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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Jose Rene CORNEJO-MEJIA
(also known as Jose Rene Cormejo-Mejia),

Petitioner,

v.

Michael Bernacke, Field Office Director, ERO Salt Lake City, et al.,

Defendants.

Case No. 2:25-cv-02139

PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

This case challenges the Department of Homeland Security's (DHS) unlawful expansion of its mandatory-detention authority under 8 U.S.C. § 1225(b)(2) to individuals arrested in the interior of the United States—far from any border or port of entry—and its continued application of Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), to deny immigration judges jurisdiction to conduct bond hearings.

Petitioner Jose Rene Cornejo-Mejia (also known as Jose Rene Cormejo-Mejia) is a 34-year-old father of three U.S. citizen children who has lived in the United States since 2012. He was taken into ICE custody on September 30, 2025, in Las Vegas, Nevada, following a stop for unpaid traffic fines—an event entirely unrelated to any criminal conduct or border encounter. He has no criminal convictions and a long history of lawful work and family ties in Nevada.

On October 27, 2025, Immigration Judge Ann McDermott denied bond, finding that she lacked jurisdiction under *Matter of Yajure Hurtado*, which deemed Petitioner an "applicant for admission" subject to § 1225(b)(2) mandatory detention. The court made no factual finding that Mr. Cornejo-Mejia posed a danger or flight risk; jurisdiction alone foreclosed relief. As a result, Mr. Cornejo-Mejia remains confined at the Henderson Detention Center, separated from his family and community without an individualized determination of necessity or risk. This detention is unlawful.

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. Cornejo-Mejia'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). 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.

Accordingly, Petitioner seeks a preliminary injunction ordering Respondents to provide a constitutionally adequate custody hearing under § 1226(a) within seven (7) days—or to release him on appropriate bond—and enjoining the continued application of *Matter of Yajure Hurtado* and related practices to individuals apprehended in the interior.

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 Mr. Cornejo-Mejia is a thirty-four-year-old national of El Salvador who has resided continuously in the United States since 2012. For more than a decade, he has lived and worked openly in the United States, building a stable home, maintaining long-term employment, and supporting his U.S.-citizen children.

He shares custody of his three daughters with Gabriela S. I. P., his former spouse and mother of the children. The children are all U.S. citizens and reside in Nevada. Each has expressed in writing the emotional and financial hardship caused by their father's detention. His partner of the past two years, Elsa Q., has also described his reliability and his central role in helping to raise the children.

Prior to his detention, Mr. Cornejo-Mejia worked full-time in ranch and construction labor, providing steady income and support for his family. He is well known among his neighbors, coworkers, and church members as a dependable, respectful, and peaceful man. Numerous letters from family, clergy, and friends attest to his good moral character, strong work ethic, and commitment to his children.

He has no criminal convictions. The sole arrest cited by DHS occurred on September 30, 2025, when local police stopped him in Las Vegas for unpaid traffic tickets. Although he was briefly taken into custody, the incident did not result in a criminal prosecution or conviction. DHS nonetheless used that event to initiate removal proceedings and detain him at the Henderson Detention Center, where he remains today.

Mr. Cornejo-Mejia's family depends heavily on his presence. Taken together, these equities confirm that Mr. Cornejo-Mejia is a deeply rooted member of his community, a devoted parent, and a law-abiding resident who poses no danger to the public and no risk of flight. His

continued detention serves no legitimate government interest and inflicts severe, irreparable harm on his U.S.-citizen children and family.

III. Immigration Proceedings and the IJ's Bond Determination

On October 1, 2025, the Department of Homeland Security ("DHS") issued a Notice to Appear (NTA) charging Mr. Cornejo-Mejia as removable under 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled, and 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid unexpired visa, reentry permit, border crossing card, or other valid entry document required under the Act. He was placed in removal proceedings before the Las Vegas Immigration Court pursuant to 8 U.S.C. § 1229a. The charging document alleged no criminal conduct and was based solely on his 2012 entry without inspection.

Mr. Cornejo-Mejia, through counsel, requested a custody redetermination hearing under INA § 236(a), arguing that as a long-term resident apprehended in the interior he is entitled to bond and an individualized assessment of flight risk and danger. The hearing was held on October 27, 2025, before Immigration Judge Ann McDermott at the Henderson Immigration Court.

