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12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 VICTOR KALID JACOBO RAMIREZ; EDGAR
 15 MICHEL GUEVARA ALCANTAR; on behalf of
 16 themselves and others similarly situated, et al.,

17 Plaintiffs-Petitioners,

18 vs.

19 KRISTI NOEM, Secretary, U.S. Department of
 20 Homeland Security, in her official capacity; U.S.
 21 DEPARTMENT OF HOMELAND SECURITY;
 22 PAMELA J BONDI, Attorney General of the
 23 United States, in her official capacity; TODD
 24 LYONS, Acting Director for U.S. Immigration and
 Customs Enforcement, in his official capacity; U.S.
 IMMIGRATION AND CUSTOMS
 ENFORCEMENT; JASON KNIGHT, Acting Field
 Office Director, EXECUTIVE OFFICE FOR
 IMMIGRATION REVIEW; SIRCE OWEN,
 Acting Director for Executive Office of
 Immigration Review, in her official capacity; LAS
 VEGAS IMMIGRATION COURT; JOHN
 MATTOS, Warden, Nevada Southern Detention
 Facility, in his official capacity,

Defendants-Respondents.

Case No.: 2:25-cv-02136

**NAMED PLAINTIFFS' MOTION
 FOR A PRELIMINARY
 INJUNCTION**

Expedited Briefing Requested

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Roughly four months ago, the Department of Homeland Security (DHS) began to
4 systemically misclassify immigration detainees in order to deny them bond hearings. This practice
5 is contrary to decades of settled law and policy. On September 5, the government cemented the
6 practice through the Board of Immigration Appeals' ("BIA") precedential decision in *Matter of*
7 *Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025) ("*Matter of Hurtado*"). That decision
8 unlawfully compels all Immigration Judges (IJs) to uniformly refuse to provide bond hearings to
9 anyone who originally entered the country without inspection. The overwhelming majority of
10 federal courts to have considered this issue has ruled that the government is wrong.

11 The impact on the immigrant community from DHS's policy and *Matter of Hurtado* can
12 hardly be overstated. In Nevada alone, hundreds of people are suddenly facing the prospect of
13 being illegally detained for months or years with no bond hearing at all. In the short time that the
14 policies have been implemented, dozens of people seeking help have filed habeas petitions in this
15 District. These numbers will only continue to grow as U.S. Immigration and Customs Enforcement
16 ("ICE") surges its enforcement activities in Nevada and neighboring states. Because this large and
17 growing group of cases all challenge a uniform policy, a collective resolution would be less
18 burdensome to the individuals, would ensure consistent adjudication for all people, and would
19 promote the efficient use of resources for all involved.

20 Plaintiffs Victor Kalid Jacobo-Ramirez and Edgar Michel Guevara-Alcantar ("Named
21 Plaintiffs") filed a class complaint and habeas petition on October 30, 2025, seeking such
22 classwide relief for similarly-situated individuals in Nevada. Both are longtime residents of the
23 United States who are harmed by Defendants' new policies subjecting them to mandatory
24 detention. Both Plaintiffs entered the United States without inspection as minors many years ago

1 and have since built their lives here with their U.S. citizen children and loved ones. They are
2 currently detained at the Nevada Southern Detention Center (NSDC) after they were arrested by
3 immigration officials in Nevada. Neither of them has criminal records disqualifying them from
4 consideration for bond. Both Plaintiffs are strong candidates for release on bond—in fact, an IJ
5 has already found that Mr. Jacobo-Ramirez did not pose any flight risk or danger and released him
6 on bond until rescinding that bond based on *Matter of Hurtado*—yet they are both facing prolonged
7 detention based on Defendants’ illegal mandatory detention practice, and they will not have any
8 access to a bond hearing absent an order from this Court.

9 Named Plaintiffs are willing to help promote a uniform resolution of this problem by serving
10 as representatives for a class of similarly situated detainees. Such a case will almost certainly take
11 longer to finally resolve than a typical individual habeas petition. At the same time, it is important
12 that Named Plaintiffs receive individual access to a bond hearing or release without delay.
13 Accordingly, they are moving for a preliminary injunction to ensure their rights are adequately
14 protected while the larger case unfolds. Because this relief is preliminary in nature, the Named
15 Plaintiffs’ case will not be moot, and the final resolution of this case will still be controlled by the
16 Court’s ultimate judgment. Thus, their interests will remain aligned with the class at all times. This
17 was deemed a fair approach in similar, if not identical, class actions currently pending before this
18 Court, in the Western District of Washington, and the District of Massachusetts. *See, e.g.,*
19 *Maldonado Vazquez v. Feeley*, No. 25-1542-RFB-EJY, 2025 WL 2676082, at *22-23 (D. Nev.
20 Sept. 17, 2025); *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239, 1263 (W.D. Wash. 2025),
21 *class subsequently certified at* 349 F.R.D. 333, 364-65 (W.D. Wash. 2025); *Guerrero Orellana v.*
22 *Moniz*, No. 25-cv-12664-PBS, ___ F. Supp. 3d ___, 2025 WL 3033769, at *14 (D. Mass. Oct. 30,
23 2025); *Mendoza Gutierrez v. Balthasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *14 (D.
24 Colo. Oct. 17, 2025). Named Plaintiffs respectfully request that the Court adopt the same approach

1 here and enter a preliminary injunction requiring that Mr. Jacobo-Ramirez be released unless the
2 bond previously granted by the IJ on September 3, 2025, is reinstated within seven days of the
3 Court's order, and Mr. Guevara-Alcantar be released unless he is provided a bond hearing with all
4 required procedural protections within seven days of the Court's order.

