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

Jorge BAUTISTA-AVALOS, Petitioner, v. Michael Bernacke, Field Office Director, ERO Salt Lake City, et al., Defendants.	Case No. 2:25-cv-01987 **PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

This case challenges the Department of Homeland Security's (DHS) unlawful application of 8 U.S.C. § 1225(b)(2) to detain a long-term U.S. resident apprehended in the interior, despite an Immigration Judge's explicit finding that he is not a danger to the community nor a flight risk. Petitioner Jorge Bautista Avalos has lived in the United States since 2007, resides in Oregon with his wife and three U.S.-citizen daughters, and has worked for nearly two decades at J.C. Ranch. On October 7, 2025, an Immigration Judge found that Mr. Bautista Avalos merits release and would have set bond at $3,500 with Alternatives to Detention at DHS's discretion—but concluded he was bound by the Board of Immigration Appeals' recent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

Under *Hurtado*, DHS has adopted an extreme and unprecedented interpretation of the Immigration and Nationality Act (INA), claiming that all noncitizens who entered without inspection—regardless of how long they have resided in the United States—are "applicants for admission" subject to mandatory detention under § 1225(b)(2). This position departs from nearly three decades of settled practice applying § 1226(a) to individuals apprehended within the United States and denies Immigration Judges the authority to conduct individualized bond hearings.

Federal courts, including the District of Nevada, have already rejected this expansive reading. In *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), the court held that DHS's and EOIR's coordinated policy is likely inconsistent with the INA's text and structure and that its enforcement results in unconstitutional deprivations of liberty. Likewise, in *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025), and *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass. July 7, 2025), courts have recognized that §

1226(a)—not § 1225(b)(2)—governs detention of long-term residents arrested away from the border.

Mr. Bautista Avalos's detention exemplifies the constitutional and statutory defects these courts identified. He remains confined solely because the Immigration Judge believed he lacked jurisdiction to act under § 1226(a), even though the Judge expressly found that release was warranted. The government did not file an EOIR-43 appeal, effectively waiving review of that determination, yet continues to detain him under an unlawful statutory theory.

Petitioner therefore seeks a preliminary injunction ordering his immediate release under the Immigration Judge's October 7, 2025, alternative bond finding, or, in the alternative, a prompt, constitutionally adequate custody hearing under § 1226(a) before a neutral decision-maker. The injunction is necessary to prevent the ongoing violation of Petitioner's statutory and constitutional rights and to preserve the rule of law pending final adjudication of these issues in this and related federal cases, including *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), set for hearing on October 17, 2025.

STATEMENT OF FACTS

I. DHS's New Policy Redefining Long-Term Residents as "Applicants for Admission"

On July 8, 2025, the Department of Homeland Security (DHS), in coordination with the Department of Justice (DOJ) and the Executive Office for Immigration Review (EOIR), issued Interim Guidance Regarding Detention Authority for Applicants for Admission. The policy asserted that all persons who entered the United States without inspection (EWIs) are to be deemed "applicants for admission" under 8 U.S.C. § 1225(b)(2)—even if they have resided in the United States for years or decades and were apprehended far from any port of entry.

This abrupt departure from decades of agency practice reclassified thousands of long-term residents previously detained under 8 U.S.C. § 1226(a)—the statute governing custody of individuals in standard removal proceedings—as instead subject to mandatory detention without bond. Historically, both DHS and EOIR had interpreted § 1226(a) to apply to such individuals, permitting Immigration Judges to conduct bond hearings to determine whether detention was necessary. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Since the July 8 policy's rollout, numerous federal courts have found it inconsistent with the INA's text and structure. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025), and *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025), both held that § 1226(a), not § 1225(b)(2), governs detention of individuals who entered without inspection but were not apprehended at the border. Most recently, in *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), the U.S. District Court for the District of Nevada found DHS's new interpretation likely unlawful and unconstitutional.

II. Petitioner's Background and Family Ties

Petitioner Jorge Bautista Avalos is a 42-year-old husband and father of three U.S.-citizen daughters, ages 17, 14, and 9. He has lived in the United States continuously since 2007, residing in Oregon, where he has worked for nearly two decades as a ranch hand and equipment operator at J.C. Ranch.

The harms are immediate and severe: Mr. Bautista Avalos is the family's sole provider. His wife remains at home caring for their children. His detention has caused severe emotional and financial hardship, depriving the family of income and separating a father from his daughters during their formative years. He has no criminal history and no record of violence or absconding.

III. Immigration Proceedings and the IJ's Bond Determination

On September 15, 2025, while visiting Las Vegas, Nevada, Petitioner was taken into custody on an allegation of misdemeanor domestic battery. The charge was denied and rejected the same day by the Clark County District Attorney's Office and has never resulted in prosecution or conviction. Department of Homeland Security (DHS) records, including Form I-213, confirm that Petitioner has no criminal history, no outstanding warrants, and no prior immigration violations.

