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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF NEVADA

8 CRUZ RAMIREZ, SOLEDAD

9 PETITIONER

10 VS.

11 KRISTI NOEM, SECRETARY OF THE UNITED
12 STATES DEPARTMENT OF HOMELAND
13 SECURITY; PAM BONDI, UNITED STATES
14 ATTORNEY GENERAL; TODD LYONS,
15 DIRECTOR OF UNITED STATES
16 IMMIGRATION AND CUSTOM
17 ENFORCEMENT; BRYAN WILCOX, FIELD
18 OFFICE DIRECTOR FOR DETENTION AND
19 REMOVAL, U.S. IMMIGRATION AND
20 CUSTOMS ENFORCEMENT, DEPARTMENT OF
21 HOMELAND SECURITY; WARDEN
22 HENDERSON DETENTION CENTER;
23 EXECUTIVE OFFICE FOR IMMIGRATION
24 REVIEW (EOIR); SIRCE OWEN, ACTING
25 DIRECTOR, EOIR; LAS VEGAS IMMIGRATION
26 COURT

27 RESPONDENTS.

CIVIL NO. 25-2110

PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION

28 INTRODUCTION

Petitioner seeks a preliminary injunction that requires Respondents to accept her bond payment, enjoins Respondents from applying stays on bond grants under 8 C.F.R. 1003.6, and that enjoins the BIA from applying Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025) to her bond proceedings. Although Petitioner has lived in the United States for several years, Respondents are attempting to have Petitioner treated as an applicant for admission to the U.S., requiring mandatory detention under 8 U.S.C. § 1225(b)(2). But § 1226(a)'s discretionary detention scheme—and not §

1 1225(b)(2)'s detention authority— governs Petitioner's detention as held by the Las Vegas Immigration
2 Court. Section 1226's plain language makes this clear. Under that statute, the Department of Homeland
3 Security (DHS) may detain a noncitizen pending a hearing on that person's admissibility. In fact, the
4 statute explicitly extends to people who are inadmissible because they entered unlawfully. The statutory
5 language is unambiguous; § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders
6 and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the
7 country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Indeed, in contrast to § 1226(a),
8 the whole purpose of § 1225 is to define how DHS should inspect, process, and detain various classes of
9 people arriving at the border or who have just entered the country. Section 1225(b)(2) thus does not apply
10 to people like Petitioner, who are "already in the country" and are detained "pending the outcome of
11 removal proceedings." *Id.* at 289. The Court should not require administrative exhaustion. Appeals to the
Board of Immigration Appeals (BIA or the Board) inflict the very harm Petitioner seeks to avoid, where
appeals take six months or more to resolve.

12 STATEMENT OF FACTS

13 I. ICE's adopted a policy of filing frivolous appeals

14 This case concerns the detention authority for people who entered the United States without inspection,
15 are not apprehended upon arrival, and are not subject to some other detention authority, like the detention
16 authority for people in expedited removal, 8 U.S.C. § 1225(b)(1), or withholding-only proceedings, see
17 *id.* § 1231(a)(6). For decades, people who have been residing in the United States, often for years had
18 bond determinations based on the merits of their cases Prior to passage of the Illegal Immigration Reform
19 and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found
20 at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during deportation proceedings,
21 as well as authority to release the noncitizen on bond. Such proceedings governed the detention of anyone
22 in the United States, regardless of manner of entry. IIRIRA maintained the same basic detention authority
23 in the new § 1226(a). Indeed, when passing IIRIRA, Congress explained that the new § 1226(a) merely
24 "restates the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to
25 arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep.
26 No. 104-469, pt. 1, at 229 (1996); see also H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).
27 Separately, Congress enacted new detention authorities for people arriving in or who recently entered the
28 United States, including a new expedited removal scheme for those arriving or who recently entered. See
8 U.S.C. § 1225(b)(1)–(2). In implementing this new detention authority, the former Immigration and
Naturalization Service clarified that people who entered the United States without inspection and who
were not in expedited removal would continue to be detained. Separately, "exclusion" proceedings

