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Aldo Sanchez Chavez

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Aldo Sanchez Chavez,

Petitioner,

v.

Unknown Individual #1, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement;

Kristi Noem, Secretary, U.S. Department of Homeland Security;

Pamela Bondi, U.S. Attorney General;

Unknown Individual #2, Warden of Eloy Detention Center;

Todd Lyons, Acting Director, Immigration and Customs Enforcement and Removal Operations.

Respondents.

Case No. TBD

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TRO/PI

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local Rules of this Court, Petitioner moves this Court for an order that Respondents Unknown Individual #1, in his/her official capacity as Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement ("ICE"), Kristi Noem, in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"), Pamela Bondi, in her official capacity as the U.S. Attorney General with authority over the Executive Office for Immigration Review, Todd Lyons, in his official capacity as Acting Director of ICE Enforcement and Removal Operations, and Unknown Individual #2, in his/her official capacity as Warden of the Eloy Detention Center, where Petitioner is detained, be enjoined from continuing to detain Petitioner following submission of the bond set in the alternative by the immigration judge. Respondents should also not transfer the Petitioner outside the District of Arizona, where he is presently located, while this petition is pending, but should permit him to travel to Oregon, where he resides and where his family lives, following his release. Such an order would maintain the status quo while habeas jurisdiction is litigated and would also ensure that Petitioner remains close to legal counsel during the pendency of his petition, and to his family following his release.

The reasons for this Motion are in the accompanying Memorandum of Points and Authorities. As this Motion shows, Petitioner warrants a temporary restraining order and a preliminary injunction due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful detention.

Petitioner is submitting a habeas petition for same, on the same grounds, and is also filing this motion for a temporary restraining order and preliminary injunction to prevent irreparable injury before a hearing on his Habeas may be held. Petitioner has provided a copy of his Petition for Writ of Habeas Corpus and Motions for Temporary Restraining Order and Motion for Preliminary Injunction to Katherine Branch, Civil Chief for the U.S. Attorney's Office, via email.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and preliminary injunction enjoining Respondents from continuing to detain him following submission of the bond ordered in the alternative by the immigration judge. Petitioner further prays this Court enjoin ICE from transferring him outside this judicial district while his habeas corpus petition is pending, and enjoin ICE from preventing his relocation to Oregon, where he and his family reside, following his release from custody.

Dated: November 4, 2025

Respectfully Submitted

s/ Gregory Fay
Attorney for Petitioner

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I. INTRODUCTION

Petitioner Aldo Sanchez Chavez seeks a Temporary Restraining Order (TRO) and Preliminary Injunction (PI) that requires Respondents to release him from custody upon submission of the bond set in the alternative by the immigration judge, and precludes the Department of Homeland Security (DHS) from re-detaining him without a hearing in which DHS bears the burden of demonstrating that his detention is justified (i.e. whether he poses a danger or a flight risk), and where the immigration judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that Respondents may establish. Finally, Petitioner seeks a TRO and PI enjoining Respondents from transferring Petitioner outside the District of Arizona, where he is presently located, while this petition is pending, and enjoining Respondents from hindering Petitioner's travel to Oregon, where he resides and where his U.S.-citizen family members are located, following his release.

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims. The text of 8 U.S.C. § 1226(a) and § 1225(b)(2) demonstrates that he is not subject to mandatory detention. Further, other federal courts have rejected the respondents' novel argument that 8 U.S.C. § 1225(b) governs the detention of every noncitizen without lawful immigration status.

Petitioner will also suffer irreparable harm in the absence of a TRO and a PI. The balance of equities tips in his favor, and a TRO and PI are in the public interest. Prudential exhaustion is not required here due to futility, irreparable injury, and agency delay. Finally, there is no jurisdictional hurdle barring relief. This Court should thus grant this motion.

II. STATEMENT OF THE FACTS

Petitioner is a 24-year-old resident of Oregon. He entered the United States in August of 2009, when he was only eight years old, after a woman he did not know brought him across the southwest border and sent him to live with his aunt. *See* Exhibit A (Declaration of Petitioner). Petitioner is engaged to be married to a United States citizen, and he has two United States-citizen siblings and four United States-citizen cousins. *See id.* Petitioner also has the support of his uncle, a United States citizen who has served as a father figure for Mr. Sanchez Chavez and would provide for him if he were released from immigration custody. *See id.*; *see also* Exhibit B (Letter of Support from Petitioner's Uncle).