5 Additionally, because Named Plaintiffs are unlawfully jailed, and because this motion raises
6 essentially the same issues that Respondents were already ordered to brief in other similar cases
7 before this Court, Named Plaintiffs respectfully request that the Court order any opposition to this
8 motion be filed no later than November 10, 2025.

9 **II. FACTUAL BACKGROUND CONCERNING RELIEF FOR NAMED PLAINTIFFS.**

10 Mr. Jacobo-Ramirez has resided in the United States since 2002 when he entered as a minor.
11 Exhibit 1 (Decl. of Michael Kagan) at ¶ 8. In 2012, Mr. Jacobo-Ramirez applied for Deferred
12 Action for Childhood Arrivals (DACA), which was approved, and he maintained that status until
13 2024. *Id.* at ¶ 9. He currently resides in Las Vegas with his wife and six-year-old daughter who are
14 both U.S.-born citizens. *Id.* at ¶ 8. He has never had any prior contact with immigration authorities.
15 *Id.* at ¶ 13. ICE arrested Mr. Jacobo-Ramirez in a Las Vegas jail on August 18, 2025, after he was
16 released on his own recognizance on charges of driving under the influence and traffic offenses.
17 *Id.* ¶¶ 10-11. He has no criminal convictions and no other criminal charges pending. *Id.* at ¶ 14.

18 Mr. Jacobo-Ramirez is currently in removal proceedings before the Las Vegas Immigration
19 Court pursuant 8 U.S.C. § 1229a. *Id.* at ¶ 15. ICE has charged him with, *inter alia*, being present
20 without being admitted or paroled. *Id.* at ¶ 13. The I-213 form issued by DHS about him states that
21 he entered without inspection. *Id.* On September 3, 2025, Mr. Jacobo-Ramirez appeared for a
22 custody redetermination hearing before IJ Daniel J. Daugherty in Las Vegas, Nevada. *Id.* at ¶ 16.
23 In that hearing, the IJ agreed that Mr. Jacobo-Ramirez posed no flight risk or danger and granted
24 release on bond of \$7,500. *Id.* He subsequently paid the bond and was released from DHS custody.

1 *Id.* at ¶ 17. However, DHS filed and the IJ granted a motion to reconsider and rescind the bond
2 based on the BIA's decision in *Matter of Yajure Hurtado* rendering him subject to detention under
3 8 U.S.C. § 1225(b)(2). *Id.* at ¶ 18. Thus, Mr. Jacobo-Ramirez was rearrested by DHS when he
4 reported for a scheduled check-in with ICE. *Id.* at ¶ 19. Mr. Jacobo-Ramirez has remained in
5 detention in Pahrump, Nevada, since October 7, 2025. *Id.*

6 Like Mr. Jacobo-Ramirez, Mr. Guevara-Alcantar entered the United States as a minor nearly
7 a decade ago. *Id.* at ¶ 20. On July 26, 2019, Mr. Guevara-Alcantar was a victim of battery with a
8 deadly weapon which qualifies as a felonious assault for the purposes of obtaining a U-Visa. *Id.* at
9 ¶ 22. He was granted deferred action from removal after United States Citizenship and Immigration
10 Services (USCIS) found his U-Visa application was bona fide. *Id.* at ¶ 22. He has never had any
11 prior contact with immigration authorities. *Id.* at ¶ 25. He has deep ties to Nevada, as he currently
12 resides in Las Vegas, Nevada with his partner and four-year-old daughter, who is a U.S.-born
13 citizen. *Id.* at ¶ 20. Prior to his detention, Mr. Guevara-Alcantar supported his family financially
14 and shared custody of his daughter with her mother. *Id.* at ¶ 20. His detention has caused financial
15 strain for both his current partner and the mother of his child. *Id.* at ¶¶ 20, 29. ICE arrested Mr.
16 Guevara-Alcantar in a Las Vegas jail on August 26, 2025, upon his release from state custody after
17 the district attorney declined to prosecute a domestic violence charge. *Id.* ¶¶ 23-24. He has no other
18 criminal record. *Id.* at ¶ 26. While in ICE custody, Mr. Guevara-Alcantar sustained an injury to his
19 shoulder after he slipped and fell. *Id.* at ¶ 30. The injury has caused him a lot of pain, and he has
20 not regained full movement in the injured area. *Id.* DHS placed Mr. Guevara-Alcantar in removal
21 proceedings before the Las Vegas Immigration Court pursuant 8 U.S.C. § 1229a. *Id.* at ¶ 27. Upon
22 information and belief, ICE has charged him with, *inter alia*, being inadmissible as someone who
23 allegedly entered the United States without inspection. *See id.* at ¶ 28. He has not had a bond
24 hearing in Immigration Court because of Defendants' policies. *See id.*