1 covered those who arrived at U.S. ports of entries and had never entered the United States. See 8 U.S.C. §
2 1225 (1994) (providing for inspection and detention of noncitizens “arriving at ports of the United
3 States”); id. § 1226 (1994) (providing for exclusion proceedings of “arriving” noncitizens detained for
4 further inquiry). The distinction between § 1226(a) detention and § 1225(b) detention is important.
5 Detention under § 1226(a) includes the right to a bond hearing before a neutral decisionmaker—
6 specifically, an IJ. See 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence of their
7 ties to the United States, lack of criminal history, and other factors that show they are not a flight risk or
8 danger to the community. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people
9 determined to be detained under § 1225(b) are subject to mandatory detention and receive no bond
10 hearing. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2). They may only be released at the discretion of the
11 arresting agency via humanitarian parole. *Jennings*, 583 U.S. at 288; see also 8 U.S.C. § 1182(d)(5)(A).
12 For the first 25 years after IIRIRA was enacted, immigration courts across the country, applied § 1226(a)
13 to the detention of people who were apprehended within the United States after having entered without
14 inspection. ICE has made a drastic policy shift that contradicts the plain language of the law, affecting
15 those detained at NSDC. Hundreds of people have been denied the opportunity to post their bond, forcing
16 them to litigate their cases from detention or to give up altogether. Many, if not most, of these individuals
17 have resided in the United States for years, or even decades. Meanwhile, BIA appeals do not provide any
18 meaningful relief where nearly all cases are mooted out. In September of 2025, the BIA issued a decision
19 finding that anyone who entered the U.S. without inspection is subject to mandatory detention under
20 Section 235 of the INA, regardless of how long ago or where encountered. *Matter of YAJURE*
21 *HURTADO*, 29 I&N Dec. 216 (BIA 2025).

22 ARGUMENT

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

A. Petitioner is likely to succeed on the merits of their argument that ICE and EOIR are violating their Due Process by invoking automatic stays via frivolous appeals.

1. The text of § 1226 and § 1225 demonstrate that Petitioner is not subject to mandatory detention and ICE’s appeals are frivolous. First, the plain text of § 1226 demonstrates that its subsection

1 (a) applies to Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending a
2 decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).
3 Section 1226 goes on to explicitly confirm that this authority includes not just persons who are
4 deportable, but also noncitizens who are inadmissible. While § 1226(a) provides the right to seek release,
5 § 1226(c) carves out specific categories of noncitizens from being released—including certain categories
6 of inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., *id.* §
7 1226(c)(1)(A), (C). Clearly, if § 1226(a) did not cover inadmissible noncitizens there would be no reason
8 to specify that § 1226(c) governs certain persons who are inadmissible; instead, it would have only
9 needed to address people who are deportable for certain offenses. Generally speaking, grounds of
10 deportability (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as
11 lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182)
12 apply to those who have not been admitted to the United States. See, e.g., *Barton v. Barr*, 590 U.S. 222,
13 234 (2020). Notably, recent amendments to § 1226 dramatically reinforce that this section covers people
14 such as Petitioner, whom DHS alleges to have entered without inspection. The Laken Riley Act added
15 language to § 1226 that directly references people who have entered without inspection or who are
16 present without authorization. See Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).
17 Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6)
18 (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking
19 valid documentation to enter the United States) and who have been arrested, charged with, or convicted of
20 certain crimes are subject to § 1226(c)’s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E).
21 By including such individuals under § 1226(c), Congress further clarified that, by default, § 1226(a)
22 covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as
23 inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E)
24 do not apply, then § 1226(a) governs that person’s detention. *Shady Grove Orthopedic Assocs., P.A. v.*
25 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if
26 the statute at issue did not otherwise cover the excepted conduct). In sum § 1226’s plain text
27 demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States “who
28 has not been admitted,” 8 U.S.C. § 1225(a)(1). Section 1226(a) covers those who are not now seeking
admission but instead are already residing in the United States—including those who are charged with
inadmissibility—while § 1225(b)(2) covers only those “seeking admission,” i.e., those who are
apprehended upon arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)).
A contrary interpretation would ignore § 1226(a)’s plain text and structure and render meaningless §
1226’s language that specifically addresses individuals who have entered without inspection. The text of

1 § 1225 reinforces this interpretation. As the Supreme Court has recognized, § 1225 is concerned
2 “primarily [with those] seeking entry,” Jennings, 583 U.S. at 297, i.e., cases “at the Nation’s borders and
3 ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the
4 country is admissible,” id. at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To
5 begin, paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving [noncitizens]”—
6 encompasses only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney
7 General designates, and only those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8
8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent information
9 to an examining immigration officer or do not have adequate documents to enter the United States. Thus,
10 subsection (b)(1)’s text demonstrates that it is focused only on people arriving at a port of entry or who
11 have recently entered the United States and not those already residing here. Paragraph (b)(2) is similarly
12 limited to people applying for admission when they arrive in the United States. The title explains that this
13 paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking
14 admission,” but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those
15 “seeking admission,” Congress confirmed that it did not intend to sweep into this section individuals such
16 as Petitioner, who has already entered and are now residing in the United States. An individual submits an
17 “application for admission” only at “the moment in time when the immigrant actually applies for
18 admission into the United States.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in
19 *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is
20 presently in the United States without admission or parole is someone “deemed to have made an actual
21 application for admission.” Id. (emphasis omitted). That holding is instructive here too, as only those who
22 take affirmative acts, like submitting an “application for admission,” are those that can be said to be
23 “seeking admission” within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, violating
24 a key rule of statutory construction. *Shulman*, 58 F.4th at 410–11.

