orders of removal but of custody. *Maldonado*
26 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order
27 Granting Temporary Restraining Order, Dkt. 14 at 4-5.
28

1 The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear “any cause or
2 claim by or on behalf of any alien arising from the decision or action by the Attorney General to
3 commence proceedings, adjudicate cases, or execute removal orders against any alien under this
4 chapter.” The Supreme Court previously characterized § 1252(g) as a narrow provision, applying
5 “only to three discrete actions that the Attorney General may take: her ‘decision or action’ to
6 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-*
7 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme
8 Court found it “implausible that the mention of *three discrete events* along the road to deportation
9 was a shorthand way to referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis
10 added). Petitioner’s challenge to her detention does not fall within these discrete actions.
11 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28,
12 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

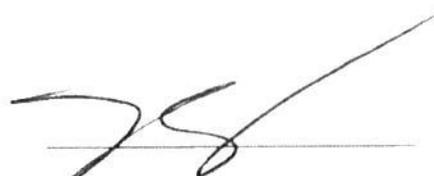
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15 Finally, 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,” Section
16 1252(a)(2) contains four subsections, which outlines categories of claims that are not subject to
17 judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply
18 to this matter, as the specified statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a),
19 which are the two provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of
20 jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
21 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court
22 has jurisdiction over Petitioner’s challenge to her detention.
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27 IV. CONCLUSION

28 For the foregoing reasons, the Court should grant Petitioner’s application for a Temporary

1 Restraining Order and Order to Show Cause.

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4 Dated: 9/16/25



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6 Mitchell H. Shen, Esq.
7 Attorney for Petitioner

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24 **WORD COUNT CERTIFICATION**

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26 The undersigned, counsel of record for Petitioner, certifies that this Memo contains 6048 words,
27 which complies with the word limit of L.R. 11-6.1.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Certified Mail /
Return Receipt to:

United States Attorney's Office,
501 I Street, Suite 10-100
Sacramento, CA 95814;

Ron Murray, Senior Warden, Otay Detention Facility
425 Golden State Ave,
Bakersfield, CA 93301

Polly Kaiser, Field Office Director
U.S. Immigration and Customs Enforcement (ICE)
630 Sansome Street, Rm 590
San Francisco, CA 94111

Todd M. Lyons, Acting Director
U.S. Immigration and Customs Enforcement (ICE)
500 12th St SW
Washington, DC 20536

Kristi Noem, Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Pam Bondi, Attorney General of the United States
950 Pennsylvania Ave., N.W. Room 45-45
Washington, DC 20530-0001; upon the date given below.

Date: 09/12/2025

Signature: /s/ Mitchell H. Shen
MITCHELL H. SHEN, ESQ.
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1 ***Ex Parte* Application for Temporary Restraining Order and Order to Show Cause**
2 **re: Preliminary Injunction**
3 **Yanela Ghilary Huaman Villanueva**
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15 **EXHIBIT A**
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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADELANTO IMMIGRATION COURT

Respondent Name:

HUAMAN VILLANUEVA, YANELA
GHIL

To:

Shen, Mitchell H
617 S. Olive St., Ste. 810
Los Angeles, CA 90014

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

08/18/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because

An "applicant for admission" is defined, in relevant part, as an alien "who arrives in the United States []whether or not at a designated port of arrival." INA § 235(a)(1), 8 U.S.C. § 1225(a)(1). An alien, like the respondent, "who tries to enter the country illegally is treated as an 'applicant for admission.'" *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting INA § 235(a)(1), 8 U.S.C. § 1225(a)(1)). The Supreme Court of the United States has clarified that "an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry,'" and is in the same position as an alien seeking admission at a port of entry. *Id.* (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

"Thus, consistent with the holding in *Matter of M-S-*, 27 I&N Dec. at 515-16, that aliens initially placed in expedited removal proceedings are subject to mandatory detention until the conclusion of any further immigration proceedings, we hold that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Matter of Q. Li* 29 I&N Dec. 66 (BIA 2025).

Respondent was arrested without a warrant by CBP shortly after entering the United States. She is subject to mandatory custody under INA Section 235(b)(2)(A).

Granted. It is ordered that Respondent be:

released from custody on his own recognizance.

released from custody under bond of \$

other:

Alison E Daw

Immigration Judge: DAW, ALISON 08/18/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 09/17/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : HUAMAN VILLANUEVA, YANELA GHIL | A-Number :



Riders:

Date: 08/18/2025 By: DAW, ALISON, Immigration Judge

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EXHIBIT B

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EXHIBIT C

OMB# 1125-0002

Notice of Appeal from a Decision of an Immigration Judge

U.S. Department of Justice
Office of the Chief Immigration Judge
Immigration and Customs Enforcement

1. Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

Yanela Ghilary Huaman Villanueva (A [REDACTED])

! WARNING: Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

For Official Use Only

2. I am the Respondent/Applicant DHS-ICE (Mark only one box.)
3. I am DETAINED NOT DETAINED (Mark only one box.)
4. My last hearing was at 10250 Rancho Rd., Ste. 201A, Adelanto, CA 92301 (Location, City, State)

5. What decision are you appealing?

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

I am filing an appeal from the Immigration Judge's decision *in merits proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated _____.

I am filing an appeal from the Immigration Judge's decision *in bond proceedings* dated August 18, 2025. (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? Yes No.)

