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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Francisco COC TUC;
Lefner GUTIERREZ FUNES;
Juan MARCIAL CRUZ;
Xiomara SANCHEZ MARTINEZ;
Adolfo TORRES AGUIRRE;
Aaron MICO VARGAS; and
Mario ROMERO SERRANO,

Petitioners,

v.

Kristi NOEM, Secretary, U.S.
Department of Homeland Security;
Pamela BONDI, U.S. Attorney General;
Todd LYONS, Acting Director,
Immigration and Customs Enforcement;
Ernesto SANTACRUZ JR., Acting
Director, Los Angeles Field Office,
Immigration and Customs Enforcement,
Enforcement and Removal Operations;
Fereti SEMAIA, Warden, Adelanto ICE
Processing Center; EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW; IMMIGRATION AND
CUSTOMS ENFORCEMENT; U.S.
DEPARTMENT OF HOMELAND
SECURITY,

Respondents.

Case No. 5:25-cv-2701

**PETITIONERS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE**

1 Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioners
2 hereby move the Court for emergency relief in the form of a temporary restraining
3 order directing Respondents to release Petitioners from their custody or to provide
4 Petitioners with individualized bond hearings before an immigration judge pursuant
5 to 8 U.S.C. § 1226(a) within seven days of issuance of an Order.
6
7

8 Petitioners seek this emergency relief because their continued detention
9 without an initial bond hearing is depriving Petitioners of statutory and
10 constitutional rights and is causing immediate and irreparable injury in the form of
11 the unlawful deprivation of their liberty.
12

13 Petitioners also seek a temporary restraining order enjoining the Respondents
14 from relocating Petitioners outside of the Central District of California pending
15 final resolution of this case.
16

17 Petitioners further move for the issuance of an order to show cause as to why
18 a preliminary injunction should not issue.
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1 This application is supported by the Memorandum of Points and Authorities,
2 accompanying exhibits, as well as any additional submissions that may be
3 considered by the Court.
4

5 Respondents oppose this TRO Application.

6 Dated: October 14, 2025

Respectfully submitted,

7
8 s/ Niels W. Frenzen

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CERTIFICATE OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, L.R. 7-19.1, and L.R. 65-1, I hereby certify that on Friday, October 10, 2025 at 1:00 PM, I spoke by telephone with Daniel Beck, AUSA, Chief, Complex and Defensive Litigation Section, U.S. Attorney's Office, Central District of California, and informed him of our intent to file an ex parte application for TRO in this matter. Prior to our conversation, on October 9th, I emailed Mr. Beck a summary of the parties and claims. Mr. Beck indicated that Respondents opposed a TRO.

I will provide a copy of the Application for a Temporary Restraining Order, Memorandum of Points and Authorities, Supporting Exhibits, and Petition for Writ of Habeas Corpus to Mr. Beck by emailing copies to Daniel.Beck@usdoj.gov shortly after filing the pleadings via CM/ECF.

Dated: October 14, 2025

Respectfully submitted,

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8 **CENTRAL DISTRICT OF CALIFORNIA**

9 Francisco COC TUT;
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12 Xiomara SANCHEZ MARTINEZ;
13 Adolfo TORRES AGUIRRE;
14 Aaron MICO VARGAS; and
15 Mario ROMERO SERRANO,

16
17 Petitioners,

18 v.

19 Kristi NOEM, Secretary, U.S.
20 Department of Homeland Security;
21 Pamela BONDI, U.S. Attorney General;
22 Todd LYONS, Acting Director,
23 Immigration and Customs Enforcement;
24 Ernesto SANTACRUZ JR., Acting
25 Director, Los Angeles Field Office,
26 Immigration and Customs Enforcement,
27 Enforcement and Removal Operations;
28 Fereti SEMAIA, Warden, Adelanto
ICE Processing Center; EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW; IMMIGRATION AND
CUSTOMS ENFORCEMENT; and
DEPARTMENT OF HOMELAND
SECURITY,

Respondents.

