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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Werclain Lopez-Cruz,
Petitioner,

v.

Kristi Noem, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting Director of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **Luis Rosa, Jr.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **Sirce Owen**, Acting Director of the Executive Office for Immigration Review, in her official capacity,
Respondents.

Case No. 2:25-cv-03566-DJH--ASB
Agency No [redacted]

PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

INTRODUCTION

Petitioner Werclain Lopez-Cruz is being unlawfully detained by Respondents at the Florence Detention Center in Arizona due to the Department of Homeland Security's (DHS) newly adopted and erroneous position[1] that all noncitizens who enter without inspection are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under §

[1] *See,* Exhibit 4 filed with the Petition for Writ of Habeas Corpus, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025).

1225(b)(2). Mr. Lopez-Cruz has been living in the United States for 12 years, is married and has a son who was born in Tuscson, Arizona.[2] He is not an ""applicant for admission" just arriving at the border but a long-term resident, properly detained under 8 U.S.C. § 1226 which authorizes bond hearings. Petitioner respectfully moves this honorable Court for a temporary restraining order (TRO) or a preliminary injunction requiring Respondents to immediately release him from his unlawful detention at the Florence Detention Center in Arizona.

The recent decision of the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) [3] does not compel a different result. Federal courts are not bound by BIA precedent and numerous federal courts - including in this Circuit - have rejected DHS's attempt to expand the definition of "arriving aliens" under 8 U.S.C. § 1225(a). Because DHS has improperly invoked § 1225(b)(2), Petitioner has been deprived of the opportunity for an individualized bond hearing and remains in unlawful detention in violation of the Federal Law and the Constitution.

Petitioner also meets the TRO standards. He is likely to succeed on the merits, he faces immediate and irreparable harm from unlawful detention, and the equities and public interest weigh heavily in his favor. Filed herewith as Exhibits "14" and "15" are the declarations of Petitioner and his counsel as required by Fed.R.Civ.Pro. 65(b)(1)(A) and (B), to establish the specific facts necessary to permit entry of the temporary restraining order on an *ex parte* basis.

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[2] *See,* Petitioner's Bond Hearing Exhibits, filed with the Petition for Writ of Habeas Corpus as Exhibit 2.
[3] *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed with the Petition for Writ of Habeas Corpus as Exhibit 10.

MEMORANDUM OF LAW

I. Statement Of Facts.

Petitioner Jorge Abrego Zarate was born on [redacted] in Puebla, Mexico and he crossed into the United States on May 18, 2003.[4] He has lived in the United States for 22 years and has requested asylum due to [redacted] has resided with his U.S. citizen cousin since 2012; and has worked for the same company since 2014.[5] Although he has one misdemeanor conviction for a DUI, 1st offense, he has complied with all conditions of his probation. [6]

Respondents arrested Petitioner in New York and he was transferred to the Florence Detention Center in Arizona, where he remains in custody. [7]

On August 19, 2025, a custody redetermination hearing was held in Florence, Arizona, where Petitioner submitted evidence including: (a) a copy of his Mexican Passport; (b) his USCIS Form I-589 Application for Asylum; (c) a letter of support from his US citizen cousin, Juan Avalos, with whom he has lived since 2012; and (d) a letter of support from his employer, Container Group Employment Letter, whom he has worked for since 2014.[8]

On August 19, 2025, a written order entered denying a bond, stating that:

> Respondent did not establish that the Immigration Court or an Immigration Judge would have jurisdiction to redetermine the conditions of his custody or release him on bond or parole under INA 236(a), and that he is not an "applicant for admission" under INA 235(a)(1) and/or that he is not subject to mandatory detention under INA 235(b)(1) or 235(b)(2).
> ***
> This IJ finds that the applicable statutes state that all "applicants for admission" are subject to DHS detention under INA 235 (whether an "arriving alien" or an "alien present … or who arrives"), and it appears that only noncitizen aliens who were admitted at a POE/POA or those who

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[4] *See,* Petitioner's Request for Bond and EOIR-28, filed with the Habeas Petition as Exhibit 2.
[5] *Id.*
[6] *Id.*
[7] *See,* 9-22-2025 ICE Locator Page for Jorge Abrego Zarate, filed with the Habeas Petition as Exhibit 3.
[8] *See,* Petitioner's Bond Hearing Exhibits, filed with the Habeas Petition as Exhibit 7.

> were admitted into some legal status after arrival, and then or later arrested, would be subject to the custody redetermination and bond provisions of INA 236(a), and that all other non-admitted persons, non-"arrested aliens," and persons who entered illegally or not paroled after inspection would be subject to detention under INA 235, as "applicants for admission," under INA 235(b) (1)(B)(iii)(IV) and/or 235(b)(2)(A).

See, Order Denying Bond, filed with the Petition for Writ of Habeas Corpus as Exhibit 1.

Petitioner has determined that an appeal to BIA would be futile in light of the precedential holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

II. Legal Standard

> To obtain a preliminary injunction, a plaintiff must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (*en banc*) (*citing Winter [v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 at 20 (2008)]). "[T]he legal standards applicable to TROs and preliminary injunctions are `substantially identical.'" *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) (*per curiam*) (*quoting Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)).