At the hearing, counsel presented evidence of Mr. Cornejo-Mejia's strong community and family ties, including affidavits from his, partner, mother of his children, friends and family proof of steady employment; and the absence of any criminal record. DHS submitted no evidence of danger or flight risk and relied solely on jurisdictional arguments following Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

In her oral and written decision issued October 27, 2025, Judge McDermott concluded that she lacked jurisdiction to set bond. She stated that under *Matter of Yajure Hurtado*, individuals who entered without inspection are "applicants for admission" subject to 8 U.S.C. § 1225(b)(2)

and therefore ineligible for custody redetermination under § 236(a). The Immigration Judge made no finding that Mr. Cornejo-Mejia posed any danger to the community or risk of flight; rather, the denial rested solely on the binding effect of *Hurtado*.

As a result, Mr. Cornejo-Mejia remains detained at the Henderson Detention Center, deprived of an individualized custody assessment or access to bond despite his clean record and exceptional equities. His case illustrates the direct and ongoing consequences of DHS's post-Hurtado policy, which extends mandatory detention to long-term residents far removed from any border encounter—a practice federal courts have found inconsistent with both the Immigration and Nationality Act and due process. 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. Cornejo-Mejia has now endured over one month in immigration custody, separated from his children and deprived of his livelihood; 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. Cornejo-Mejia 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. Cornejo-Mejia Is Arbitrary, Unlawful, and Contrary to the INA

Mr. Cornejo-Mejia remains confined at the Henderson Detention Center in Nevada, where he has now been detained for nearly a month without any individualized custody determination. His continued detention rests solely on the government's application of *Yajure Hurtado*, which classifies all individuals who entered without inspection as "applicants for admission" subject to 8 U.S.C. § 1225(b)(2). Under this expanded interpretation, long-term residents apprehended in the interior—like Mr. Cornejo-Mejia—are denied access to bond hearings under § 1226(a), even when

they have lived and worked in the United States for years and have deep family and community ties.

The government's continued detention of Mr. Cornejo-Mejia 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. Cornejo-Mejia, who were apprehended long after entering and residing within the United States.

Mr. Cornejo-Mejia's detention thus arises at the crossroads of these ongoing challenges. He remains incarcerated despite a complete lack of criminal history, strong family ties, and no evidence of danger or flight risk. His case exemplifies the unlawful and arbitrary enforcement pattern now under federal court scrutiny—one that effectively converts discretionary civil detention under § 1226(a) into mandatory and indefinite confinement under § 1225(b)(2), in violation of statutory limits and constitutional guarantees of due process. 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 an individual who is plainly eligible for release on bond violates both the INA's statutory structure and basic principles of due process. It transforms a discretionary civil custody framework into a system of indefinite preventive detention, imposed without the individualized assessment required by Matter of Guerra, 24 I&N Dec. 37 (BIA 2006), and without any form of meaningful judicial review.

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 continued detention of Mr. Cornejo-Mejia, absent any finding that he poses a danger to the community or a risk of flight, serves no legitimate governmental purpose and contradicts the INA's structure, long-standing administrative practice, and the fundamental protections guaranteed by the Constitution.

IV. Prudential exhaustion is not required.

Respondents may contend that Mr. Cornejo-Mejia must first pursue BIA review of any bond denial. But prudential exhaustion does not require him to endure the very harm he seeks to prevent—prolonged detention under an unlawful statutory theory—while waiting months for a BIA decision. As the Ninth Circuit has recognized, "[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. Cornejo-Mejía remains in custody inflicts concrete and irreparable harm. The Immigration Judge expressly stated that he lacked jurisdiction to consider bond under *Yajure Hurtado*, despite no evidence that Mr. Cornejo-Mejía poses any danger to the community or risk of flight. DHS continues to detain him solely under this new and unlawful interpretation of § 1225(b)(2), which denies him any opportunity for individualized review or release.

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. Cornejo-Mejia is deprived of daily contact and support for his partner 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 Henderson 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. Cornejo-Mejia'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. Cornejo-Mejia 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 *Yajure Hurtado,* to prevent Immigration Judges from granting release and to prolong detention indefinitely. Although DHS did not file an *EOIR-43* here, the result is the same: Mr. Cornejo-Mejía remains confined solely because the agency has adopted a sweeping legal interpretation that strips Immigration Judges of authority to act. This structural barrier, compounded by the BIA's chronic backlog, guarantees that any administrative review would take months and leave Petitioner detained without meaningful 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, supra. 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 *Yajure 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, Jose Rene Cornejo-Mejia, respectfully requests that this Court grant his Motion for a Preliminary Injunction. Specifically, Petitioner asks that the Court:

1. **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;
2. **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
3. **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

4. **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 30th day of October, 2025.

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