Petitioner filed a U visa petition with United States Citizenship and Immigration Services (USCIS) on April 17, 2017, and he obtained employment authorization on the basis of this pending petition in May 2022. Exhibit C (Written Pleadings submitted to Immigration Court on September 15, 2025), Exhibit D (Copy of Employment Authorization Document for Petitioner). If approved, Mr. Sanchez Chavez's U visa petition, which has been pending for over 8 years and is likely to be decided in the near future, would provide him with a means of obtaining lawful permanent residence in the United States. *See* 8 U.S.C. 1101(a)(15)(U), 1255(m).

Petitioner was detained on July 18, 2025, and thereafter convicted of accessory after the fact to smuggling of noncitizens. Exhibit E (Copy of Plea Agreement). He came into immigration custody at the Eloy Detention Center in Eloy, Arizona, on August 15, 2025, after his release from criminal custody. Petitioner sought release from immigration

custody, but an immigration judge found he had no jurisdiction to grant bond. Exhibit F (Immigration Judge's Decision Denying Bond, October 6, 2025). However, the immigration judge concluded that if he had jurisdiction, he would grant bond in the amount of $10,000.00. *Id.* ICE has charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I), as a noncitizen present in the United States without being admitted or paroled, and as an immigrant who, at the time of application for admission, was not in possession of a valid visa or entry document. Exhibit G (Notice to Appear).

Thus, Petitioner has been detained in immigration custody for well over two months, including nearly a month after an immigration judge determined he would be entitled to release upon payment of a bond, were it not for the decision of the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

III. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order and preliminary injunctive relief if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant relief if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the

remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As shown below, Petitioner overwhelmingly satisfies the standards for both a temporary restraining order and a preliminary injunction.

IV. ARGUMENT

PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION BECAUSE HE IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS, AND HE SUFFERS IRREPARABLE INJURY EACH DAY HE REMAINS DETAINED.

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims, he is likely to suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in his favor, and an injunction is in the public interest.

Respondents have violated the Immigration and Nationality Act and applicable regulations. Indeed, the text of 8 U.S.C. § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is not subject to mandatory detention. Further, other federal courts have rejected the Respondents' novel argument that 8 U.S.C. § 1225(b) governs the detention of every noncitizen without lawful immigration status.

Petitioner will also suffer irreparable harm in the absence of a TRO and a PI. The

balance of equities tips in his favor, and a TRO and PI are in the public interest. Prudential exhaustion is not required here due to futility, irreparable injury, and agency delay. Finally, there is no jurisdictional hurdle barring relief. This Court should thus grant this motion.

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM

Petitioner is likely to succeed on his claim that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2), and the denial of access to bond, is unlawful.

1. Discretionary Versus Mandatory Detention in Removal Proceedings

Noncitizens detained by DHS while in removal proceedings generally can request a bond—or "custody redetermination"—hearing before an immigration judge. 8 U.S.C. 1226(a); 8 C.F.R. 1236.1(d)(1). If the noncitizen does not present a danger to others, a threat to the national security, or a flight risk, the immigration judge may order that individual released on conditional parole or upon the posting of a monetary bond of no less than $1,500. 8 U.S.C. 1226(a)(2)(A)-(B); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

Certain categories of noncitizens are subject to mandatory detention while in removal proceedings. Under a provision in IIRIRA, if "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. 1229a]." 8 U.S.C. 1225(b)(2)(A). In the same bill, Congress defined "admission" and "admitted" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). In other words, the terms "admission" and "admitted" "refer to inspection and authorization by an immigration officer at the port of entry." *Hing Sum v. Holder*, 602 F.3d 1092, 1101 (9th Cir. 2010). Thus, as the Supreme Court has explained, 8 U.S.C. 1225(b)(2)(A) only

applies to noncitizens who are "seeking admission into the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), i.e., those who are "arriving in the United States." *Clark v. Martinez*, 543 U.S. 371 (2005).

Consistent with the text of 8 U.S.C. 1225(b)(2)(A), federal regulations preclude immigration judges from granting bond to "arriving aliens," 8 C.F.R. 1003.19(h)(1)(B)(ii), a phrase defined in relevant part as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. 1001.1(q). The decision to preclude immigration judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without admission—was the product of notice and comment rulemaking in early 1997 following the enactment of the IIRIRA. As the regulations were initially proposed, all "[i]nadmissible aliens in removal proceedings" would have been ineligible for bond. Inspection and Expedited Removal of *Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to "[a]rriving aliens."[1] *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997).