Case No. 5:25-cv-2701

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

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3 **Other Authority**

4 Illegal Immigration Reform and Immigrant Responsibility Act of 1996

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INTRODUCTION

Petitioners Francisco Coc Tut, Lefner Gutierrez Funes, Juan Marcial Cruz, Xiomara Sanchez Martinez, Adolfo Torres Aguirre, Aaron Mico Vargas, and Mario Romero Serrano seek a Temporary Restraining Order that requires Respondents to release them from custody or to provide them with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

Although each Petitioner was present and residing in the United States at the time of their immigration arrests, they have been subjected to a new DHS policy and practice issued on July 8, 2025 which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The new DHS policy was issued “in coordination with the Department of Justice (DOJ).” *See* Ex. V, ICE Interim Guidance Regarding Detention Authority for Applicants for Admission.

Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board), issued a precedent decision, binding on all immigration judges, endorsing the rationale set forth in DHS’s “Interim Guidance Regarding Detention Authority for Applicants for Admission” and holding that an immigration judge has no authority to consider bond requests for any person such as Petitioners who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec.

1 216 (BIA 2025). The Board determined that such individuals are subject to
2 mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be
3 released on bond.
4

5 Each Petitioner is detained at the Adelanto ICE Processing Center in
6 Adelanto, California. Each Petitioner has either been denied a bond hearing by an
7 IJ who determined that because the Petitioner was present in the United States
8 without admission, he or she was subject to mandatory detention under 8 U.S.C. §
9 1225(b)(2)(A), or the Petitioner is unable to obtain a bond hearing before an IJ
10 pursuant to 8 U.S.C. § 1226(a) due to the BIA's decision in *Matter of Yajure*
11 *Hurtado*. See Exs. O, P, R, S, T, U, IJ Bond Orders.
12
13

14 Three IJ bond orders were issued before the BIA's September 5, 2025
15 decision in *Matter of Yajure Hurtado* and concluded there was no jurisdiction to
16 consider a bond request for someone present without admission. See Exs. P, R, S,
17 IJ Bond Orders. Three IJ bond orders followed *Matter of Yajure Hurtado*. See Exs.
18 O, T, U, IJ Bond Orders. And Petitioner Marcial Cruz withdrew his request for a
19 bond hearing and is unable to obtain a bond hearing due to the BIA's decision in
20 *Matter of Yajure Hurtado* requiring IJs to deny such requests on jurisdictional
21 grounds.
22
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25 The denial of bond hearings to the Petitioners and their ongoing detention on
26 the basis of *Yajure Hurtado*, the DHS policy, and / or the rationale stated in the BIA
27 decision and the DHS policy violate the plain language of the Immigration and
28

1 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

2 Despite the BIA's and the DHS policy's assertions to the contrary, 8 U.S.C.
3
4 § 1225(b)(2)(A) does not apply to individuals like Petitioners who previously
5 entered and were residing in the United States at the time of their arrests. Instead,
6 such individuals are subject to a different statute, § 1226(a), that allows for release
7 on bond or conditional parole. Section 1226(a) expressly applies to people who,
8 like Petitioners, are charged as removable for having entered the United States
9 without inspection and being present without admission.
10

11
12 Respondents' new legal interpretation set forth in *Matter of Yajure Hurtado*
13 and in the DHS policy is plainly contrary to the statutory framework and to decades
14 of agency practice applying § 1226(a) to people like Petitioners who are present
15 within the United States. Respondents' new policy and the resulting ongoing
16 detention of Petitioners without a bond hearing is depriving Petitioners of statutory
17 and constitutional rights and unquestionably constitutes irreparable injury.
18

19
20 Petitioners therefore seek a Temporary Restraining Order enjoining
21 Respondents from continuing to detain them unless Petitioners are provided an
22 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §
23 1226(a) within seven days of the TRO.
24

25 Petitioners also seek an Order prohibiting Respondents from relocating
26 Petitioners outside of the Central District pending final resolution of this litigation.
27

28 ///

STATEMENT OF FACTS

Petitioner Francisco Coc Tut resides in Huntington Beach, California. On August 20, 2025, he was arrested in Santa Ana, California. He has no criminal record and his previous contact with immigration authorities does not trigger mandatory detention pursuant to 8 U.S.C. § 1226(c) or on any other basis. *See* Ex. H, DHS Form I-213, Record of Deportable/Inadmissible Alien. He is now detained at the ICE Adelanto Detention Center in Adelanto, California. ICE placed Coc Tut in removal proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without admission in the United States. *See* Ex. A, Notice to Appear. Coc Tut requested a bond redetermination hearing before an IJ and, on September 25, 2025, an IJ denied the request and issued a decision that the court lacked jurisdiction to conduct a bond redetermination hearing because he was an applicant for admission. *See* Ex. O, IJ Bond Order.

