DANIEL F. LIPPMANN, ESQ.
Nevada Bar No. 11636
Lipp Law LLC
2580 Sorrel Street
Las Vegas, Nevada 89146
Telephone – (702) 745-4700
info@lipplaw.vegas
Counsel for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

David Alberto PEREZ SANCHEZ, Petitioner, v. Michael Bernacke, Field Office Director, ERO Salt Lake City, et al., Defendants.	Case No. 2:25-cv-01921 **PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

Petitioner David Alberto Perez Sanchez seeks a preliminary injunction to enjoin Respondents from continuing to detain him pursuant to an unlawful statutory interpretation and the unconstitutional automatic stay regulation at 8 C.F.R. § 1003.19(i)(2).

Mr. Perez Sanchez has lived in the United States since 1997, when he was brought here as a child. He is the father of five U.S. citizen children, and his most recent DACA renewal was approved and remains valid until July 21, 2027. On July 10, 2025, an Immigration Judge of the Las Vegas Immigration Court granted him bond in the amount of $3,000, expressly finding that he was not a danger to the community or a flight risk.

Rather than respect the Immigration Judge's determination, DHS invoked the automatic stay provision by filing Form EOIR-43. That unilateral filing nullified the IJ's order and left Mr. Perez Sanchez detained indefinitely. DHS has also appealed to the BIA, where briefing has been marred by late filings and repeated delays, and where the Board's recent decision in Matter of Yahure Hurtado, 29 I&N Dec. 216 (BIA 2025), has already foreclosed relief.

This Court has already recognized the profound constitutional and statutory problems with DHS's position. In *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025), Judge Richard Boulware held that the EOIR-43 automatic stay regulation is unconstitutional and that DHS's expanded reading of §§ 235 and 236 is unlikely to prevail. The same defects apply here, where Mr. Perez Sanchez remains detained despite a valid DACA grant, an IJ's bond order, and no finding of dangerousness or flight risk.

For these reasons, and to prevent ongoing irreparable harm, Mr. Perez Sanchez respectfully requests that this Court enjoin Respondents from applying 8 C.F.R. § 1003.19(i)(2) to him, and order his release under the Immigration Judge's July 10, 2025 bond order, or, in the alternative,

direct that he receive a constitutionally adequate bond hearing under 8 U.S.C. § 1226(a) within fourteen (14) days.

STATEMENT OF FACTS

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

This This case concerns DHS's post–July 8, 2025 reinterpretation of its detention authority for people who entered the United States without inspection ("EWIs"), were not apprehended at a port of entry, and are not subject to any other detention authority, such as expedited removal under 8 U.S.C. § 1225(b)(1) or post-order detention under § 1231(a)(6).

For decades, such individuals were detained under 8 U.S.C. § 1226(a) and received bond hearings before Immigration Judges. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Congress's intent, carried forward from pre-IIRIRA law, was that long-settled noncitizens encountered in the interior remain bond eligible. See H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

On July 8, 2025, however, DHS and DOJ/EOIR jointly issued "Interim Guidance Regarding Detention Authority for Applicants for Admission," declaring that all EWIs, regardless of length of residence or place of arrest, are now "applicants for admission" detained under § 1225(b)(2).

Since July 8, most Las Vegas IJs have rejected this overbroad interpretation, exercising § 1226(a) jurisdiction and granting bond in meritorious cases. In response, OPLA has adopted a uniform tactic: filing Form EOIR-43 within one business day of a bond grant. That filing, under 8 C.F.R. § 1003.19(i)(2), automatically stays the IJ's order without any showing of danger, flight risk, or likelihood of success, and ensures prolonged detention while the BIA adjudicates the appeal.

This practice renders the statutory right to a bond hearing an empty formality. Even when an IJ determines release is warranted, OPLA's routine use of EOIR-43 nullifies the decision, and respondents remain incarcerated for months or longer while appeals pend before the BIA.

