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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 RAMIREZ-CONTRERAS, FILOGONIO

10 Petitioner,

11 V.

12 KRISTI NOEM, Secretary of
13 the United States Department of Homeland
14 Security; PAM BONDI,
15 United States Attorney General;
16 TODD LYONS, Director of
17 United States Immigration and Customs
18 Enforcement; BRYAN WILCOX,
19 Field Office Director for Detention and
20 Removal, U.S. Immigration and Customs
21 Enforcement, Department of Homeland
22 Security; John Mattos Warden,
23 Nevada Southern Detention Center;
24 UNITED STATES DEPARTMENT OF
25 HOMELAND SECURITY; UNITED
26 STATES IMMIGRATION AND
27 CUSTOMS ENFORCEMENT;

28 Respondents

A  Detained

Case File No.:

Immigration file No.:

**PETITIONER'S
MOTION FOR
PRELIMINARY
INJUNCTION**

EMERGENCY MOTION

21 Petitioner seeks a preliminary injunction that requires Respondents to release
22 him on his own recognizance or under a bond payment of \$3,000.00, enjoining
23 Respondents from applying Matter of YAJURE HURTADO, 29 I&N Dec. 216
24 (BIA 2025) to his bond proceedings.
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1 Although Petitioner has lived in the United States for over 20 years,
2 Respondents are attempting to have Petitioner treated as an applicant for admission
3 to the U.S., requiring mandatory detention under 8 U.S.C. § 1225(b)(2). But §
4 1226(a)'s discretionary detention scheme—and not § 1225(b)(2)'s detention
5 authority— governs Petitioner's detention.
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8 Section 1226's plain language makes this clear. Under that statute, the
9 Department of Homeland Security (DHS) may detain a noncitizen pending a
10 hearing on that person's admissibility. In fact, the statute explicitly extends to
11 people who are inadmissible because they entered unlawfully.
12

13 The statutory language is unambiguous; § 1225(b)(2)'s mandatory detention
14 scheme applies "at the Nation's borders and ports of entry, where the Government
15 must determine whether a[] [noncitizen] seeking to enter the country is
16 admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Indeed, in contrast
17 to § 1226(a), the whole purpose of § 1225 is to define how DHS should inspect,
18 process, and detain various classes of people arriving at the border or who have
19 just entered the country. Section 1225(b)(2) thus does not apply to people like
20 Petitioner, who are "already in the country" and are detained "pending
21 the outcome of removal proceedings." *Id.* at 289.
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24 The Court should not require administrative exhaustion.
25 Appeals to the Board of Immigration Appeals (BIA or the Board) inflict the very
26 harm Petitioner seeks to avoid, where appeals take six months or more to resolve.
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STATEMENT OF FACTS

This case concerns the detention authority for people who entered the United States without inspection, are not apprehended upon arrival, and are not subject to some other detention authority, like the detention authority for people in expedited removal, 8 U.S.C. § 1225(b)(1), or withholding-only proceedings, see *id.* § 1231(a)(6). For decades, people who have been residing in the United States, often for years had bond determinations based on the merits of their cases

Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during deportation proceedings, as well as authority to release the noncitizen on bond. Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. IIRIRA maintained the same basic detention authority in the new § 1226(a). Indeed, when passing IIRIRA, Congress explained that the new § 1226(a) merely “restates the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); see also H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). Separately, Congress enacted new detention authorities for people arriving in or who recently entered the United States, including a new expedited removal scheme for those arriving or who recently

1 entered. *See* 8 U.S.C. § 1225(b)(1)–(2). In implementing this new detention
2 authority, the former Immigration and Naturalization Service clarified that people
3 who entered the United States without inspection and who were not in expedited
4 removal would continue to be detained. Separately, “exclusion” proceedings
5 covered those who arrived at U.S. ports of entries and had never entered the United
6 States. *See* 8 U.S.C. § 1225 (1994) (providing for inspection and detention of
7 noncitizens “arriving at ports of the United States”); *id.* § 1226 (1994) (providing
8 for exclusion proceedings of “arriving” noncitizens detained for further inquiry).

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12 The distinction between § 1226(a) detention and § 1225(b) detention is
13 important.