1 As people arrested inside the United States and held in civil immigration detention for
2 pending removal proceedings, and because they lack any criminal predicates that could subject
3 them to mandatory detention under 8 U.S.C. § 1226(c), Mr. Jacobo-Ramirez and Mr. Guevara-
4 Alcantar are subject to detention, if at all, pursuant to 8 U.S.C. § 1226(a). *See, e.g., Maldonado*
5 *Vazquez*, 2025 WL 2676082, at *16 (“In sum, the Court finds that the text and canons of statutory
6 interpretation, including the legislative history, regulations, and long history of consistent agency
7 practice, as well as the doctrine of constitutional avoidance, demonstrate that Petitioner is likely
8 to succeed in establishing he and similarly situated noncitizens are subject to detention under §
9 1226(a) and its implementing regulations, not § 1225(b)(2)(A)"); *Jennings*, 583 U.S. at 288-89
10 (describing § 1226 detention as relating to people “inside the United States” and “present in the
11 country”); *Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *1, 8-13 (D. Mass. Aug. 19,
12 2025) (collecting cases). As such, they must, at the very least, have access to a bond hearing before
13 an IJ and be released on bond if the IJ so orders. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(c),
14 1236.1(c), 1003.19(a)-(f). However, under *Matter of Hurtado*, the responsible administrative
15 agency has determined that individuals like Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar are
16 not eligible for a bond hearing solely because they allegedly entered the country without being
17 admitted many years ago. The government is unlawfully holding Mr. Jacobo-Ramirez and Mr.
18 Guevara-Alcantar under the purported authority of 8 U.S.C. § 1225(b)(2), under which they will
19 remain detained throughout their removal proceedings regardless of the strength of their cases and
20 the lack of any justification for their detention.

21 Unless the Court intervenes, Mr. Jacobo-Ramirez’s and Mr. Guevara-Alcantar’s unlawful
22 detentions without due process are likely to last for a very long time. Completing the process in
23 the Immigration Court alone could take six months or more. *See* Kagan Decl. at ¶ 34. And if an
24 appeal is required, the period of unlawful detention could span years. *See id.*

1 **III. LEGAL STANDARD**

2 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive
3 relief to prevent “immediate and irreparable injury.” *Maldonado Vazquez*, 2025 WL 2676082, at
4 *6 (citing Fed R. Civ. P. 65(b)). A preliminary injunction is “an extraordinary remedy that may
5 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural*
6 *Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must
7 establish four elements: “(1) a likelihood of success on the merits, (2) that the plaintiff will likely
8 suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in
9 its favor, and (4) that the public interest favors an injunction.” *Wells Fargo & Co. v. ABD Ins. &*
10 *Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing *Winter*,
11 555 U.S. at 20).

12 In the Ninth Circuit, a preliminary injunction may also issue under the “serious questions”
13 test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the
14 continued viability of this doctrine post-*Winter*). According to this test, “serious questions going
15 to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance
16 of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of
17 irreparable injury, and that the injunction is in the public interest.” *Id.* at 1135. Courts in the Ninth
18 Circuit evaluate “these factors on a sliding scale, such that a stronger showing of one element may
19 offset a weaker showing of another.” *Recycle for Change v. City of Oakland*, 856 F.3d 666, 669
20 (9th Cir. 2017).

21 **IV. ARGUMENT**

22 Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar satisfy all four factors for preliminary
23 injunctive relief. This Court has granted preliminary injunctions in similar cases, including cases
24 where petitioners, like Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar, are seeking custody

1 redetermination (i.e. bond hearing) after the BIA’s ruling adopted DHS’s reading of the INA and
2 held IJs have no jurisdiction to hold a bond hearing for detained noncitizens. *See, e.g., Maldonado*
3 *Vazquez*, 2025 WL 2676082, at *11, 22-23; *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025
4 WL 2710211, at *1, 6-7 (D. Nev. Sept. 23, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-
5 DJA, 2025 WL 2998098, at *1, 6 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-
6 CV-01553-RFB-EJY, 2025 WL 2998094, at *1, 5-6 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v.*
7 *Bernacke*, No. 2:25-CV-01987-RFB-BNW, 2025 WL 3014023, at *1, 7 (D. Nev. Oct. 27, 2025)
8 *Arce-Cervera v. Noem*, No. 2:25-cv-01895-RFB-NJK, 2025 WL 3017866, at *2, 8 (D. Nev. Oct.
9 28, 2025); *see also E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *2, 13
10 (D. Nev. Aug. 14, 2025). The same analysis and ruling should apply to this case.

11 **A. Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar are likely to succeed on the**
12 **merits of their claims.**

13 Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar have raised essentially three sets of claims
14 in their petition and complaint: (1) that they are being misclassified in the statutory/regulatory
15 scheme as no-bond detainees, when they are actually bond eligible, *see* ECF 1 at 17-18; (2) that
16 their detention without a bond hearing violates constitutional due process protections, *see id.* at
17 20; and (3) that their detention pursuant to *Matter of Hurtado* is unlawful and therefore also
18 violates the Administrative Procedure Act (APA). *See id.* at 19-20. There is every reason to believe
19 that they will prevail on each of these claims, and therefore a preliminary injunction should enter.
20 *See Matsumoto v. Labrador*, 122 F.4th 787, 804 (9th Cir. 2024) (Likelihood of success on the
21 merits is the most important factor in a preliminary injunction analysis); *see also Baird v. Bonta*,
22 81 F.4th 1036, 1042 (9th Cir. 2023) (likelihood of success is especially important where a plaintiff
23 seeks a preliminary injunction because of an alleged constitutional violation). Indeed, this Court
24

1 had granted preliminary injunctions to similarly-situated people being denied bond hearings. *See*
2 *supra* Part IV.