Babaria v. Blinken, 87 F. 4th 963, 976 (9th Cir. 2023).

The Court considers the elements on a "sliding scale" pursuant to the Ninth Circuit's "serious question" test:

> A preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor.

Alliance for the Wild Rockies v. Cottrell, 632 F. 3d 1127, 1134-35 (9th Cir. 2011) (*citing Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*)) (internal quotations omitted). Likelihood of success on the merits is the most important factor. Where a movant fails to meet this requirement, the "court need not consider the other factors in the absence of serious questions going

to the merits." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal citations and quotations omitted).

A. Petitioner Is Likely To Succeed On The Merits Of His Argument That He Is Wrongfully Detained Because He Is Not Subject To Mandatory Detention Under § 1225(B)(2).

DHS argues that Petitioner is subject to "mandatory detention" under 8 U.S.C. § 1225 (b)(2)(A) by virtue of being an "applicant for admission" under § 1225 (a)(1), pursuant to a July 8, 2025 change in DHS policy.[9] In essence, Respondents now argue that ***any*** noncitizen not previously admitted to the United States is subject to mandatory detention, without the possibility of a bond hearing. However, Petitioner is likely to succeed on his claims that he is detained under 8 U.S.C. § 1226(a). He has been residing in the United States for almost 12 years and has never sought admission.

Further, the plain text of § 1226 demonstrates that its subsection (a) applies to Petitioner. 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 goes on to explicitly confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible.[10] While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens who may not be released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g., id.* § 1226(c)(1)(A), (C). Even if § 1226(a) did not cover inadmissible noncitizens—there would be no

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[9] *See,* Exhibit 4, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025).

[10] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182) apply to those who have not been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses.

Notably, recent amendments to § 1226 dramatically reinforce this argument. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *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 entry without inspection) or (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, by default, § 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 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).

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," 8 U.S.C. § 1225(a)(1). Section 1226(a) covers those who are not now seeking admission but instead are already residing in the United States—including those who are charged with inadmissibility—while § 1225(b)(2) covers only those "seeking admission," i.e., those who are apprehended upon arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore § 1226(a)'s plain text and structure and render meaningless § 1226's language that specifically addresses individuals who have entered without inspection. The text of § 1225 reinforces this

interpretation. As the Supreme Court has recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at 297, 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 Petitioner, 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 that 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").

A. The Record And Longstanding Practice Reflect That § 1226 Governs Petitioner's Detention.

Here, DHS's long practice of considering people living in the United States for more than two years as detained under § 1226(a) further supports this reading of the statute. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of 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, in 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies 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 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

In sum, § 1226 governs this case. Section 1225 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 have been residing in the United States for more than 2 years.

B. Numerous Federal Courts Have Recently Granted Injunctive Relief Rejecting Respondent's Argument Regarding Mandatory Detention Under § 1225.

Respondents attach hereto evidence showing that several Federal Courts around the country have recently entered injunctive relief specifically rejecting DHS's argument that every noncitizen in the United States is an "applicant for admission" under § 1225 (a)(1) and therefore subject to mandatory detention under § 1225 (b)(2)(A), even if they have lived in the United States for longer than two years, effectively ignoring § 1225(b)(1)(A)(iii)(II).[11]

[11] § 1225 (b)(1)(A)(iii)(II) states that: "An alien described in this clause is an alien . . .who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph."

The following United States District Courts have issued injunctive or habeas relief restraining DHS from taking this position:

1) On October 9, 2025, the U.S. District Court for the District of Arizona issued an Order consolidating Petitioner's request for preliminary injunction with the decision on the merits in this action and ordered the release of Petitioner, stating that "Respondents themselves establish Petitioner was placed in removal proceedings under 8 U.S.C. § 1182(a)(6)(A)(i) as "[a]n alien present in the United States without being admitted or paroled," and not as "an arriving alien" and applicant for admission under 8 U.S.C. § 1225(b)." *See,* Order entered 10/9/2025 in *Hector Lopez-Melo v. Bondi, et. al.,* Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.). [12]

2) On October 3, 2025, the U.S. District Court for the District of Arizona issued an Order directing Respondents to grant Petitioner, who had been present in the United States for 24 years, a "prompt bond hearing", saying that it " agrees with the majority of courts that have concluded that § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.") *See, Francisco Echevarria v. Pam Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025). [13]

3) On July 24, 2025, the U.S. District Court for the District of Massachusetts issued a published decision which states that DHS's position ignores the plain statutory language of both § 1225 and § 1226. *See, Diaz Martinez v. Hyde,* — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025). [14]

4) On July 28, 2025, the U.S. District Court for the Central District of California, Eastern Division, issued a Temporary Restraining Order (TRO) enjoining DHS from categorically denying initial § 236(a) bond hearings to respondents in § 240 proceedings under DHS's July 8, 2025 7/8/25 DHS Guidance Notice. *See, Lazaro Maldonado Bautista et al. v. Santacruz, Jr., et al.* [15]

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[12] *See,* Order entered 10/9/2025 in *Hector Lopez-Melo v. Bondi, et. al.,* Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.) filed herewith as Exhibit 13.