Petitioner Lefner Gutierrez Funes resides in Canoga Park, California. His previous contact with immigration authorities and his criminal record do not trigger mandatory detention pursuant to 8 U.S.C. § 1226(c) or on any other basis. *See* Ex. I, DHS Form I-213, Record of Deportable/Inadmissible Alien. On July 14, 2025, he was arrested in Canoga Park, California. He is now detained at the ICE Adelanto Detention Center in Adelanto, California. ICE placed Gutierrez Funes in removal proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. §

1 1229a. ICE has charged him with being inadmissible under, inter alia, 8 U.S.C. §
2 1182(a)(6)(A)(i) as someone who is present without admission in the United States.
3
4 See Ex. B, Notice to Appear. Gutierrez Funes requested a bond hearing before an
5 IJ and on August 11, 2025, an IJ denied the request and issued a decision that the
6 court lacked jurisdiction to conduct a bond redetermination hearing. See Ex. P, IJ
7 Bond Order.
8

9 Petitioner Juan Marcial Cruz resides in Concord, North Carolina. He has no
10 previous contact with immigration authorities and his criminal record does not
11 trigger mandatory detention pursuant to 8 U.S.C. § 1226(c) or on any other basis.
12 See Ex. J, DHS Form I-213, Record of Deportable/Inadmissible Alien. On May 15,
13 2025, he was arrested in Concord, North Carolina. He is now detained at the
14 Adelanto ICE Detention Center in Adelanto, California. ICE placed Marcial Cruz
15 in removal proceedings pursuant to 8 U.S.C. § 1229a. Removal proceedings were
16 initiated in Lumpkin, Georgia and are now pending before the Adelanto
17 Immigration Court. ICE has charged him with being inadmissible under 8 U.S.C. §
18 1182(a)(6)(A)(i) as someone who is present without admission in the United States.
19 See Ex. C, Notice to Appear. Marcial Cruz requested a bond hearing before an IJ
20 but withdrew that request on September 10, 2025. See Ex. Q, IJ Bond Order. In
21 light of the BIA's September 5, 2025 decision in *Matter of Yajure Hurtado*, Marcial
22 Cruz is unable to obtain a bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a).
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Petitioner Xiomara Sanchez Martinez resides in California. On June 28,

1 2025, she was arrested in Los Angeles, California. She has no criminal record and
2 no previous contact with immigration authorities. *See* Ex. K, DHS Form I-213,
3
4 Record of Deportable/Inadmissible Alien. She is now detained at the Adelanto ICE
5 Detention Center in Adelanto, California. ICE placed Sanchez Martinez in removal
6 proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a.
7
8 ICE has charged her with being inadmissible under, inter alia, 8 U.S.C. §
9 1182(a)(6)(A)(i) as someone who is present without admission in the United States.
10 *See* Ex. D, Notice to Appear. Sanchez Martinez requested a bond hearing before an
11 IJ. On August 13, 2025, an IJ denied the request and issued a decision that the court
12 lacked jurisdiction to conduct a bond hearing. *See* Ex. R, IJ Bond Order.
13