II. Petitioner David Alberto Perez Sanchez

Petitioner David Alberto Perez Sanchez is currently detained at the Nevada Southern Detention Center ("NSDC") in Pahrump, Nevada, despite an IJ's finding that he is neither a flight risk nor a danger to the community and should be released on bond.

Mr. Perez Sanchez has lived in the United States since 1997, when he was brought here as a child. He resides in Taylorsville, Utah, is the father of five U.S. citizen children, and has extensive family and community ties. He has no disqualifying criminal convictions. Importantly, he is a long-time DACA recipient; his most recent renewal was approved and remains valid until February 2, 2027.

On July 10, 2025, an Immigration Judge of the Las Vegas Immigration Court found that § 1226(a), not § 1225(b)(2), governs his detention, concluded that he was not a danger or flight risk, and ordered his release on a $3,000 bond.

On July 11, 2025, OPLA filed Form EOIR-43, automatically staying the IJ's release order. DHS then filed a Notice of Appeal with the BIA, which remains pending. That appeal has already been marred by late government filings and motions to accept, further delaying resolution.

As of the filing of this motion, Mr. Perez Sanchez remains incarcerated solely because DHS invoked the EOIR-43 automatic stay, nullifying the IJ's bond order. This continued detention deprives him of liberty despite his equities, valid DACA status, and an IJ's determination that he is bond eligible.

The harms are immediate and severe: Mr. Perez Sanchez remains separated from his five U.S. citizen children and family, his household has lost its primary provider, and his ability to defend his removal case is impaired by his detention.

ARGUMENT

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

I. Petitioner Is Likely to Succeed on the Merits.

A. Statutory Claim (§ 1226(a) vs. § 1225(b)(2))

The plain text, structure, and decades of practice confirm that **§ 1226(a)** governs the detention of long-term residents like Mr. Perez Sanchez, who were apprehended in the interior years after entry. See *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025). By contrast, § 1225(b)(2) applies to "arriving aliens" seeking admission at the border. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

DHS's July 8, 2025 Interim Guidance and the BIA's recent decision in Matter of Yahure Hurtado, 29 I&N Dec. 216 (BIA 2025), misclassify all EWIs as "arriving aliens." This interpretation conflicts with the INA's text, legislative history, and long-settled agency practice, and therefore cannot stand.

B. Constitutional Claim (EOIR-43 Automatic Stay Violates Due Process)

On July 10, 2025, an Immigration Judge found Mr. Perez Sanchez was not a danger or flight risk and ordered his release on $3,000 bond. Yet DHS's filing of Form EOIR-43 unilaterally nullified that judicial determination, leaving Petitioner detained indefinitely. This scheme violates the Fifth Amendment because it authorizes the deprivation of liberty without individualized judicial review. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

This Court has already recognized the regulation's constitutional infirmity. In *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025), Judge Boulware held that 8 C.F.R. § 1003.19(i)(2) is unconstitutional both facially and as applied. Likewise, in *Herrera Torralba v. Feeley*, No. 2:25-cv-01366-RFB-DJA, ECF No. 32 at *11–12 (D. Nev. Sept. 5, 2025)*, the Court struck down the automatic stay as violating due process. The same reasoning compels relief here.

C. Major Questions Doctrine

To the extent Respondents contend that § 1225(b)(2) authorizes the mass mandatory detention of millions of EWIs—including long-settled DACA recipients like Mr. Perez Sanchez—such an interpretation raises grave concerns under the Major Questions Doctrine. Agencies may not assert vast new powers with sweeping consequences absent clear congressional authorization. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). Nothing in the INA suggests Congress intended to upend decades of practice by mandating detention for interior residents with deep community ties.

Together, these statutory and constitutional claims establish a strong likelihood of success on the merits.

II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.

The Ninth Circuit has made clear that prolonged immigration detention without adequate process constitutes irreparable harm. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). This Court has likewise recognized that continued detention under the EOIR-43 automatic stay inflicts ongoing constitutional injury. See *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, ECF No. 24 (D. Nev. Sept. 9, 2025) (finding automatic stay unconstitutional and granting preliminary injunction ordering release).