As the Attorney General explained, "[t]he effect of this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." *Id.* at 10323. In other

[1] This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred to 8 C.F.R. § 1003.19(h)(2)(i)(B).

words, "aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." *Id.*

The IIRIRA also made subject to mandatory detention those noncitizens who have been convicted of certain crimes or engaged in terrorist activity. For example, the IIRIRA made noncitizens who are inadmissible by reason of having committed certain criminal offenses subject to mandatory detention under 8 U.S.C. 1226(c)(1)(A), and those inadmissible for having engaged in terrorist activity subject to mandatory detention under 8 U.S.C. 1226(c)(1)(D). More recently, under the Laken Riley Act, Pub. L. No. 119-1, Congress mandated detention for noncitizens who entered without admission and were subsequently charged with, arrested for, convicted of, or admitted to certain offenses. 8 U.S.C. 1226(c)(1)(E). These provisions under 8 U.S.C. 1226(c) would be superfluous if all noncitizens who were present without admission were already subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A).

2. The Government's Novel and Widely Rejected Theory That All Noncitizens Who Entered Without Admission Are Subject to Mandatory Detention

On Friday, July 4, 2025, President Trump signed the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72. Among other things, the bill appropriated $45 billion to ICE to detain noncitizens through fiscal year 2029. § 90003, 139 Stat. 358.

On Tuesday, July 8, 2025, Acting ICE Director Todd Lyons issued a memorandum stating that DHS and the Department of Justice had "revisited" the government's legal position regarding the statutory basis for detaining noncitizens who were present in the

country without being admitted. According to Lyons, the government now believed that noncitizens present without admission are subject to mandatory detention under 8 U.S.C. 1225(b), rather than discretionary detention under 8 U.S.C. 1226(a), because, under 8 U.S.C. 1225(a)(1), they are deemed "applicant[s] for admission." The memo further stated that this change in legal interpretation might "warrant re-detention of a previously released alien in a given case."

On September 5, 2025, the BIA issued a precedential decision adopting ICE's novel argument that all noncitizens who are present without admission are subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA acknowledged that 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," but, like ICE, concluded that the provision applied to all noncitizens who are present without admission as they are also "applicant[s] for admission" under 8 U.S.C. 1225(a)(1). 29 I&N Dec. at 218. The BIA acknowledged that its interpretation rendered superfluous multiple provisions of 8 U.S.C. 1226(c), including one recently enacted in the Laken Riley Act, but it stated that "redundancies are common in statutory drafting." 29 I&N Dec. at 221-22 (quoting *Barton v. Barr*, 590 U.S. 222 (2020)).

A motion to reconsider had been filed in *Matter of Yajure Hurtado*. The motion challenges the Board's statutory analysis, and asks it to withdraw its decision because (a) the underlying removal proceedings had concluded by the time the Board issued its decision, making the case moot, and (b) the decision conflicts with longstanding

regulations issued by the Attorney General.[2]

To date, over 100 federal district judges have either outright rejected the government's novel interpretation,[3] or found that noncitizens challenging the government's

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[2] The Board's Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it contravenes the statutory language and legislative history, and it deviates from longstanding agency practice and regulations. *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025).

[3] *Elias v. Hyde*, No. 25-540, 2025 LX 210971 (D. R.I. Oct. 27, 2025); *Carmona v. Noem*, No. 25-1131, 2025 LX 209629 (W.D. Mich. Oct. 23, 2025) (Maloney, J.); *Del Cid v. Bondi*, No. 25-0304, 2025 LX 209136 (W.D. Pa. Oct. 23, 2025) (Haines, J.); *Avila v. Bondi*, No. 25-3741, 2025 LX 206789 (D. Minn. Oct. 21, 2025) (Tunheim, J.); *Miguel v. Noem*, No. 25-C-11137, 2025 LX 206990 (N.D. Ill. Oct. 21, 2025) (Alonso, J.); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 LX 207581 (D. Md. Oct. 21, 2025) (Chuang, J.); *Buestan v. Cory Chu*, No. 225-16034, 2025 LX 211879 (D. N.J. Oct. 21, 2025) (Fabiarz, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. In. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi,* No. 25-3726, (S.D. Tx. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425

interpretation were substantially likely to prevail on the merits.[4] These judges have been unsparing in their criticism of the government's newfound position. One called it a

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(E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, __F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

[4] *Mendoza Gutierrez v. Baltasar*, No. 25-CV-02720, 2025 LX 208448 (D. Colo. Oct. 17, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29, 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025) (*Seeborg*, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek, J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Ca Sept. 23, 2025) (Sherriff, J.); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw. J.); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

"nonstarter." *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another called it "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md. Aug. 24, 2025). Another called it "a policy argument, projected onto Congress." *Romero v. Hyde*, No. 25-11631, __ F. Supp. 3d __, 2025 WL 2403827 at *28 (D. Mass. Aug. 19, 2025). And another noted that the government "could not identify any federal court that has adopted their novel reading of § 1225(b)(2)(A)." *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at *20 (E.D. Mich Sept. 9, 2025).