On September 16, 2025, DHS issued a Notice to Appear, charging Petitioner as removable under 8 U.S.C. § 1182(a)(6)(A)(i) (present without admission or parole) and § 1182(a)(7)(A)(i)(I) (without valid entry documents). Petitioner was subsequently transferred to the Nevada Southern Detention Center (NSDC) in Pahrump, Nevada, where he has remained in custody since.

Petitioner requested a custody redetermination under 8 U.S.C. § 1226(a). On October 7, 2025, an Immigration Judge of the Las Vegas Immigration Court issued an oral and written decision concluding that, although Petitioner is neither a danger to the community nor a flight risk, the Court was bound by the Board of Immigration Appeals' recent decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), which held that all individuals who entered without inspection are "applicants for admission" subject to mandatory detention under § 1225(b)(2). Therefore denying bond, however, the Immigration Judge stated:

"The Court finds that [Mr. Bautista Avalos] is not a danger to the community nor a flight risk. The Court would have set bond in the amount of $3,500 with ATD at the direction of DHS." ECF 2 – Exhibit D.

No Form EOIR-43 or notice of appeal has been filed by DHS, thus waiving any challenge to the Immigration Judge's factual findings. ICE continues to detain Petitioner under § 1225(b)(2)

solely on the basis of the *Hurtado* interpretation, denying him the individualized bond hearing that § 1226(a) and due process require.

IV. Ongoing Detention and Related Litigation

Mr. Bautista Avalos has now endured over one month in immigration custody, separated from his children and deprived of his livelihood. Although an Immigration Judge found him eligible for release on bond, his continued detention stems solely from the new interpretation adopted in *Hurtado*. His confinement reflects the same statutory and constitutional violations condemned in Maldonado Vazquez, underscoring the systemic harm caused by this shift in legal standard.

The legality of DHS's *Hurtado*-based detention theory is currently under broader federal review. In *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), a pending class action scheduled for hearing on October 17, 2025, plaintiffs challenge DHS's and EOIR's coordinated use of § 1225(b)(2) to detain long-term residents and deny bond hearings. These parallel proceedings reinforce that DHS's position is unlikely to survive judicial scrutiny.

Petitioner now seeks preliminary injunctive relief to halt his ongoing unlawful detention and to restore the statutory and constitutional protections guaranteed under § 1226(a) and the Fifth Amendment.

ARGUMENT

To obtain a preliminary injunction, Petitioner 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 Petitioner 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 Petitioner, 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. Major Questions Doctrine

To the extent Respondents contend that § 1225(b)(2) authorizes the mass mandatory detention of millions of EWIs—including long-settled individuals like Petitioner, 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. Bautista-Avalos has now been detained for over a month; each additional day of detention imposes irreparable harm: prolonged separation from his 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. Bautista-Avalos a bond release or a new hearing untainted by the post–July 8 EOIR-43 automatic-stay practice.

III. DHS's Continued Detention of Mr. Bautista Avalos Is Arbitrary, Unlawful, and Contrary to the INA

Mr. Bautista Avalos has now been detained for over a month, despite an Immigration Judge's express finding that he is neither a danger to the community nor a flight risk, and that, but for the Board's decision in *Matter of Yajure Hurtado*, the Court would have ordered his release on a $3,500 bond with Alternatives to Detention (ATD) at DHS's discretion.

The government's continued detention of Mr. Bautista Avalos under 8 U.S.C. § 1225(b)(2)—a statute designed for recent border arrivals, not long-term interior residents—is arbitrary, ultra vires, and unconstitutional. This expanded interpretation has been repeatedly questioned and rejected by federal courts. In *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025), the District of Nevada held that DHS's post-Hurtado application of § 235(b) likely violates both the statutory scheme and due process, and that the government's reliance on this theory to deny release inflicts irreparable constitutional harm. The court emphasized that DHS is unlikely to prevail in defending this new interpretation on the merits, given the INA's plain text and the long-standing statutory distinction between border and interior apprehensions. Similarly, *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025), and *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025), concluded that § 1226(a)—not § 1225(b)(2)—governs the detention of

individuals like Mr. Bautista Avalos, who were apprehended long after entering and residing within the United States.

Each additional day of detention compounds the harm: Mr. Bautista Avalos is separated from his wife and three U.S. citizen daughters, deprived of his family's only source of income, and unable to assist in the preparation of his defense from outside custody. These harms are not speculative, they are immediate, concrete, and irreparable. Courts recognize that "loss of liberty for even one day is a harm of the most serious magnitude." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

DHS's detention of a person whom an IJ has already found eligible for release, and for whom the government declined to file an appeal, violates both the INA's structure and fundamental fairness. It converts a discretionary civil custody regime into indefinite preventive detention, without the individualized assessment required by Matter of Guerra, 24 I&N Dec. 37 (BIA 2006), and without judicial oversight.

Moreover, DHS's reliance on *Hurtado* to detain individuals far from the border contradicts the plain language of § 1225(b)(2), which applies only to those "seeking admission" at ports of entry or who have been apprehended at or near the border. Congress has never authorized the government to apply this provision to individuals like Mr. Bautista Avalos, long-settled residents with deep family and community ties, nor to strip Immigration Judges of jurisdiction to conduct bond hearings.