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15 Detention under § 1226(a) includes the right to a bond hearing before a
16 neutral decisionmaker— specifically, an IJ. *See* 8 C.F.R. § 1236.1(d). At that
17 hearing, the noncitizen may present evidence of their ties to the United States, lack
18 of criminal history, and other factors that show they are not a flight risk or danger
19 to the community. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By
20 contrast, people determined to be detained under § 1225(b) are
21 subject to mandatory detention and receive no bond hearing. 8 U.S.C. §
22 1225(b)(1)(B)(ii), (iii)(IV), (b)(2). They may only be released at the discretion of
23 the arresting agency via humanitarian parole. *Jennings*, 583 U.S. at 288; *see also* 8
24 U.S.C. § 1182(d)(5)(A).

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28 For the first 25 years after IIRIRA was enacted, immigration courts across

1 the country, applied § 1226(a) to the detention of people who were apprehended
2 within the United States after having entered without inspection.

3 ICE has made a drastic policy shift that contradicts the plain language of the law,
4 affecting those detained at NSDC.

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6 Hundreds of people have been denied the opportunity to post their bond,
7 forcing them to litigate their cases from detention or to give up altogether. Many, if
8 not most, of these individuals have resided in the United States for years, or even
9 decades.
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12 Meanwhile, BIA appeals do not provide any meaningful relief where nearly
13 all cases are mooted out.

14 In September of 2025, the BIA issued a decision finding that anyone who
15 entered the U.S. without inspection is subject to mandatory detention under Section
16 235 of the INA, regardless of how long ago or where encountered. Matter of
17 YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025).
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19 20 ARGUMENT

21 To obtain a preliminary injunction, Petitioner must demonstrate that (1) they
22 are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the
23 absence of preliminary relief, (3) the balance of equities tips in their favor, and (4)
24 an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555
25 U.S. 7, 20 (2008). Even if Petitioner raises only “serious questions going to the
26 merits,” the Court can nevertheless grant relief if the balance of hardships tips
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1 “sharply” in his favor, and the remaining equitable factors are satisfied.

2 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

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4 **I. Petitioner satisfies all the factors required for a preliminary injunction.**

5 **A. Petitioner is likely to succeed on the merits of their argument that**
6 **ICE and EOIR are violating his Due Process.**

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8 *Matter of Hurtado* is a poorly reasoned decision that ignores the applicable
9 law and is not binding on this Court.

10 First, the plain text of § 1226 demonstrates that its subsection (a) applies to
11 Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending
12 a decision on whether the [noncitizen] is to be removed from the United States.” 8
13 U.S.C. § 1226(a).
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16 Section 1226 goes on to explicitly confirm that this authority includes not
17 just persons who are deportable, but also noncitizens who are inadmissible. While
18 § 1226(a) provides the right to seek release, § 1226(c) carves out specific
19 categories of noncitizens from being released—including certain categories of
20 inadmissible noncitizens—and subjects them instead to mandatory detention. See,
21 e.g., *id.* § 1226(c)(1)(A), (C). Clearly, if § 1226(a) did not cover inadmissible
22 noncitizens there would be no reason to specify that § 1226(c) governs certain
23 persons who are inadmissible; instead, it would have only needed to address people
24 who are deportable for certain offenses.
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28 Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227)

1 apply to people who have previously been admitted, such as lawful permanent
2 residents and certain visa holders, while grounds of inadmissibility (found in §
3 1182) apply to those who have not been admitted to the United States. See, e.g.,
4 *Barton v. Barr*, 590 U.S. 222, 234 (2020).

6 Notably, recent amendments to § 1226 dramatically reinforce that this
7 section covers people such as Petitioner, whom DHS alleges to have entered
8 without inspection. The Laken Riley Act added language to § 1226 that directly
9 references people who have entered without inspection or who are present without
10 authorization. See Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).
11 Specifically, pursuant to the LRA amendments, people charged as
12 inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for entry without
13 inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to
14 enter the United States) and who have been arrested, charged with, or convicted of
15 certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8
16 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress
17 further clarified that, by default, § 1226(a) covers persons charged
18 under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as
19 inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related
20 provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's
21 detention. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393,
22 400 (2010) (observing that a statutory exception would be
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unnecessary if the statute at issue did not otherwise cover the excepted conduct).
In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to
apply to everyone who is in the United States "who has not been admitted," 8
U.S.C. § 1225(a)(1).