It is not difficult to understand why federal district courts have rejected the government's novel interpretation. By its terms, 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," and Congress defined "admission" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (citing 8 U.S.C. 1101(a)(13)(A)). As importantly, if "the [BIA was] correct that § 1225(b)'s mandatory detention provisions apply to all persons who have not been admitted into the United States, that would render superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)." *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). The BIA's interpretation would also "render the Laken Riley Act a meaningless amendment, since it would have

prescribed mandatory detention for noncitizens already subject to it." *Aceros v. Kaiser*, 2025 WL 2637503 at *28 (N.D. Cal. Sept. 12, 2025).

Indeed, the plain text of section 1226 demonstrates that subsection (a) applies to Petitioner. Section 1226(a) permits the release of noncitizens who are detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). While section 1226(a) provides the right to seek release, section 1226(c) carves out specific categories of noncitizens—including certain categories of noncitizens who are inadmissible under 8 U.S.C. § 1182(a)—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C). If § 1226(a) could never apply to inadmissible noncitizens, there would be no reason to specify that section 1226(c) governs certain persons who are inadmissible; instead, section 1226(c) would only have needed to address people who are deportable for certain offenses under 8 U.S.C. § 1227(a).

Recent amendments to § 1226 dramatically reinforce that this section covers people like Petitioner, whom DHS alleges to be present without admission. Specifically, the Laken Riley Act added language to section 1226 that directly references those who are inadmissible under section 1182(a)(6) because they are present without admission or under § 1182(a)(7) because of the lack of valid documentation. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c) and carving them out of § 1226(a) if they have been arrested, charged with, or convicted of certain crimes, Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). *See Rodriguez Vazquez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining these amendments

explicitly provide that § 1226(a) covers people like Petitioner because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Unlike 8 U.S.C. § 1226, 8 U.S.C. § 1225(b) requires the detention of certain individuals who are arriving at U.S. ports of entry or who recently entered the United States. As relevant here, 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who are "seeking admission" to the United States.[5] *See Benitez-Cornejo v. Cantu, et al.*, 2:25-CV-03672-JJT-ESW, 2025 LX (D. Ariz. Oct. 17, 2025) (rejecting argument that all "individuals who have never been admitted are 'seeking admission'"); *Echevarria v. Bondi, et al.*, 2:25-CV-03252-DWL-ESW, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025)

[5] 8 U.S.C. § 1225(b)(1) concerns "expedited removal of inadmissible arriving [noncitizens]," including those who present themselves for inspection upon "arriving" and other individuals designated by the Attorney General who have been present in the United States for less than two years, and who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). Subsection (b)(1) does not require Petitioner's detention because he did not present himself for inspection.

(reasoning that to argue all applicants for admission "are necessarily (and continuously) 'seeking admission,' so long as they continue to exist in the United States" is "an obvious violation of the rule against surplusage" and "goes against the plain, ordinary meaning of the words 'seeking' and 'admission'"); *Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting DHS' contention that an individual who entered the United States without inspection "is automatically understood to be 'seeking admission' within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or parole"); *Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of argument that "[t]o ignore the 'seeking admission' language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of statutory construction"); *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are presently "coming or attempting to come into the United States").

8 U.S.C. § 1225 further defines its scope by reference to "inspections"—a term not defined in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2) (referring to "inspections" in their titles); § 1225(b)(2)(A), (b)(4) (referring to "examining immigration officers'); § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Many statutory

provisions, various regulations, and agency precedent also discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

The statutory and regulatory text's use of the present and present progressive tenses further excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. *See* 8 U.S.C. § 1225(b)(2)(C) (addressing the "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e. those who are "*arriving* on land") (emphasis added). As the Supreme Court recognized, this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible," and § 1225 is concerned "primarily [with those] seeking entry." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