3 **i. Named Plaintiffs are likely to show that they are being misclassified in**
4 **the statutory/regulatory scheme as no-bond detainees, when they are**
5 **actually bond eligible.**

6 As this Court has recognized, nearly every court to have examined the issue has rejected the
7 government's recent attempts to misclassify people arrested inside the United States—people
8 exactly like Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar—as § 1225(b)(2) no-bond detainees.
9 *See, e.g., Maldonado Vazquez*, 2025 WL 2676082, at *11 (“the Court holds, consistent with the
10 overwhelming majority of district courts in the Ninth Circuit and across the country that have thus
11 far considered the issue, that § 1226, not § 1225, applies to Petitioner and others similarly
12 situated.”); *Arce-Cervera*, 2025 WL 3017866, at *2 (“This Court is not alone in its finding, as the
13 overwhelming majority of district courts across the country that have considered DHS and the
14 BIA's new statutory interpretation have found it unlawful”); *Rodriguez Vasquez*, 2025 WL
15 2782499, at *27 (holding that the class members are detained under 8 U.S.C. § 1226(a) and are
16 not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *Guerrero Orellana*, 2025 WL
17 2809996, at *4-9 (holding that § 1226(a) applied based on the statute's plain language, Congress's
18 recent amendment to § 1226(c), the Supreme Court's decision in *Jennings*, and established agency
19 practice); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept.
20 9, 2025) (“[T]he BIA's decision to pivot from three decades of consistent statutory interpretation
21 and call for [petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that
22 has been confronted with the same question of statutory interpretation.”); *Mendoza Gutierrez v.*
23 *Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *4 (D. Colo. Oct. 17, 2025) (noting the
24 government “readily admit[s] that other district courts that have considered this same or similar
issue ‘have concluded that aliens who enter without inspection and then reside in the United States

1 fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)” (citation omitted);
2 *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, ___ F. Supp. 3d ___, 2025 WL 2935630, at *8
3 (N.D. Cal. Oct. 15, 2025) (“District courts throughout this district and across the country have
4 rejected that argument” that § 1225(b)(2) covers petitioners); *Hernandez Lopez v. Hardin*, No.
5 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4 (M.D. Fla. Oct. 29, 2025) (“Courts around the
6 country have since rejected the government's new interpretation. This Court now joins the
7 consensus.” (citation omitted)).¹

8 There is therefore a strong likelihood that Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar
9 will show that they, too, have been misclassified, and are in fact § 1226(a) detainees who are
10 entitled to a bond hearing before an IJ. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1,
11 1003.19(a)-(f).

12 Mr. Jacobo-Ramirez’s and Mr. Guevara-Alcantar’s statutory and regulatory arguments arise
13 from the intersection of the three mutually exclusive statutes that create the legal landscape for
14 civil immigration detention.

15 First, at the border, individuals “seeking admission” who are placed into removal
16 proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).² *See*

17 ¹ *See also Guerrero Orellana*, 2025 WL 2809996, at *5 (collecting cases); *Rodriguez Vasquez*,
18 2025 WL 2782499, at *1 n.3 (same); *Pizarro Reyes*, 2025 WL 2609425, at *7 (same); *Ventura*
19 *Martinez v. Trump*, No. 25-1445 (W.D. La. Oct. 22, 2025), ECF No. 17 at 5 n.1 (same); Kyle
20 Cheney et al., *Judges Really Don’t Like This Policy*, Politico (Oct. 31, 2025),
21 [https://www.politico.com/newsletters/west-wing-playbook-remaking-](https://www.politico.com/newsletters/west-wing-playbook-remaking-government/2025/10/31/judges-really-dont-like-this-detention-policy-00631871)
22 [government/2025/10/31/judges-really-dont-like-this-detention-policy-00631871](https://www.politico.com/newsletters/west-wing-playbook-remaking-government/2025/10/31/judges-really-dont-like-this-detention-policy-00631871) (describing how
23 over 100 judges have ruled at least 200 times against the government’s new mandatory detention
24 policy).

² These individuals may request release through humanitarian parole under 8 U.S.C. §
1182(d)(5)(A). Separately, there is also a limited subset of individuals in and around the border
who may be placed into the Expedited Removal process and are subject to mandatory detention
under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at
*23 (D.D.C. Aug. 29, 2025). This subset is not pertinent to Mr. Jacobo-Ramirez and Mr. Guevara-
Alcantar for a variety of reasons— including because they have resided in the United States for
many years and the government has not attempted to place them in Expedited Removal.

1 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to “borders and
2 ports of entry”); *see also Maldonado Vazquez*, 2025 WL 2676082, at *13 (describing § 1225’s
3 limited temporal focus to “ports of entry” and “recent arrivals.”).

4 Second, when a person is arrested inside the United States on civil immigration charges,
5 they are generally subject to the detention authority of 8 U.S.C. § 1226 during the pendency of
6 their removal proceedings. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as
7 relating to people “inside the United States” and “present in the country”); *see also Maldonado*
8 *Vazquez*, 2025 WL 2676082, at *14, (citing *Jennings*, 583 U.S. at 303) (describing § 1226 as
9 applying to “aliens already present in the United States”). Those (like Mr. Jacobo-Ramirez and
10 Mr. Guevara-Alcantar) who do not have disqualifying criminal history are entitled to a bond
11 hearing before an IJ to decide whether they should be detained or released. *See* 8 U.S.C. § 1226(a);
12 8 C.F.R. §§ 236.1(d); 1003.19(a), 1236.1(d). This statute has long been interpreted to apply to
13 people arrested inside the United States, even if they initially entered the country without being
14 admitted. *See, e.g.*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for
15 admission, aliens who are present without having been admitted or paroled (formerly referred to
16 as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

17 Third, if a person completes their removal proceedings and all appeals, and is ordered
18 removed, the person is subject to detention under 8 U.S.C. § 1231 while the government attempts
19 to remove them. *See generally Zadvydas v. Davis*, 533 U.S. 678, 688-89 (2001) (discussing
20 limitations on post-final order detention).