14 Petitioner Adolfo Torres Aguirre resides in Los Angeles, California and has
15 resided in the United States for at least ten years. On June 26, 2025, he was
16 arrested in Los Angeles, California. He has no previous contact with immigration
17 authorities and his criminal record does not trigger mandatory detention pursuant to
18 8 U.S.C. § 1226(c) or on any other basis. *See* Ex. L, DHS Form I-213, Record of
19 Deportable/Inadmissible Alien. He is now detained at the Adelanto ICE Detention
20 Center in Adelanto, California. ICE placed Torres Aguirre in removal proceedings
21 before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has
22 charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone
23 who is present without admission in the United States. *See* Ex. E, Notice to Appear.
24 Torres Aguirre requested a bond hearing before an IJ. On August 19, 2025, an IJ
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1 denied the request and issued a decision that the court lacked jurisdiction to conduct
2 a bond hearing because he was an applicant for admission. *See* Ex. S, IJ Bond
3 Order.
4

5 Petitioner Aaron Mico Vargas resides in Los Angeles, California. On July
6 21, 2025, he was arrested in Los Angeles, California. He has no previous contact
7 with immigration authorities and no criminal record. *See* Ex. M, DHS Form I-213,
8 Record of Deportable/Inadmissible Alien. He is now detained at the Adelanto ICE
9 Detention Center in Adelanto, California. ICE placed Mico Vargas in removal
10 proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a.
11 ICE has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as
12 someone who is present without admission in the United States. *See* Ex. F, Notice
13 to Appear. Mico Vargas requested a bond hearing before an IJ. On September 17,
14 2025, an IJ denied the request and issued a decision that the court lacked
15 jurisdiction to conduct a bond hearing because he was present without admission.
16 *See* Ex. T, IJ Bond Order.
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21 Petitioner Mario Romero Serrano resides in Reseda, California. On August
22 19, 2025, he was arrested in Santa Ana, California. He has no previous contact
23 with immigration authorities and no criminal record. *See* Ex. N, DHS Form I-213,
24 Record of Deportable/Inadmissible Alien. He is now detained at the Adelanto ICE
25 Detention Center in Adelanto, California. ICE placed Romero Serrano in removal
26 proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a.
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1 ICE has charged him with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as
2 someone who is present without admission in the United States. *See* Ex. G, Notice
3 to Appear. Romero Serrano requested a bond hearing before an IJ. On October 1,
4 2025, an IJ denied the request and issued a decision that the court lacked
5 jurisdiction to conduct a bond hearing pursuant to *Matter of Yajure Hurtado*. *See*
6 Ex. U, IJ Bond Order.

9 ARGUMENT

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

13
14 Petitioners must demonstrate that (1) they are likely to succeed on the merits
15 of their claims; (2) they are likely to suffer irreparable harm in the absence of
16 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
17 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
18 (2008). A sliding scale test may be applied and an injunction should be issued
19 when there is a stronger showing on the balance of hardships, even if there are
20 “serious questions on the merits ... so long as the plaintiff also shows a likelihood
21 of irreparable harm and that the injunction is in the public interest.” *All. for the*
22 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
23 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
24 2024). Petitioners satisfy the criteria and a TRO should be granted.

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

Petitioners are likely to succeed on their claims that their ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of a bond hearing before an immigration judge is unlawful. The text, context, and legislative and statutory history of the Immigration and Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs their detention.

Since Respondents adopted their new policies, dozens of federal courts have rejected DHS's and the BIA's new interpretation of the INA's detention authorities, including at least eight cases in the Central District of California. *See Lopez Pop v. Noem*, No. 5:25-cv-2589-SSS-SSC (C.D. Calif. Oct. 3, 2025); *Santiago Flores v. Noem*, Case No. 5:25-cv-2490-AB-AJR (Sept. 29, 2025); *Arreola Armenta v. Noem*, 5:25-cv-2416-JFW-SP (C.D. Cal. Sept. 16, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Benitez v. Noem*, 5:25-cv-2190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Ceja Gonzalez v. Noem*, 5:25-cv-2054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); and *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025).