[13] *See,* 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 14.

[14] *See, Diaz Martinez v. Hyde,* — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025), filed with the Petition for Writ of Habeas Corpus as Exhibit 5.

[15] *See* Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.,* Plaintiffs-Petitioners, v. *Kristi Noem, Secretary, Department of Homeland Security, et al.,* Defendants-Respondents, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM, filed with the Petition for Writ of Habeas Corpus as Exhibit 6.

5) On August 29, 2025, the U.S. District Court for the District of Minnesota, issued an Order for Injunctive Relief against four of the same Respondents named in this case, enjoining them from denying that petitioner – who had been present in the U.S. for ten years - a bond hearing. That Court found that he "more clearly falls under a plain text reading of section 1226(a). As other courts have observed, "[t]aken together these two statutes principally govern the detention of non-citizens pending removal proceedings—section 1225 governs detention of noncitizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" *Francisco T. v. Bondi, et al.,* Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17] Filed 08/29/25, Page 7-8. [16]

6) On August 14, 2025, the U.S. District Court for the District of Nebraska issued a Memorandum and Order granting the Petitioner's immediate release and her writ of habeas corpus on the ground "the government is unlawfully detaining Petitioner in violation of her Due Process rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration Judge determined was appropriate." See, Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al., Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3]. [17]

7) August 19, 2025, the U.S. District Court for the District of Massachusetts entered a 26-page memoranda Order exhaustively discussing the DHS position and noted that:

> This case is the latest in a growing number of challenges in this District, and across the country, to non-citizen detention arising out a decision by the Department of Homeland Security to radically alter its interpretation of the immigration statutes. Previously, in a similar instance, this Court concluded that the interpretation being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to the plain text of the statute and the overall statutory scheme.

Romero v. Hyde, (D. Mass. Aug. 19, 2025) (*see also* numerous cases cited therein). [18]

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[16] *See* Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.,* Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota, filed with the Petition for Writ of Habeas Corpus as Exhibit 7.

[18] *See*, Order entered 8/19/2025 in *Romero v. Hyde, et al.,* Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts, filed with the Petition for Writ of Habeas Corpus as Exhibit 9.

8) On April 24, 2025, the U.S. District Court for the Western District of Washington granted preliminary injunctive relief after finding that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock, et al.*, Case No. 3:25-CV-05240-TMC [CM/ECF No. 29] (W.D. Wash. Apr. 24, 2025)[19]

As shown by these various TROs, memorandum orders, and injunctions, Petitioner has an excellent chance of winning on the merits of his argument that Respondents are mislabeling him as an "applicant for admission" under § 1225 (a)(1) solely for the purpose of imposing mandatory detention under § 1225 (b)(2)(A). Rather, because he has lived in the U.S. for almost 20 years, he is more appropriately treated under § 1226 and subject to release on bond.

C. BIA's Determinations Are Not Entitled To Deference.

Obviously, decisions by IJs and the BIA are not binding on the Federal Judiciary, and vice-versa. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The legal relationship between federal courts and the BIA was fundamentally restructured on June 28, 2024, when the Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024), which overturned nearly 40 years of administrative law precedent. The majority opinion, authored by Chief Justice John Roberts, held that Federal Courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority". *Loper Bright,* 603 U.S. at 207.

Thus, determining whether or not DHS's new internal policy of treating all noncitizens as "applicants for admission" under § 1225 (a)(1) and thereby subject to "mandatory detention" under 8 U.S.C. § 1225 (b)(2)(A) is properly decided by the Federal Courts. The recent decision of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) notwithstanding.[20]

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[20] *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed with the Petition for Writ of Habeas Corpus as Exhibit 10.

D. Petitioner Will Suffer Irreparable Harm Absent An Injunction.

Parties seeking preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." . *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Since Petitioner's detention he has been detained at the Florence Arizona Detention Center, similar to a criminal detention, under the pretense that his detention is mandatory. The Supreme Court has established that the "loss of freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner's ongoing loss of liberty, he has demonstrated significant irreparable harm. This factor weighs in his favor.

E. The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of liberty, separation from family, significant stress and anxiety, and difficulty in communicating with his attorney.

The government, by contrast, faces minimal hardship: the administrative costs associated with three bond hearings. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." What is more, because the policy preventing Petitioner 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 at 832 (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). Indeed, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145."

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests the Court grant this motion for a Temporary Restraining Order and order him released immediately or issue a show cause order and schedule a hearing on Preliminary Injunction as soon as practicable.

DATED this 18th Day of October, 2025.

By: */s/ Nera Shefer*
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LIST OF NEW EXHIBITS	
Exhibit 14	**Rule 65(b) Declaration of Nera Shefer**
Exhibit 15	**Declaration of Werclain Lopez-Cruz**
Exhibit 16	**10/9/2025 Order entered in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.)**
Exhibit 17	**10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)**