21 The present crisis has arisen because the government is now attempting to unlawfully move
22 thousands of people from one of these categories to the other. Specifically, the government is
23 attempting to misclassify bond-eligible § 1226 detainees arrested inside the United States as no-
24 bond border detainees under § 1225(b)(2). This unlawful practice apparently began in a single

1 Immigration Court in Washington. *See Rodriguez Vasquez*, 779 F. Supp. 3d at 1244. Last summer,
2 DHS, “in coordination” with DOJ, began making this argument to Immigration Courts
3 nationwide.³ And finally, on September 5, 2025, the Board of Immigration Appeals adopted it as
4 a uniform policy for all Immigration Courts in the *Matter of Hurtado* decision. *See* 29 I. & N. Dec.
5 216 (B.I.A. 2025). Under DHS’s policy and *Matter of Hurtado*, Mr. Jacobo-Ramirez has been
6 misclassified as a § 1225(b)(2) no-bond detainee and had his bond revoked, solely because the
7 government alleges he entered the United States without being admitted more than two decades
8 ago. Mr. Guevara-Alcantar is misclassified in the same way and does not have access to any
9 consideration for bond.

10 This Court, and many throughout the country, have rejected the government’s unlawful
11 reversal of nearly three decades of settled immigration practice. *See* discussion *supra* Part IV.A.i.
12 As this Court has explained, the government’s interpretation 1) is “inconsistent with the plain,
13 ordinary meaning of the phrase ‘seeking admission’ to apply [§ 1225(b)(2)] to all noncitizens
14 already present and residing in the U.S.”; 2) goes against legislative history that “supports
15 interpreting the INA as subjecting noncitizens like Petitioner[s] to discretionary detention with the
16 associated procedural protections”; 3) is inconsistent with “Supreme Court precedent interpreting
17 § 1225(b) and finding it ‘applies primarily to aliens seeking entry into the United States
18 (‘applicants for admission’ in the language of the statute)”; and 4) is inconsistent with existing
19 regulations governing IJs’ bond jurisdiction, as well as decades of agency practice. *Maldonado*
20 *Vazquez*, 2025 WL 2676082, at *12-15. The new interpretation also contradicts Congress’s clear
21 understanding of the statutory framework as expressed this year with the passage of the Laken
22 Riley Act—a new statute that expressly contemplates the inclusion of people who entered without

23 _____
24 ³ *See* Interim Guidance Regarding Detention Authority for Applicants for Admission,
<https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applicationsfor-admission>.

1 inspection within the scope of § 1226. *See id* at *14 (citing *Diaz Martinez v. Hyde*, No. 25-11613,
2 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (“if, as the Government argue[s], . . . a
3 noncitizen’s inadmissibility were alone already sufficient to mandate detention under section
4 1225(b)(2)(A), then the 2025 amendment would have no effect”).

5 “By its plain text, § 1225(b)(2) applies where several conditions are met: (1) an ‘examining
6 immigration officer’ in the context of ‘inspection’ (2) determines that an individual is an ‘applicant
7 for admission’ who is (3) ‘seeking admission.’” *See Maldonado Vazquez*, 2025 WL 2676082, at
8 *12. A person apprehended inside the United States is not undergoing an “examination,” which
9 “is a specific legal process one undergoes while trying to enter the country.” *Romero*, 2025 WL
10 2403827, at *9 (citing 8 C.F.R. § 235.1). And a person “seeking admission” is necessarily taking
11 a “present-tense action” to attempt to enter the country, not somebody already inside. *See id.* at
12 *9-10; *see also Maldonado Vasquez*, 2025 WL 2676082, at *13 (“It is inconsistent with the plain,
13 ordinary meaning of the phrase ‘seeking admission’ to apply this section to all noncitizens already
14 present and residing in the U.S., regardless of whether they are taking any affirmative acts that
15 constitute ‘seeking admission.’”); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), __F. Supp.
16 3d __, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025) (“As § 1225(b)(2)(A) applies only to
17 those noncitizens who are actively ‘seeking admission’ to the United States, it cannot, according
18 to its ordinary meaning, apply to [petitioner], because he has already been residing in the United
19 States for several years.”).

20 Lastly, to the extent the government might propose deference to *Matter of Hurtado*, there is
21 no longer any requirement to defer to the administrative agency’s interpretation, even if the statute
22 were ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024); *Pablo*
23 *Sequen*, 2025 WL 2935630, at *9 (“Because ‘agencies have no special competence in resolving
24 statutory ambiguities,’ ‘the BIA decision is entitled to little deference.’ (citation omitted)). It

1 appears that nearly every court that has examined this issue since the BIA’s decision on September
2 5 has rejected *Matter of Hurtado* as unavailing in light of the contrary conclusion compelled by
3 tools of statutory interpretation. *See, e.g., Rodriguez Vazquez*, 2025 WL 2782499, at *26 (“In
4 *Matter of Hurtado*, the BIA adopts many of Defendants’ arguments on the text of section 1225,
5 canons of interpretation, legislative history, and prior agency practice. For the reasons already
6 explained in this Order, the Court is not persuaded by the Board’s analysis.”); *Pizarro Reyes*, 2025
7 WL 2609425, at *7 (“[T]he BIA’s decision to pivot from three decades of consistent statutory
8 interpretation and call for [petitioner’s] detention under § 1225(b)(2)(A) is at odds with every
9 District Court that has been confronted with the same question of statutory interpretation.”); *Pablo*
10 *Sequen*, 2025 WL 2935630, at *9 (“The BIA’s reasoning fails to persuade because, as explained
11 above, its interpretation of § 1225(b)(2) needlessly renders the phrase ‘seeking admission’
12 superfluous, vitiates the discretionary-detention regime created by § 1226(a), and nullifies much
13 of § 1226(c). Any persuasive power the BIA’s decision might have is further undercut by its
14 inconsistency with the BIA’s earlier pronouncements.”).