On September 30, 2025, the U.S. District Court for the Western District of Washington issued a partial summary judgment order concluding that such persons are subject to detention under 8 U.S.C. § 1226(a) and are not subject to mandatory

1 detention under 8 U.S.C. § 1225(b)(2)(A). *Rodriguez Vazquez v. Bostock*, 2025
2 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Partial Summary Judgment Order). A
3 partial list of other federal courts rejecting the DHS's and BIA's interpretations is
4 contained in the Petition for Writ of Habeas Corpus, Dkt. 1 at ¶ 45. *But see, Sixtos*
5 *Chavez v. Noem*, No. 3:25-cv-2325-CAB-SBC (S.D. Cal. Sept. 24, 2025) (denying
6 TRO and accepting government's interpretation of § 1225(b)(2)).
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8
9 **A. The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioners are**
10 **not subject to mandatory detention.**

11 First, the plain text of § 1226 demonstrates that subsection (a) applies to
12 Petitioners. By its own terms, § 1226(a) applies to anyone who is detained “pending
13 a decision on whether the [noncitizen] is to be removed from the United States.” 8
14 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not
15 just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also
16 noncitizens, such as Petitioners, who are inadmissible pursuant to 8 U.S.C. §
17 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out
18 specific categories of noncitizens from being released—including certain
19 categories of inadmissible noncitizens—and subjects them instead to
20 mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C).
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22 If Respondents' position that § 1226(a) did not apply to inadmissible
23 noncitizens such as Petitioners who are present without admission in the United
24 States were correct, there would be no reason to specify that § 1226(c) governs
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1 certain persons who are *inadmissible*; instead, the statute would only have needed
2 to address people who are *deportable* for certain offenses. Notably, recent
3 amendments to § 1226 reinforce that this section covers people like Petitioners who
4 DHS alleges to be present without admission. The Laken Riley Act added language
5 to § 1226 that directly references people who have entered without inspection, those
6 who are inadmissible because they are present without admission. *See* Laken Riley
7 Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the
8 LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the
9 inadmissibility ground for presence without admission) or § 1182(a)(7) (the
10 inadmissibility ground for lacking valid documentation to enter the United States)
11 *and* who have been arrested, charged with, or convicted of certain crimes are
12 subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. §
13 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further
14 clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In
15 other words, if someone is *only* charged as inadmissible under § 1182(a)(6) or
16 (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply,
17 then § 1226(a) governs that person's detention. *See Rodriguez Vazquez v. Bostock*,
18 779 F. Supp. 3d 1239, 1259 (W.D. Wash. 2025) (Preliminary Injunction Order),
19 explaining these amendments explicitly provide that § 1226(a) covers people like
20 Petitioners because the “‘specific exceptions’ [in the LRA] for inadmissible
21 noncitizens who are arrested, charged with, or convicted of the enumerated crimes

1 logically leaves those inadmissible noncitizens not criminally implicated under
2 Section 1226(a)'s default rule for discretionary detention.”; *Diaz Martinez v. Hyde*,
3 2025 WL 2084238 at *7 (D. Mass. July 24, 2025) (“if, as the Government argue[s],
4 . . . a non-citizen’s inadmissibility were alone already sufficient to mandate
5 detention under section 1225(b)(2)(A), then the 2025 amendment would have no
6 effect.” 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025
7 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar); *Ceja Gonzalez v. Noem*, No.
8 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025) Order Granting Ex Parte
9 Application for TRO and OSC, Dkt. 12 at 7 (“If Respondents are correct that
10 Congress meant for § 1225 to govern all aliens present in the United States who had
11 not been admitted, it would render the exception made under § 1226(c)(1)(E)
12 unnecessary. This does not stand to reason for, as Respondents aptly note, ‘a
13 statute should be construed so that effect is given to all its provisions.’” (citations
14 omitted.) *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559
15 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if
16 the statute at issue did not otherwise cover the excepted conduct).