The Board in *Matter of Yajure Hurtado* ignored the "seeking admission" requirement and instead focused solely on whether an individual who enters the United States without inspection is "applicant for admission," as § 1225(b)(2)(A) also requires. But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). In context, the differential phrasing of "applicant for

admission" and "seeking admission" in the same statutory subsection is significant, because "applicant for admission" is a term of art that has been analyzed as such by both the Supreme Court and the Ninth Circuit Court of Appeals. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020); *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018); *see also Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States."). By contrast, an individual who has not presented at a port of entry and has not filed any affirmative application for immigration benefits is not "seeking" anything under the plain meaning of the word. *See* Merriam Webster's Dictionary (2025) (defining "seek" as, inter alia, "to go in search of" or "to try to acquire or gain").

Thus, Petitioner prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission" is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioner.

In sum, section 1226 governs this case. The mandatory detention provision of section 1225 applies only to individuals arriving in the United States as specified in the statute, while section 1226 applies to those who previously entered without admission.

B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION.

In the absence of a TRO and PI, Petitioner will continue to be unlawfully detained by Respondents under § 1225(b)(2) and denied the freedom the IJ has already established is appropriate upon payment of a bond. Petitioner has now been detained for over two months following his transfer to immigration custody. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Further, it "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005); *see also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (concluding that Plaintiffs who showed unconstitutional deprivation of physical liberty "also carried their burden as to irreparable harm."); *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv- 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting TRO, Dkt. 14 at 9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a).").

Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). Petitioner, who has been in the U.S. since the age of eight, is engaged to a U.S. citizen and is the beneficiary of a U visa petition that has been pending since 2017. Exhibits A, C, D. He has two U.S.-citizen siblings, four U.S.-citizen cousins, and a U.S.-citizen uncle with whom he would live if he were released. Exhibits A, B. Petitioner's separation from his

family and community constitutes an irreparable harm, particularly as he is on the verge of receiving a decision on his visa petition.

Just as Petitioner suffers irreparable harm from his current unlawful detention, he would suffer irreparable harm for the same reasons if he were re-detained without a showing that he posed a danger or flight risk, as there is no other basis on which detention is warranted (absent enumerated criminal grounds that do not apply here) under 8 U.S.C. 1226. Petitioner therefore asks that the Court enjoin the Department of Homeland Security (DHS) from re-detaining him without a hearing in which DHS bears the burden of demonstrating that his detention is justified (i.e. whether he poses a danger or a flight risk), and where the immigration judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that Respondents may establish. *See Pablo Sequen et al v. Albarran et al.*, No. 25-6487, 2025 LX 203758, *34-*36 & n.5 (N.D. Cal. Oct. 15, 2025) (ordering release following unlawful detention under *Yajure-Hurtado*, and enjoining re-detention without a hearing at which DHS bore the burden to demonstrate danger or flight risk).

Petitioner will also suffer irreparable harm if he is transferred outside this judicial district while his petition is pending. Because habeas review is governed by the district-of-confinement/immediate-custodian rule, transfer of a detainee to another judicial district can frustrate effective review. *See Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966). Furthermore, in a habeas action, the physical presence of a petitioner in the judicial district where the action is pending "facilitate[s]" the petitioner's

"ability to work with [his or] her attorneys, coordinate the appearance of witnesses, and generally present [his or her] habeas claims." *Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025). These interests are particularly acute where, as in Mr. Sanchez Chavez's case, the habeas claim is "based on events that occurred in" the same geographic region as the judicial district of detention. *Id.*; *see also* Standing Order 2025-01, Misc. No. 00-308 (D. Md., May 21, 2025) (prohibiting, for at least two business days after the filing of all habeas petitions, removal of petitioners from the continental United States to preserve their ability to participate in court proceedings and access legal counsel); *Velasquez-Salazar v. Dedos*, 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sep. 17, 2025) (enjoining Respondents from transferring petitioner outside judicial district during pendency of habeas action upon a finding that petitioner showed a likelihood of irreparable harm absent injunction). Finally, if Petitioner is prevented from traveling to and from Oregon, where he resides and where his U.S.-citizen family members live, following his release, he will suffer irreparable harm due to separation from his family members and associated difficulty gathering evidence to prepare his case in removal proceedings, which remain ongoing before the Immigration Court. Thus, a temporary restraining order and preliminary injunctive relief are necessary to prevent Petitioner from suffering irreparable harm by remaining in unlawful and unjust detention, or by being moved outside this judicial district while the petition is pending or prevented from traveling within the United States following his release.