"[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Moreover, where the policy preventing release "is inconsistent with federal law … the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli* ("*Moreno I*"), 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019), aff'd in part, 52 F.4th 821, 832 (9th Cir. 2022) (approving district court's conclusion "that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). As the Ninth Circuit has repeatedly recognized, "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). Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Mr. Perez Sanchez has now been detained for months despite an IJ's determination that he is neither a danger to the community nor a flight risk, and despite his valid DACA approval until February 2, 2027. Each additional day of detention imposes irreparable harms: prolonged separation from his five U.S. citizen children, loss of his family's primary source of income, and

impairment of his ability to prepare his defense from outside custody. These harms cannot be remedied by money damages or post hoc relief.

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

III. DHS's Continued Detention of a Current DACA Recipient Is Arbitrary and Unlawful.

Petitioner Perez Sanchez's DACA renewal was approved and remains valid until July 21, 2027. DACA constitutes a formal grant of deferred action, under which DHS has exercised its discretion to defer removal for a fixed period. As CRS has explained, individuals granted deferred action generally are not subject to removal proceedings during the period of deferred action." CRS R45158 (Feb. 2025).

Nonetheless, DHS continues to detain Petitioner as though no such protection were in place. Courts have recently condemned this disregard of DACA. See *Santiago v. DHS*, No. 3:25-cv-00361-KC, 2025 WL 2606118, (W.D. Tex. Oct. 2, 2025) (ordering release of a detained DACA recipient and holding DHS acted unlawfully in disregarding active deferred action). As the Supreme Court recognized in *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 25-26 (2020), deferred action creates reliance interests and legal consequences that cannot be casually ignored.

Here, DHS's detention of a current DACA recipient is arbitrary and capricious, undermines its own exercise of discretion, and further confirms Petitioner's likelihood of success on the merits.

IV. Prudential exhaustion is not required.

Respondents may argue that Mr. Perez Sanchez must first pursue BIA review of OPLA's EOIR-43 appeal. But prudential exhaustion does not require him to endure the very harm he seeks to avoid — prolonged detention under an unlawful statutory theory and an automatic stay — while

waiting months for a BIA decision. "[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious . . . [or] irreparable injury will result . . ." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Courts may waive exhaustion when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action," including where "an unreasonable or indefinite timeframe for administrative action" would cause harm. *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992).

A. Irreparable injury

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

Civil detention "violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). While Mr. Perez Sanchez asserts statutory claims, he also has a "fundamental" liberty interest in release where an IJ has already found § 1226(a) jurisdiction and no danger or flight risk. *Hernandez*, 872 F.3d at 993 ("freedom from imprisonment is at the 'core

of the liberty protected by the Due Process Clause'") (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

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

- Family separation — Mr. Perez Sanchez is deprived of daily contact and support for his spouse and three U.S. citizen children, a recognized injury under equitable principles.
- Economic hardship — The loss of income jeopardizes the family's ability to meet basic needs, including rent, food, and utilities.
- Barriers to counsel — His geographic isolation in Pahrump severely limits access to legal representation and impedes preparation of his defense.
- Psychological and medical impacts — Prolonged confinement has caused significant stress and anxiety, compounded by degraded detention conditions and the constitutional injury stemming from the initial unlawful stop.

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

B. Agency Delay

Second, the BIA's chronic delays in adjudicating bond appeals independently warrant excusing any exhaustion requirement. The court's ability to waive exhaustion based on delay is especially broad here given the liberty interests at stake. As the Ninth Circuit has explained, Supreme Court precedent "permits a court under certain prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.'" *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)). Here, Mr. Perez Sanchez's interest in physical liberty is "fundamental."