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22 Despite the clear statutory language, DHS issued a new policy on July 8,
23 2025 instructing all Immigration and Customs Enforcement (ICE) employees to
24 consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present
25 without admission - to be an “applicant for admission” and therefore subject to
26 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *See* Ex. V, “Interim
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1 Guidance Regarding Detention Authority for Applicants for Admission,” ICE, July
2 8, 2025.
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4 The new DHS policy was implemented “in coordination with” the
5 Department of Justice. *Id.* And on September 5, 2025, the BIA issued a precedent
6 decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) which
7 endorsed the DHS policy and similarly stated that any person who entered the
8 United States without admission is subject to mandatory detention under 8 U.S.C. §
9 1225(b)(2)(A) and therefore ineligible to be released on bond. The BIA’s decision
10 is not entitled to deference. “When the meaning of a statute [is] at issue, the
11 judicial role [is] to ‘interpret the act of Congress, in order to ascertain the rights of
12 the parties.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (citation
13 omitted). “*Chevron* [has been] overruled. Courts must exercise their independent
14 judgment in deciding whether an agency has acted within its statutory authority....”
15 *Id.* at 412. Petitioners have been denied or cannot obtain a bond hearing before an
16 IJ pursuant to this new DHS and BIA policy.
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18 The new policy is also inconsistent with the canon against superfluities.
19 Under this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed
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1 so that effect is given to all of its provisions, so that no part will be inoperative or
2 superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314
3 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101
4 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)
5 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
6 making every effort not to interpret a provision in a manner that renders other
7 provisions of the same statute inconsistent, meaningless or superfluous.’” (citation
8 omitted)). But by concluding that the mandatory detention provision of §
9 1225(b)(2) applies to Petitioners, DHS and the BIA violate this rule.

13 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read
14 to apply to everyone who is in the United States “who has not been admitted.”
15 Section 1226(a) covers those who are present without admission and residing
16 within the United States and who are not at the border seeking admission. The text
17 of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
18 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
19 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
20 Government must determine whether a[] [noncitizen] seeking to enter the country is
21 admissible,” *id.* at 287.

25 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
26 paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving
27 [noncitizens]”—encompasses only the “inspection” of certain “arriving”
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1 noncitizens and other recent entrants the Attorney General designates, and only
2 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C.
3 § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent
4 information to an examining immigration officer or do not have adequate
5 documents to enter the United States. Thus, subsection (b)(1)’s text demonstrates
6 that it is focused only on people arriving at a port of entry or who have recently
7 entered the United States and not those already residing here. Paragraph (b)(2) is
8 similarly limited to people applying for admission when they arrive in the United
9 States. The title explains that this paragraph addresses the “[i]nspection of other
10 [noncitizens],” i.e., those noncitizens who are “seeking admission,” but who (b)(1)
11 does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those “seeking
12 admission,” Congress confirmed that it did not intend to sweep into this section
13 individuals like Petitioners, who have already entered and are now residing in the
14 United States. An individual submits an “application for admission” only at “the
15 moment in time when the immigrant actually applies for admission into the United
16 States.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in
17 *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that
18 anyone who is presently in the United States without admission or parole is
19 someone “deemed to have made an actual application for admission.” *Id.* (emphasis
20 omitted). That holding is instructive here too, as only those who take affirmative
21 acts, like submitting an “application for admission,” are those who can be said to be
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1 “seeking admission” within § 1225(b)(2)(A). Otherwise, that language would serve
2 no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at
3 410–11.
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5 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
6 [noncitizens] *arriving* from contiguous territory,” i.e. those who are “*arriving* on
7 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
8 underscores Congress’s focus in § 1225 on those who are arriving into the United
9 States—not those already residing here. Similarly, the title of § 1225 refers to the
10 “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*,
11 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
12 construe statute).
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16 Finally, the entire statute is premised on the idea that an inspection occurs
17 near the border and shortly after arrival, as the statute repeatedly refers to
18 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
19 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
20 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
21 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
22 meaning”).
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25 The new DHS and BIA policy on which the IJ orders denying bond are based
26 ignore all this and instead focus on the definition of “applicant for admission” at §
27 1225(a)(1) (*see Ex. V*, “Interim Guidance Regarding Detention Authority for
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1 Applicants for Admission”, ICE, July 8, 2025; *Yajure Hurtado*, 29 I. & N. Dec. at
2 218), which defines an “applicant for admission” as a person who is “present in the
3 United States who has not been admitted or who arrives in the United States.” §
4 U.S.C. § 1225(a)(1). But as the Ninth Circuit has explained, “when deciding
5 whether language is plain, [courts] must read the words in their context and with a
6 view to their place in the overall statutory scheme.” *San Carlos Apache Tribe v.*
7 *Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted).
8 Here, that context underscores that the definition in (a)(1) is limited by other
9 aspects of the statute to those who undergo an initial inspection at or near a port of
10 entry shortly after arrival—and that it does not apply to those who are arrested in
11 the interior of the United States months or years or decades later.