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

Finally, the entire statute is premised on the idea that an inspection occurs near the border
and shortly after arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8 U.S.C. §
1225(b)(2)(A), (b)(4), or officers conducting “inspection[s]” of people “arriving in the United States,” id.

1 § 1225(a)(3), (b)(1), (b)(2), (d); see also *King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's
2 "broader structure . . . to determine [the statute's] meaning").

3 2. The legislative history further supports the application of § 1226(a) to Petitioner.
4 The legislative history of IIRIRA also supports a limited construction of § 1225 and instead concluding
5 that § 1226(a) applies to Petitioner. In passing the Act, Congress was focused on the perceived problem of
6 recent arrivals to the United States who do not have documents to remain. See H.R. Rep. No. 104-469, pt.
7 1, at 157–58, 228–29; H.R. Rep. No. 104- 828, at 209. Notably, Congress did not say anything about
8 subjecting all people present in the United States after an unlawful entry to mandatory detention if
9 arrested. This is important, as prior to IIRIRA, people like Petitioner was not subject to mandatory
10 detention. See 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for
11 deportability proceedings, which applied to all persons within the United States). Had Congress intended
12 to make such a monumental shift in immigration law (potentially subjecting millions of people
13 to mandatory detention), it would have explained so or spoken more clearly. See *Whitman v. Am. Trucking*
14 *Ass'n*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained
15 precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in section
16 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[]
17 [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis
18 added); see also H.R. Rep. No. 104-828, at 210 (same).

19 3. The record and longstanding practice reflect that § 1226 governs Petitioner's
20 detention.
21 DHS's long practice of considering people like Petitioner as detained under § 1226(a) prior to July of
22 2025 further supports this reading of the statute. Typically, in cases like that of Petitioner, DHS issues a
23 Form I-286, Notice of Custody Determination or Form I-200 stating that the person is detained under §
24 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is consistent with
25 longstanding practice. For decades, and across administrations, DHS has acknowledged that § 1226(a)
26 applies to individuals who entered the United States unlawfully, but who were later apprehended within
27 the borders of the United States long after their entry. Such a longstanding and consistent interpretation
28 "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v.*
United States, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); see also *Bankamerica Corp. v. United*
States, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and
practice to reject government's new proposed interpretation of the law at issue). Indeed, agency
regulations have long recognized that people like Petitioner are subject to detention under § 1226(a).
Nothing in 8 C.F.R. § 1003.19(h)—the regulatory basis for the immigration court's jurisdiction—

1 provides otherwise. In fact, the Executive Office for Immigration Review (EOIR) confirmed that §
2 1226(a) applies to Petitioner and proposed class members' cases when it promulgated the regulations
3 governing immigration courts and implementing § 1226 decades ago. Specifically, EOIR explained that
4 "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or
5 paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond
and bond redetermination." 62 Fed. Reg. at 10323.3

6 In sum, § 1226 governs this case. Section 1225 applies only to individuals arriving in the
7 United States as specified in the statute, while § 1226 applies to those who have previously entered
8 without admission and are now residing in the United States.