Hernandez v. Sessions, 872 F.3d 976, 993 (9th Cir. 2017). And as the Supreme Court has made clear, "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this mandate, the BIA takes, on average, well over half a year to resolve custody appeals. EOIR's own FOIA data confirms an **average of 204 days** for bond-appeal adjudications in FY 2024 — with "dozens of cases" taking multiple years. See Korthuis Decl. ¶¶ 5–6, *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240 (W.D. Wash. Apr. 24, 2025). In the meantime, noncitizens remain locked in ICE detention facilities under conditions "similar … to those in many prisons and jails" and separated from their families. *Jennings v. Rodriguez*, 583 U.S. 281, 329 (2018) (Breyer, J., dissenting); see also *Hernandez*, 872 F.3d at 996. For Mr. Maldonado Vazquez, this means months of incarceration after an IJ has already ordered release on bond, solely because OPLA invoked an automatic stay via EOIR-43.

Federal law in the criminal context underscores the unreasonableness of such delay. The Supreme Court upheld the federal pretrial detention scheme in part because it "provide[s] for immediate appellate review of the detention decision." *United States v. Salerno*, 481 U.S. 739, 752 (1987). There, probable cause has already been established, yet magistrate judges rule "immediately" at first appearance, 18 U.S.C. § 3142(f), with prompt district-court review, *id.* § 3145(a)–(b), and expedited consideration in the court of appeals, *id.* § 3145(c); *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572–73 (9th Cir. 1987); *United States v. Walker*, 808 F.2d 1309, 1311 (9th Cir. 1986); 9th Cir. R. 9-1.1. Even a 30-day delay in criminal pretrial detention review has been deemed excessive.

By contrast, waiting six months, a year, or more for BIA review of an IJ's custody order, or of an IJ's determination that no bond hearing will even be held, is indefensible. The Ninth

Circuit has signaled that prompt review protections afforded in the criminal-detention context should inform civil-immigration detention. See *Gonzalez v. U.S. Immigration & Customs Enforcement*, 975 F.3d 788, 798, 823–26 (9th Cir. 2020) (requiring a "prompt" probable-cause determination by a neutral magistrate). The same Fifth Amendment principles that protect criminal defendants apply here. *See Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001).

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

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

C. Exhaustion Is Futile Where the BIA Has Already Ruled Adversely.

Exhaustion is also excused because the BIA has already adopted the very interpretation Petitioner challenges. In Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), the Board held that all noncitizens who entered without inspection are "applicants for admission" and therefore

subject to mandatory detention under § 1225(b)(2). That position is directly at odds with decades of practice, the plain text of the INA, and this Court's own finding in *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 9, 2025), that § 1226(a) governs detention for long-term residents apprehended in the interior.

Because the BIA has foreclosed relief by binding precedent, requiring Petitioner to pursue further administrative review would be futile. *See Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (waiving exhaustion where administrative remedies are "inadequate or not efficacious"). Moreover, the Board's adherence to DHS's July 8, 2025, Interim Guidance and its rejection of longstanding statutory interpretation raise serious constitutional concerns under the Due Process Clause and the Major Questions Doctrine, confirming that federal court intervention is necessary.

CONCLUSION

For the foregoing reasons, Petitioner David Alberto Perez Sanchez respectfully requests that this Court grant his motion for a preliminary injunction. Specifically, Petitioner asks the Court to:

1. **Order Respondents to lift the EOIR-43 automatic stay** and enforce the $3,000 bond previously granted by the Immigration Judge on July 10, 2025, thereby effectuating his release; or, in the alternative,
2. **Order a prompt, individualized custody hearing under 8 U.S.C. § 1226(a)** before a neutral decisionmaker, at which any grant of release will not be nullified by the government's invocation of the automatic stay regulation while appeal is pending; and
3. **Enjoin Respondents from continuing to apply 8 U.S.C. § 1225(b)(2)** to Petitioner, who was apprehended in the interior, and who remains bond-eligible under § 1226(a); and

4. **Enjoin Respondents from invoking 8 C.F.R. § 1003.19(i)(2) (EOIR-43)** to automatically stay Immigration Judge bond grants, thereby prolonging detention for months in the absence of a timely BIA decision; and
5. Grant any other and further relief that the Court deems just and proper to protect Petitioner's statutory rights, his current DACA protections valid through July 21, 2027, and his fundamental liberty interests under the Constitution.

Respectfully submitted this 7th day of October, 2025.

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