I am filing an appeal from the Immigration Judge's decision *denying a motion to reopen or a motion to reconsider* dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

The Honorable Immigration Judge ("IJ") violated the Respondent's due process rights by denying her an opportunity to be heard. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry." *Leng May Ma v. Barber*, [357 U.S. 185, 187] (1958). Aliens "who have once passed through our gates, even illegally," are afforded the full range of procedural due process protections, and "may be expelled only after proceedings conforming to traditional standards of fairness." *Shaughnessy v. United States ex rel. Mezei*, [345 U.S. 206, 212] (1953). Additionally, the IJ erred in stating that Respondent was an "applicant for admission" under INA 235(a), where she instead is detained under 236(a). *Torres v. Barr*, 976 F.3d 918, 922 (9th Cir. 2020). "The Ninth Circuit has rejected the theory that any applicant for admission should be treated as having made a continuing application for admission that does not terminate until an immigration officer considers it."

Additional arguments to follow.

(Attach additional sheets if necessary)



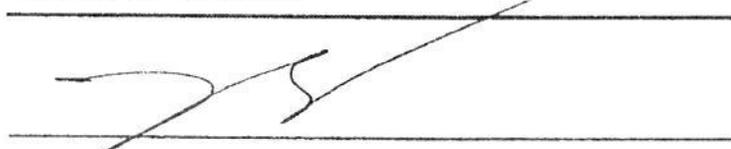
WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? Yes No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? Yes No
9. If you are unrepresented, do you give consent to the BIA Pro Bono Project to have your case screened by the Project for potential placement with a free attorney or accredited representative, which may include sharing a summary of your case with potential attorneys and accredited representatives? *(There is no guarantee that your case will be accepted for placement or that an attorney or accredited representative will accept your case for representation)* Yes No

WARNING: If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

10. **Print Name:** Mitchell H. Shen, Esq.

11. **Sign Here:**  09/09/2025

Signature of Person Appealing (or attorney or representative) Date

<p>Mailing Address of Respondent(s)/Applicant(s)</p> <p>Yanela Ghilary Huaman Villanueva</p> <p>425 Golden State Ave.</p> <p>N/A</p> <p>Bakersfield, CA 93301</p> <p>(661) 859-1028</p>	<p>Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)</p> <p>Mitchell H. Shen</p> <p>617 S. Olive Street</p> <p>Ste.810</p> <p>Los Angeles, CA 90014</p> <p>(213) 878-0333</p>
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NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form Board of Immigration Appeals (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

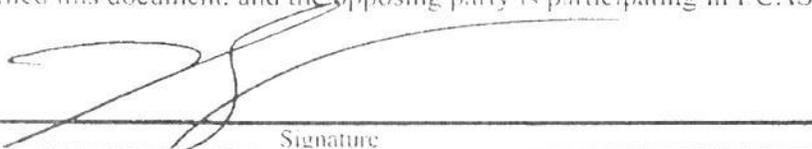
13. PROOF OF SERVICE (You Must Complete This)

I, Mitchell H. Shen mailed or delivered a copy of this Notice of Appeal
(Name)

on 09/09/2025 to DHS
(Date) (Opposing Party)

at 10250 Rancho Road Adelanto, CA 92301
(Number and Street, City, State, Zip Code)

No service needed. I electronically filed this document, and the opposing party is participating in ECAS.

SIGN HERE  X 
Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee payment receipt, fee, or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- | | |
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| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Read all of the General Instructions. <input checked="" type="checkbox"/> Provided all of the requested information. <input checked="" type="checkbox"/> Completed this form in English. <input checked="" type="checkbox"/> Provided a certified English translation for all non-English attachments. <input checked="" type="checkbox"/> Signed the form. | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Served a copy of this form and all attachments on the opposing party, if applicable. <input checked="" type="checkbox"/> Completed and signed the Proof of Service <input checked="" type="checkbox"/> Attached the required fee payment receipt, fee, or Fee Waiver Request. <input checked="" type="checkbox"/> If represented by attorney or representative, attach a completed and signed EOIR-27 for each respondent or applicant. |
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EXHIBIT D

U.S. Department of Justice
Immigration and Naturalization Service

Additional Charges of Inadmissibility/Deportability

In: Removal proceedings under section 240 of the Immigration and Nationality Act
 Deportation proceedings commenced prior to April 1, 1997 under former section 242 of the Immigration and Nationality Act

In the Matter of:

Alien Respondent: HUAMAN VILLANUEVA, YANIELA GIJIL

File No: A  Address: MESA VERDE ICE PROCESSING CTR BAKERSFIELD CA 93301

There is are hereby lodged against you the additional charge(s) of those set forth in the original charging document, that you are subject to being taken into custody and deported or removed from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

In support of the charge(s) there is submitted the following factual allegation(s) in addition to in lieu of those set forth in the original charging document.

- 4. At that time you arrived at a time or place other than as designated by the Attorney General;
- 5. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;

NISREEN
F ASSAF

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Date: 2025.08.18
09:36:06 -07'00'

Dated: August 18, 2025

(Signature of Service Counsel)

Additional allegations (continued):

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the charging document and that you are inadmissible or deportable on the charges contained in the charging document. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Certificate of Service

This charging document was served on the respondent by me on 8/18/25, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

in person by certified mail, return receipt requested by regular mail ECAS
 to: HUAMAN VILLANUEVA, YANELA GHIL, through attorney of record
 Mitchell Shen, Law Office of Mitchell H. Shen 617 S. Olive St., Ste. 810 Los Angeles CA 90014

Alien's address)

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of respondent if personally served)

(Signature and title of officer)

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EXHIBIT E

**To All ICE Employees
July 8, 2026**

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival (INA § 235(a)(1)). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 236(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(e).

Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(V), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to re-arresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.