15 **ii. Named Plaintiffs are likely to show that their detentions without**
16 **consideration of bond violate constitutional due process protections.**

17 Even if the government could permissibly interpret 8 U.S.C. §§ 1225 and 1226 to deny Mr.
18 Jacobo-Ramirez and Mr. Guevara-Alcantar bond hearings—though it cannot—holding them in
19 custody without providing them any individualized opportunity to seek release on bond still
20 violates due process requirements.

21 “In our society liberty is the norm, and detention prior to trial or without trial is the carefully
22 limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Fifth Amendment’s
23 Due Process Clause specifically forbids the Government from “depriv[ing]” any “person . . . of . .
24 . liberty . . . without due process of law.” U.S. Const. amend. V. There is no question that these

1 protections extend to noncitizens present in the United States. *See e.g., Trump v. J.G.G.*, 604 U.S.
2 670, 673 145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“It is well established that the Fifth
3 Amendment entitles aliens to due process of law’ in the context of removal proceedings . . .”)
4 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693, (2001)
5 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens,
6 whether their presence here is lawful, unlawful, temporary, or permanent.”); *Hussain v. Rosen*,
7 985 F.3d 634, 642 (9th Cir. 2021) (holding the “Fifth Amendment entitles aliens to due process of
8 law in deportation proceedings.”). Consequently, the Supreme Court has “repeatedly . . .
9 recognized that civil commitment for any purpose constitutes a significant deprivation of liberty
10 that requires due process protection,” including an individualized detention hearing. *Addington v.*
11 *Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring
12 individualized hearing and strong procedural protections for detention of people charged with
13 federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for
14 mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex
15 offenders).

16 To determine whether detention violates procedural due process, courts apply the three-part
17 test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Rodriguez Diaz v. Garland*, 53
18 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and applying the *Mathews* test to a constitutional
19 challenge to detention pursuant to 8 U.S.C. § 1226(a)). Under *Mathews*, courts weigh the following
20 three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of
21 an erroneous deprivation of such interest through the procedures used, and the probable value, if
22 any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest,
23 including the function involved and the fiscal and administrative burdens that the additional or
24 substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

1 All three factors weigh in favor of Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar.

2 The first *Mathews* factor considers the private interest affected by DHS and DOJ
3 misclassifying people as being subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See*
4 *Mathews*, 424 U.S. at 335. Here, that is Named Plaintiffs' interests in being free from
5 imprisonment, "the most elemental of liberty interests." *Maldonado Vazquez*, 2025 WL 2676082,
6 at *18 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "[T]his factor weighs heavily against
7 the government whenever it is invoked." *Id.* The mandatory detention imposed on Mr. Jacobo-
8 Ramirez and Mr. Guevara-Alcantar infringes on their fundamental right to freedom from executive
9 detention, especially because they are bond-eligible pursuant to § 1226, but also due to "the harms
10 attendant to [their] incarceration, including being separated from [their] famil[ies] and young
11 children, losing the ability to [work] . . . and earn an income which [their] famil[ies] depend[] on,
12 mental and emotional distress, and difficulty communicating with [their] counsel and gathering
13 evidence in preparation for [their] removal proceedings." *See id.* Thus, this factor weighs in their
14 favor.

15 The second *Mathews* factor is "the risk of an erroneous deprivation of [Petitioners'] interest
16 through the procedures used, and the probable value, if any, of additional or substitute procedural
17 safeguards." *Mathews*, 424 U.S. at 335. A blanket application of mandatory detention to all people
18 that enter without inspection creates an extreme risk of erroneous and arbitrary confinement. This
19 is clearly demonstrated by the circumstances of Mr. Jacobo-Ramirez where an IJ already
20 determined that he should be released but he is nonetheless being held in custody because of DHS'
21 and DOJ's policies, and the circumstances of Mr. Guevara-Alcantar who has no criminal
22 convictions and has been granted deferred action from removal by USCIS based on his bona fide
23 U-Visa application but has nonetheless been detained with no consideration of bond because of
24 DHS' and DOJ's policies.

1 The third and final *Mathews* factor considers the “Government's interest, including the
2 function involved and the fiscal and administrative burdens that the additional or substitute
3 procedural requirement would entail.” *Mathews*, 424 U.S. at 335. Put simply, “the government has
4 no legitimate interest in detaining individuals who have been determined not to be a danger to the
5 community and whose appearance at future immigration proceedings can be reasonably ensured
6 by a lesser bond or alternative conditions.” *Maldonado Vazquez*, 2025 WL 2676082, at *20 (citing
7 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). This is especially the case where an IJ
8 has already found one of the Named Plaintiffs not to be a flight risk or danger, and he even reported
9 for a scheduled check-in when his bond was rescinded. There is no government interest in
10 continued detention under these circumstances, especially without the minimal procedure of a
11 bond hearing where the government is free to raise any arguments it believes to justify continued
12 detention or, in Mr. Jacobo-Ramirez’s case, honoring the bond that the IJ already set.