9 B. Petitioner will suffer irreparable harm absent an injunction. Parties seeking
10 preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of
11 preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no
12 adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053,
1068 (9th Cir. 2014). Here, ICE's policy of filing frivolous appeals has resulted in continued detention.
13 This detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F.
14 Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), aff'd in part, vacated in part on other grounds,
15 remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); see also *Rodriguez v.*
16 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Petitioner's detention constitutes such a harm, as "civil
17 commitment for any purpose constitutes a significant deprivation of liberty that requires due process
18 protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Indeed, "[f]reedom from imprisonment—from
19 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that
20 the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For this reason, the
21 Supreme Court has repeatedly made clear that prolonged deprivations of liberty—like those that
22 noncitizens regularly experience—require a timely hearing to test the legality of detention before a
23 "neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); see also *Cnty. of*
24 *Riverside v. McLaughlin*, 500 U.S. 44, 55–56 (1991) (similar); *Gonzalez v. United States Immigr. &*
25 *Customs Enft*, 975 F.3d 788, 823–26 (9th Cir. 2020) (holding that *Gerstein* applies to the detention of
26 noncitizens on a detainer); *Zadvydas*, 533 U.S. at 690 (detention requires a hearing before an independent
27 decisionmaker to assess whether the detention "bear[s] [a] reasonable relation" to a valid government
28 purpose, such as preventing flight or protecting the community against dangerous individuals (alterations
in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *United States v. Salerno*, 481 U.S.
739, 750 (1987) (upholding Bail Reform Act's pre-trial civil detention scheme precisely because it
required the government to justify detention in a "full-blown adversary hearing" before a "neutral

1 decisionmaker”—a federal judge). Petitioner’s claims raise constitutional concerns, for civil detention
2 “violates due process outside of ‘certain special and narrow nonpunitive circumstances.’” *Rodriguez v.*
3 *Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted). These constitutional concerns reflect
4 irreparable harm, with strong likelihood of success on his claim that he is being held under § 1226(a) and
5 not § 1225(b)(2). See *Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases
6 involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable
7 harm”). Detention has also taken an emotional and mental toll on Petitioner, who reports significant
8 emotional trauma and physical struggles. Such “emotional stress, depression and reduced sense of well-
9 being” further support a finding of irreparable harm. *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir.
10 1988); see also *Moreno II*, 492 F. Supp. 3d at 1181–82 (“[S]tress, devastation, fear, and depression”
11 arising from unlawful immigration policy are the type of “harms [that] will not be remedied by an award
12 of damages.”). C. The balance of hardships and public interest weigh heavily in Petitioner’s favor. The
13 final two factors for a preliminary injunction—the balance of hardships and public interest—“merge
14 when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner
15 face weighty hardships: loss of liberty, separation from family, significant stress and anxiety, and
16 difficulty in obtaining an attorney. The government, by contrast, faces minimal hardship: the
17 administrative costs associated with three bond hearings. “[T]he balance of hardships tips decidedly in
18 Petitioner’s favor” when “[f]aced with such a conflict between financial concerns and preventable human
19 suffering.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).
20 What is more, because the policy preventing Petitioner from posting their bond “is inconsistent with
21 federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary
22 injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*);
23 see also *Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in *Moreno II* and
24 quoting approvingly district judge’s declaration that “it is clear that neither equity nor the public’s interest
25 are furthered by allowing violations of federal law to continue”). This is because “it would not be
26 equitable or in the public’s interest to allow the [government] . . . to violate the requirements of federal
27 law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d
28 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents “cannot
suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*, 715 F.3d at 1145. “The
public interest benefits from an injunction that ensures that individuals are not deprived of their liberty
and held in immigration detention because of . . . a likely [illegal bond] process.” *Hernandez*, 872 F.3d at
996. Accordingly, the balance of hardships and the public interest overwhelmingly favor injunctive relief
to ensure that Respondents comply with federal law and afford Petitioner release on bond.

1 II. Prudential exhaustion is not required.

2 “[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as
3 where administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will
4 result . . .” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court
5 may waive an exhaustion requirement when “requiring resort to the administrative remedy may occasion
6 undue prejudice to subsequent assertion of a court action.” *McCarthy v. Madigan*, 503 U.S. 140, 146–47
7 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731, 739–41
8 (2001). “Such prejudice may result . . . from an unreasonable or indefinite timeframe for administrative
9 action.” *Id.* at 147 (citing cases). Here, the exceptions regarding irreparable injury and agency delay apply
10 and warrant waiving any prudential exhaustion requirement. As with the irreparable harm analysis, “in
cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance
of equities and public interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at 1048.

11 A. Irreparable Injury

12 The first exception to any prudential exhaustion requirement that applies here is that of irreparable injury.
13 Each day Petitioner remains in detention is one in which their statutory rights have been violated and they
14 could be free. Similarly situated district courts have repeatedly recognized this fact. As one court has
15 explained, “because of delays inherent in the administrative process, BIA review would result in the very
16 harm that the bond hearing was designed to prevent: prolonged detention without due process.”
17 *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted).
18 Indeed, “if Petitioner is correct on the merits of his habeas petition, then Petitioner has already been
19 unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained
20 without a [lawful] bond hearing would cause him harm that cannot be repaired.” *Villalta v. Sessions*, No.
21 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and
22 brackets omitted); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar).
23 Other district courts have echoed these points. The district courts that have recognized that irreparable
24 harm exists here are well-supported by Ninth Circuit case law. At issue in this case is civil detention,
25 which “violates due process outside of ‘certain special and narrow nonpunitive circumstances.’”
26 *Rodriguez*, 909 F.3d 5 See, e.g., *Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v.*
27 *Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961
28 (N.D.Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal. 2018); *Montoya*
Echeverria v. Barr, No. 20-CV-02917-JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020);
Rodriguez Diaz v. Barr, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020);
Birru v. Barr, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr. 17, 2020); *Lopez Reyes*