Federal courts have underscored that such overreach "raises grave constitutional questions" under the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The arbitrary denial of liberty to an individual already found suitable for release violates both due process and the statutory limits Congress placed on immigration detention.

Accordingly, the equities and public interest overwhelmingly favor injunctive relief. The government's detention of Mr. Bautista Avalos, despite an IJ's unchallenged factual finding that he is not dangerous and not a flight risk, serves no legitimate purpose and stands in direct conflict with federal law, long-standing practice, and constitutional guarantees.

IV. Prudential exhaustion is not required.

Respondents may argue that Mr. Bautista-Avalos must first pursue BIA review of any bond 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

Each additional day that Mr. Bautista Avalos remains in custody inflicts concrete and irreparable harm. An Immigration Judge has already determined that he is neither a danger to the community nor a flight risk, and that, but for the BIA's binding decision in *Matter of Yajure Hurtado*, he would have been released on a $3,500 bond with ATD. Yet DHS continues to detain him solely under the *Hurtado* theory, denying any opportunity for release or review.

Courts recognize 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). "If 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 … 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.Bautista-Avalos 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. Bautista-Avalos 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 severe stress and anxiety, compounding the constitutional injury stemming from detention under an unlawful interpretation of the INA.

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. Bautista-Avalos'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.

While Mr. Bautista Avalos has been detained for just over one month, the structure of the administrative process guarantees prolonged detention if left unremedied: the BIA has already

adopted the *Hurtado* rule that forecloses jurisdiction, leaving no viable avenue for administrative relief. In such circumstances, delay is not hypothetical, it is systemic and futile.

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 demonstrates a systemic and uniform DHS practice of invoking procedural mechanisms, such as EOIR-43 automatic stays or, as here, jurisdictional denials under *Matter of Yajure Hurtado,* to prevent the implementation of Immigration Judges' release determinations and to prolong detention indefinitely. Although DHS did not file an EOIR-43 in Mr. Bautista Avalos's case, the effect is the same: he remains detained solely because the agency has adopted a legal interpretation that deprives Immigration Judges of authority to act. This structural barrier, coupled with the BIA's chronic backlog, ensures that any administrative review would take months and result in continued confinement without judicial oversight.

Respondents should not be permitted to benefit from their own procedural design that forecloses release while simultaneously insisting on exhaustion of the very remedies that have been rendered meaningless. Such tactics "eviscerate the statutory and constitutional protections at stake" and warrant this Court's immediate intervention..

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

Exhaustion is also excused because the BIA has already decided the dispositive issue adversely in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered without inspection are "applicants for admission" subject to § 1225(b)(2) mandatory detention. This interpretation conflicts with the INA's text, decades of administrative practice, and the reasoning of federal courts, including *Maldonado Vazquez v.*

Feeley, No. 2:25-cv-01542-RFB-EJY (D. Nev. Sept. 17, 2025)—which held that DHS's post-Hurtado reading of § 235(b) "likely violates both the statutory scheme and due process."

Because the Board has already foreclosed relief by binding precedent, requiring Mr. Bautista Avalos to pursue further administrative review would be futile. See Laing, 370 F.3d at 1000 (waiving exhaustion where administrative remedies are "inadequate or not efficacious"). Moreover, the Board's continued adherence to *Hurtado*, despite substantial contrary authority and multiple federal court challenges, including *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), raises serious constitutional concerns under the Due Process Clause and the Major Questions Doctrine, confirming that federal court intervention is both proper and necessary.is necessary.

CONCLUSION

For the foregoing reasons, Petitioner Jorge Bautista Avalos respectfully requests that this Court grant his Motion for a Preliminary Injunction. Specifically, Petitioner asks that the Court:

1. **Order Respondents to give effect to the Immigration Judge's October 7, 2025, bond determination**, which expressly found that Mr. Bautista Avalos is neither a danger to the community nor a flight risk, and that but for the binding decision in Matter of Yajure Hurtado, the Court would have set bond in the amount of $3,500 with Alternatives to Detention (ATD) at DHS's discretion; or, in the alternative,
2. **Order a prompt, individualized custody hearing under 8 U.S.C. § 1226(a)** before a neutral decisionmaker, at which the government bears the burden of justifying continued detention by clear and convincing evidence, and at which any grant of release will not be nullified by DHS's post-*Hurtado* jurisdictional theory or automatic-stay practice; and
3. **Enjoin Respondents from continuing to apply 8 U.S.C. § 1225(b)(2)** to Petitioner, who was apprehended in the interior and not at or near a port of entry, and from detaining him

under that provision's mandatory framework, which the District of Nevada has held likely violates the INA and due process; and

4. **Enjoin Respondents from maintaining or enforcing detention under the jurisdictional rule announced in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025),** pending this Court's resolution of Petitioner's habeas claims, and direct that any future custody determination comply with § 1226(a) and constitutional due-process requirements; and
5. **Grant such other and further relief as this Court deems just and proper** to protect Petitioner's statutory rights and fundamental liberty interests guaranteed under the Constitution.

Respectfully submitted this 16th 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