13 **iii. Named Plaintiffs are likely to show that their detention pursuant to**
14 ***Matter of Hurtado* is unlawful under the Administrative Procedure Act.**

15 Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar may not be detained without a bond hearing
16 with strong procedural protections for the additional reason that such detention violates the APA.
17 Agency action found to be arbitrary, capricious, or otherwise not in accordance with law “shall”
18 be held unlawful and set aside. 5 U.S.C. § 706(2). The government is currently holding Mr.
19 Guevara-Alcantar in detention without the possibility of bond pursuant to the BIA’s decision in
20 *Matter of Hurtado*, which instructs all IJs to unlawfully misclassify noncitizens like Named
21 Plaintiffs who have allegedly entered without inspection as mandatory § 1225(b)(2) detainees. An
22 IJ determined that Mr. Jacobo-Ramirez was not a flight risk or danger when he released him on a
23 \$7,500 bond. The bond was later revoked by the IJ pursuant to the BIA’s decision and the
24 government is now holding him in mandatory detention, ineligible for bond.

1 As explained above, Mr. Jacobo-Ramirez’s and Mr. Guevara-Alcantar’s misclassification
2 as required by *Matter of Hurtado* violates their statutory right to a bond hearing and offends due
3 process. *See, e.g., Maldonado Vazquez*, 2025 WL 2676082 at *23 (granting preliminary injunction
4 to putative class representative and rejecting *Matter of Hurtado*); *cf. Brito v. Barr*, 415 F. Supp.
5 3d 258, 268 (D. Mass. 2019) (“Because the Court has already concluded that the BIA’s policy of
6 placing the burden of proof on the alien in § 1226(a) bond hearings is unconstitutional, the Court
7 also holds that the BIA policy is a violation of the APA.”), *vacated in part on other grounds by*
8 *Bruto v. Garland*, 22 F.4th 240 (1st Cir. 2021).

9 Similarly, Mr. Jacobo-Ramirez’s and Mr. Guevara-Alcantar’s detention pursuant to *Matter*
10 *of Hurtado* is arbitrary and capricious. *See Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State*
11 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious if the
12 agency fails to “articulate a satisfactory explanation for its action” or “entirely fail[s] to consider
13 an important aspect of the problem”); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515
14 (2009) (agencies may not depart from prior policies without displaying awareness of the change
15 and providing good reasons for it). Mr. Jacobo-Ramirez’s and Mr. Guevara-Alcantar’s detentions
16 pursuant to *Matter of Hurtado* therefore violate the APA.

17 **B. In the absence of preliminary relief, Named Plaintiffs will suffer irreparable**
18 **harm.**

19 Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar will suffer irreparable harm if preliminary
20 relief is withheld. To make a showing of irreparable harm, a plaintiff must demonstrate likely
21 irreparable injury in the absence of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
22 7, 22 (2008). “It is well established that the deprivation of constitutional rights ‘unquestionably
23 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
24 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This Court has already determined that other petitioners

1 in similar circumstances as Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar carried this burden
2 because “the [government’s] reading of § 1225(b) to apply to [people like them] raises serious
3 constitutional concerns . . . such that [they] would continue to be deprived of [their] physical liberty
4 unconstitutionally in the absence of an injunction.” *Maldonado Vazquez*, 2025 WL 2676082, at
5 *22. Numerous other courts have held the same. *See Romero*, 2025 WL 2403827, at *8; *Pablo*
6 *Sequen*, 2025 WL 2935630, at *12 (“The likely unconstitutional deprivation of liberty that
7 [petitioners] face is an immediate and irreparable harm”); *Rodriguez Vasquez*, 779 F. Supp. 3d at
8 1262 (holding that the petitioner “suffers potentially irreparable harm every day that he remains in
9 custody without a [bond] hearing, which could ultimately result in his release from detention”);
10 *Maldonado Bautista v. Santacruz Jr.*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 2670875, at *6
11 (C. D. Cal. July 28, 2025) (finding that the potential for “continued detention without an initial
12 bond hearing would cause immediate and irreparable injury, as this violates statutory rights
13 afforded under § 1226(a)”).

14 Accordingly, Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar face clear irreparable harm
15 absent preliminary relief.

16 **C. The balance of hardships and the public interest favor preliminary relief.**

17 Both the balance of the equities and the public interest favor preliminary relief. These two
18 inquiries merge in a case like this one, where the Government is the party opposing the preliminary
19 injunction. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citing *Nken v. Holder*, 556 U.S.
20 418, 435 (2009)).

21 The Ninth Circuit has recognized that “neither equity nor the public’s interest are furthered
22 by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir.
23 2022) (holding that the district court did not abuse its discretion in finding the balance of hardships
24 weighed in favor of plaintiffs who credibly alleged that the government was violating the INA).