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16 Significantly, in deeming that all noncitizens who entered without inspection are
17 necessarily encompassed by the mandatory detention provision at § 1225(b)(2), the
18 DHS and BIA policy ignores that the provision does not simply address applicants
19 for admission. Instead, the language “applicant for admission” in (b)(2)(A) is
20 further qualified by clarifying the subparagraph applies only to those “seeking
21 admission”—in other words, those who have applied to be admitted or paroled. The
22 new policy ignores this text, just as it ignores the statutory language in § 1226 that
23 expressly encompasses persons who have entered the United States and are present
24 without admission. Thus, Petitioners’ prevail regardless of the scope of §
25 1225(a)(1)’s definition of “applicant for admission.” This is because classification
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1 as an “applicant for admission,” is not sufficient to render someone subject to
2 mandatory detention under § 1225(b)(2). The “applicant for admission” must *also*
3 be “seeking admission,” and that is clearly not the case for Petitioners.
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5 **B. The legislative history further supports the application of § 1226(a) to**
6 **Petitioners’ detention.**

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

10 DHS’s and EOIR’s long practice of considering people like the Petitioners as
11 detained under §1226(a) further supports this reading of the statute. Typically, in
12 cases like that of the Petitioners, DHS issues a Form I-286, Notice of Custody
13 Determination, or Form I-200 stating that the person is detained under § 1226(a) or
14 has been arrested under that statute. This decision to invoke § 1226(a) is consistent
15 with longstanding practice. For decades, and across administrations, DHS has
16 acknowledged that § 1226(a) applies to individuals who are present without
17 admission after entering the United States unlawfully, but who were later
18 apprehended within the United States long after their entry. Such a longstanding
19 and consistent interpretation “is powerful evidence that interpreting the Act in [this]
20 way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203
21 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462
22 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
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1 interpretation and practice to reject government's new proposed interpretation of
2 the law at issue).

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

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

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

23 In the absence of a TRO, Petitioners will continue to be unlawfully detained
24 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.
25 The seven Petitioners have now been detained without a bond hearing for between
26 fifty-six and one hundred fifty-three days.
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1 “Freedom from imprisonment—from government custody, detention, or
2 other forms of physical restraint—lies at the heart of the liberty” that the Due
3 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
4 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
5 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
6 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
7 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
8 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d
9 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d
10 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994—
11 95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
12 government's current policies [which fail to consider financial ability to pay
13 immigration bonds] are likely unconstitutional—and thus that members of the
14 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
15 the absence of the injunction—that Plaintiffs have also carried their burden as to
16 irreparable harm.”); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-
17 BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order,
18 Dkt. 14 at 9 (“[T]he Court finds that the potential for Petitioners’ continued
19 detention without an initial bond hearing would cause immediate and irreparable
20 injury, as this violates statutory rights afforded under § 1226(a).”)
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1 **III. The Balance of Equities Tips in Petitioners' Favor and**
2 **a TRO is in the Public Interest.**

3 Because the government is a party, these two factors are considered together.
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5 *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established that the
6 public interest factor weighs in their favor because their claims assert that the new
7 policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006,
8 1029 (9th Cir. 2013). Because the policy preventing Petitioners from obtaining
9 bond “is inconsistent with federal law, . . . the balance of hardships and public
10 interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v.*
11 *Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also*
12 *Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent
13 injunction issued in *Moreno II* and quoting approvingly district judge’s declaration
14 that “it is clear that neither equity nor the public’s interest are furthered by allowing
15 violations of federal law to continue”). This is because “it would not be equitable or
16 in the public’s interest to allow the [government] . . . to violate the requirements of
17 federal law, especially when there are no adequate remedies available.” *Valle del*
18 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in
19 original) (citation omitted). Indeed, Respondents “cannot suffer harm from an
20 injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d
21 1127, 1145 (9th Cir. 2013).

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