1 v. *Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D.Cal. Dec. 24, 2018). at 257 (quoting
2 *Zadvydas*, 533 U.S. at 690). Petitioner has a “fundamental” interest in such a hearing, as “as “freedom
3 from imprisonment is at the ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872
4 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). This point is “beyond dispute.” *Id.*;
5 see also *Marin*, 909 F.3d at 256–57. Moreover, the irreparable injury Petitioner faces extends beyond a
6 chance at physical liberty. There are several “irreparable harms imposed on anyone subject to
7 immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar medical and psychiatric
8 care in ICE detention facilities,” as well as the “collateral harms to children of detainees whose parents
9 are detained.” *Id.*

10 B. Agency Delay

11 Second, the BIA’s delays in adjudicating bond appeals warrant excusing any exhaustion requirement. The
12 court’s ability to waive exhaustion based on delay is especially broad here given the interests at stake. As
13 the Ninth Circuit has explained, Supreme Court precedent “permits a court under certain prescribed
14 circumstances to excuse exhaustion where ‘a claimant’s interest in having a particular issue resolved
15 promptly is so great that deference to the agency’s
16 judgment [of a lack of finality] is inappropriate.’” *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 2002).
17 Moreover, the Supreme Court has explained that “[r]elief [when seeking review of detention] must be
18 speedy if it is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

19 Despite this fundamental interest and the Supreme Court’s admonition that only speedy relief is
20 meaningful, the BIA takes over half a year in most cases to adjudicate an appeal of a decision denying
21 bond. Its own data demonstrates this fact. Waiting several months, half a year, or even a year to review a
22 custody determination is not reasonable; to the contrary, it exhibits significant disregard for the
23 “fundamental” interests at stake. The Ninth Circuit has signaled that the protections afforded to criminal
24 Respondents in pre-trial civil detention should apply in the civil immigration context. In *Gonzales v. U.S.*
25 *Immigration & Customs Enforcement*, the Court of Appeals held that the Fourth Amendment “requires a
26 prompt probable cause determination by a neutral and detached magistrate to justify continued detention”
27 of a noncitizen facing removal. 975 F.3d at 798; see also *id.* at 823–26. Similar principles demonstrate
28 why the BIA’s review here is so patently unreasonable. The protections and quick review of detention
orders afforded criminal Respondents are rooted in the Fifth Amendment’s Due Process Clause, see
Salerno, 481 U.S. at 746–47, and many of those principles unquestionably apply to noncitizens, see, e.g.,
Zadvydas, 533 U.S. at 690–91 (repeatedly citing *Salerno* and other Fifth Amendment civil detention
caselaw). Thus, as with the rights at issue in *Gonzalez*, the rights of federal criminal Respondents facing
pretrial civil detention demonstrate that the BIA’s months- or even years-long review of a noncitizen’s

1 civil detention is an “unreasonable . . . timeframe for administrative action.” *McCarthy*, 503 U.S. at
2 147. Finally, Petitioner notes that under either basis for waiving exhaustion, the history of appeals related
3 to this issue supports him. Respondents have unclean hands and should not benefit from their failure to
4 abide by appellate authority. This reality only further underscores the need for immediate relief and the
5 propriety of waving any exhaustion requirement.

6 **CONCLUSION**

7 For the foregoing reasons, Petitioner respectfully requests the Court grant their motion
8 for a preliminary injunction and:

- 9 1. Issue an injunction that enjoins Respondents from staying her bond under 8 C.F.R.
10 §1003.19;
- 11 2. . Issue an order as to Petitioner, requiring that Respondents release them or allow
12 them to post their bond within 7 days;
- 13 3. Issue an injunction barring the BIA from taking more than 30 days to adjudicate a
14 bond appeal;
- 15 4. Issue an injunction the enjoins Respondents from denying her bond based on Matter of
16 Hurtado.

17 DATED this 27th day of October, 2025.



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