1 Indeed, the Supreme Court has confirmed that “our system does not permit agencies to act
2 unlawfully even in pursuit of desirable ends.” *Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 766
3 (2021); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) (affirming district
4 court’s preliminary injunction of an illegal executive order even though a wartime president said
5 his order was “necessary to avert a national catastrophe”). Here, there is a significant public interest
6 in ensuring the government obeys the law and provides bond hearings to Named Plaintiffs and
7 other noncitizens detained under 8 U.S.C. § 1226(a), as the government has for decades. *See*
8 *Maldonado Vazquez*, 2025 WL 2676082, at *23 (“And because the Court has found it is likely that
9 Respondents are unlawfully detaining Petitioner under § 1225(b)(2), ‘neither equity or the public
10 interest are furthered’ by allowing Respondents’ violation of the INA to continue—quite the
11 opposite.”); *id.* (“The public interest benefits from an injunction that ensures that individuals are
12 not deprived of their liberty and held in immigration detention because of . . . a likely
13 unconstitutional process.” (citing *Hernandez*, 872 F.3d at 996)); *Rodriguez Vasquez*, 779 F. Supp.
14 3d at 1263 (holding that “the balance of equities tips sharply towards [petitioner]” because “neither
15 equity nor the public’s interest are furthered by detaining [petitioner] without the opportunity for
16 release on bond” as he had been unlawfully detained under § 1225(b)(2)).

17 Additionally, the hardships faced by Mr. Jacobo-Ramirez and Mr. Guevara-Alcantar—like
18 other noncitizens unlawfully detained without a bond hearing—weigh strongly in favor of granting
19 preliminary injunctive relief. Detention has separated Mr. Jacobo-Ramirez and Mr. Guevara-
20 Alcantar from their families and community, likely for a longtime if the Court does not act. *See*
21 Kagan Decl. ¶ 34. Their detention has prevented them from providing crucial financial and
22 childcare support to their partners, which has had an exorbitant strain on their families. *See id.* at
23 ¶¶ 8, 20. Courts, therefore, have found the balance of the equities favor detained noncitizens in
24 similar contexts. *See, e.g., Maldonado Vazquez*, 2025 WL 2676082, at *23 (“In contrast, the

1 hardships faced by Petitioner and the public interest in granting injunctive relief weigh strongly in
2 his favor. Detention has separated Petitioner from his family, business, and community and
3 imposed increased financial, caregiving, and emotional burdens on his wife and children.”);
4 *Rodriguez Vasquez*, 779 F. Supp. 3d at 1263 (“[T]he hardships faced by [petitioner] and the public
5 interest in granting injunctive relief weigh strongly in his favor. Detention has separated
6 [petitioner] from his family, harmed his physical and mental health, and made it harder to access
7 legal representation to defend against removal. In addition to [petitioner]’s own hardships, his
8 family has experienced increased financial, caregiving, and emotional burdens in the wake of his
9 detention.”).

10 Finally, any hardship to the government is minimal. For decades, the government has
11 provided bond hearings to individuals in the Named Plaintiffs’ exact same circumstances, and the
12 government cannot identify any harm caused by following the correct interpretation of the INA.
13 Indeed, because the government can already detain people who cannot meet their burden of
14 showing lack of flight risk or danger, *see Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)
15 (“The burden is on the [noncitizen] to show to the satisfaction of the Immigration Judge that he or
16 she merits release on bond.”), its new misclassification policy serves only to jail people who the
17 government can show no reason to detain, and there is no government interest in purposeless
18 detention.

19 To the extent the government claims that “[j]udicial intervention would only disrupt the
20 status quo,” *Rodriguez Vasquez*, 779 F. Supp. 3d at 1262, the status quo refers “not simply to any
21 situation before the filing of a lawsuit, but instead to the last uncontested status which preceded
22 the pending controversy.” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)
23 (quotation omitted). Therefore, it is the government that has disrupted the status quo by its
24 unfounded interpretation of the law, which has deprived a bond hearing to Mr. Jacobo-Ramirez

1 and Mr. Guevara-Alcantar and many others like them. *See Rodriguez Vasquez*, 779 F. Supp. 3d at
2 1262 (holding that the “harm to the government here is minimal” because the government’s
3 “argument ignores the undisputed record that the practice [petitioner] seeks to enjoin is an outlier
4 to the government’s longstanding interpretation and enforcement of its immigration laws”).

5 For these reasons, the balance of hardships and the public interest sharply favor Mr. Jacobo-
6 Ramirez and Mr. Guevara-Alcantar. Accordingly, the Court should find that they are entitled to
7 preliminary relief.

8 **V. CONCLUSION**

9 For the foregoing reasons, Named Plaintiffs respectfully request that the Court enter a
10 preliminary injunction requiring that Mr. Jacobo-Ramirez be released unless the bond previously
11 granted by the Immigration Judge (IJ) on September 3, 2025, is reinstated within seven days of the
12 Court’s order, and Mr. Guevara-Alcantar be released unless he is provided a bond hearing with all
13 required procedural protections within seven days of the Court’s order.

14 Additionally, Named Plaintiffs respectfully request that the Court order that any opposition
15 to this motion be filed no later than November 10, 2025.

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1 Dated: November 6, 2025.

2 **AMERICAN CIVIL LIBERTIES**
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| EXHIBIT | DESCRIPTION |
|----------------|--|
| 1 | Declaration of Michael Kagan, Esq. in Support of Named Plaintiffs’ Motion for a Preliminary Injunction and Motion for Class Certification and Appointment of Class Counsel |
| 1A | Las Vegas Municipal Court Case Docket for Victor Kalid Jacobo-Ramirez, Case Number 25-051521 |
| 1B | Order of Immigration Judge Granting Bond for Victor Kalid Jacobo Ramirez |
| 1C | Order of Immigration Judge Revoking Bond from Victor Kalid Jacobo Ramirez |
| 1D | Las Vegas Municipal Court Case Docket for Edgar Michel Guevara Alcantar, Case, Number 25-053721 |

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **NAMED PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on November 6, 2025. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

- CM/ECF
- Electronic mail; or
- US Mail or Carrier Service

Suzanne Lara
An employee of ACLU of Nevada