C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A TRO AND PI ARE IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in his favor because his claim asserts that the new policy violates federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioner from realizing the bond the immigration judge intended to grant "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019).

Further, any burden imposed by requiring the Respondents to release Petitioner from custody, when an immigration judge has already determined that he merits release on bond but for *Matter of Yajure Hurtado*, is both *de minimis* and clearly outweighed by the substantial harm he will suffer if he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Just as the government cannot be burdened by releasing Petitioner from custody, any burden imposed by requiring them to *maintain* custody in the District of Arizona for the duration of this case is clearly outweighed by the substantial harm Petitioner will face if his case cannot be heard at all because he is moved to a different jurisdiction. *See Ozturk v. Hyde*, 136 F.4th 382 ("[f]aced with such a conflict between the government's unspecific financial and administrative concerns on the one hand, and the risk of substantial constitutional harm to [petitioner] on the other, we have little difficulty

concluding 'that the balance of hardships tips decidedly' in [the petitioner's] favor") (quoting *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984)). Similarly, any burden imposed on the government by requiring it to permit Petitioner's travel to and from Oregon following his release is outweighed by the substantial harm Petitioner will face if he continues to be separated from his family and hindered in gathering evidence for his pending immigration case due to any travel restrictions imposed on him following release.

Finally, if preliminary relief is not entered, the government would effectively be granted permission to detain Petitioner in violation of the requirements of Due Process.

D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

Prudential exhaustion does not require Petitioner to be forced to endure the very harm he is seeking to avoid by awaiting a BIA decision, where the Board's recent precedential decision makes the outcome of that appeal a foregone conclusion. "[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). Administrative exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the exceptions regarding futility, irreparable injury, and agency delay warrant waiving any prudential exhaustion requirement.

1. Futility

The BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders prudential exhaustion futile in bond cases involving individuals who entered the United States without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025). The BIA's decision in *Matter of Yajure Hurtado* "predetermine[s]" the outcome of DHS's administrative appeal. *McCarthy*, 503 U.S. at 148. Prudential exhaustion is therefore unnecessary, and the Court should take jurisdiction over Petitioner's case.

2. Irreparable injury

Because Petitioner was denied access to a bond, each day he remains in detention is one in which his statutory and constitutional rights have been violated. Similarly situated district courts have repeatedly recognized this fact. As one court has explained, "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) (internal quotation marks omitted). Indeed, "if Petitioner is correct on the merits of his habeas petition, then Petitioner has *already* been unlawfully deprived of a [lawful] bond hearing [,] [and] . . . each additional day that Petitioner is detained without a [lawful] bond hearing 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) (internal quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar).

3. Agency delay

Third, the BIA's delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A court's ability to waive exhaustion based on delay is especially broad here given the "fundamental" interest in physical liberty that is at stake for Petitioner. *Hernandez*, 872 F.3d at 993. The BIA's months-long review is unreasonable and results in ongoing injury to Petitioner. *See, e.g.*, *Perez*, 445 F. Supp. 3d at 286.

E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

Finally, there is no jurisdictional bar under the INA because Petitioner does not seek review of a removal order, but of custody, and his challenge does not fall within the discrete actions specified in the bar to review at 8 U.S.C. § 1252(g). *Maldonado Bautista et al.*, No. 5:25-cv-01873-SSS-BFM, Order Granting TRO (addressing "zipper clause" at 8 U.S.C. § 1252(b)(9)).

V. REQUIREMENTS OF FRCP 65(b)

In compliance with Fed. R. Civ. P. 65(b)(1), Petitioner certifies that prior notice of this motion to counsel for Respondents should not be required because, as the associated habeas petition was only recently filed, no attorney has entered a notice of appearance for Respondents as of the time of this filing, and Petitioner has shown that immediate and irreparable injury, loss, or damage in the form of continued, unlawful detention will result to him before Respondents can be heard in opposition.

VI. CONCLUSION

For these reasons, the Court should grant Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction.

Dated: November 4, 2025

Respectfully Submitted,

s/ Gregory Fay

Attorney for Petitioner

WORD COUNT CERTIFICATION

The undersigned counsel of record for Petitioner certifies that this Memo contains 7695 words, which complies with the word limit of L.R. 11-6.1.

s/ Gregory Fay

Attorney for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY THAT I SEVED A COPY OF PETITIONER'S *EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION* by mail to the following individual:

Chief, Civil Division, U.S. Attorney's Office
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s/ Gregory Fay

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