Section 1226(a) covers those who are not now seeking admission but instead
are already residing in the United States—including those who are charged with
inadmissibility—while § 1225(b)(2) covers only those "seeking admission," i.e.,
those who are apprehended upon arrival in the United States (and who are not
subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore
§ 1226(a)'s plain text and structure and render meaningless § 1226's
language that specifically addresses individuals who have entered without
inspection.

The text of § 1225 reinforces this interpretation. As the Supreme Court has
recognized, § 1225 is concerned "primarily [with those] seeking entry," Jennings,
583 U.S. at 297, i.e., cases "at the Nation's borders and ports of entry, where the
Government must determine whether a[] [noncitizen] seeking to enter the country
is admissible," *id.* at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this
understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of
inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain
"arriving" noncitizens and other recent entrants the Attorney General designates,
and only those who are "inadmissible under section 1182(a)(6)(C) or §

1 1182(a)(7).” 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for
2 those who misrepresent information to an examining immigration officer or do not
3 have adequate documents to enter the United States.
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5 Thus, subsection (b)(1)’s text demonstrates that it is focused only on people
6 arriving at a port of entry or who have recently entered the United States and not
7 those already residing here.
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9 Paragraph (b)(2) is similarly limited to people applying for admission when
10 they arrive in the United States. The title explains that this paragraph addresses the
11 “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking
12 admission,” but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By
13 limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not
14 intend to sweep into this section individuals such as Petitioner, who has already
15 entered and are now residing in the United States. An individual submits an
16 “application for admission” only at “the moment in time when the immigrant
17 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d
18 918, 927 (9th Cir. 2020) (en banc).
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22 Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that §
23 1225(a)(1) means that anyone who is presently in the United States without
24 admission or parole is someone “deemed to have made an actual application for
25 admission.” Id. (emphasis omitted). That holding is instructive here too, as only
26 those who take affirmative acts, like submitting an “application for admission,” are
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1 those that can be said to be “seeking admission” within § 1225(b)(2)(A).

2 Otherwise, that language would serve no purpose, violating a key rule of statutory
3 construction. *Shulman*, 58 F.4th at 410–11.

4
5 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
6 [noncitizens] arriving from contiguous territory,” i.e. those who are “arriving on
7 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
8 underscores Congress’s focus in § 1225 on those who are arriving into the United
9 States—not those already residing here. Similarly, the title of § 1225 refers to the
10 “inspection” of “inadmissible arriving” noncitizens. *Dubin v. United States*, 599
11 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe
12 statute).

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16 Finally, the entire statute is premised on the idea that an inspection occurs
17 near the border and shortly after arrival, as the statute repeatedly refers to
18 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
19 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
20 1225(a)(3), (b)(1), (b)(2), (d); see also *King v. Burwell*, 576 U.S. 473, 492 (2015)
21 (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”).

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24 **1. The legislative history further supports the application of § 1226(a) to**
25 **Petitioner.**

26 The legislative history of IIRIRA also supports a limited construction of §
27 1225 and instead concluding that § 1226(a) applies to Petitioner. In passing the
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1 Act, Congress was focused on the perceived problem of recent arrivals to the
2 United States who do not have documents to remain. See H.R. Rep. No. 104-469,
3 pt. 1, at 157–58, 228–29; H.R. Rep. No. 104- 828, at 209. Notably, Congress did
4 not say anything about subjecting all people present in the United States after an
5 unlawful entry to mandatory detention if arrested. This is important, as
6 prior to IIRIRA, people like Petitioner was not subject to mandatory detention. See
7 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens
8 for deportability proceedings, which applied to all persons within the United
9 States). Had Congress intended to make such a monumental shift in immigration
10 law (potentially subjecting millions of people to mandatory detention), it would
11 have explained so or spoken more clearly. See *Whitman v. Am. Trucking Ass'ns*,
12 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress
13 explained precisely the opposite, noting that the new § 1226(a) merely “restates the
14 current provisions in section 242(a)(1) regarding the authority of the Attorney
15 General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully
16 in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); see
17 also H.R. Rep. No. 104-828, at 210 (same).

23
24 **2. The record and longstanding practice reflect that § 1226 governs**
25 **Petitioner’s detention.**

26 DHS’s long practice of considering people like Petitioner as detained under
27 § 1226(a) prior to July of 2025 further supports this reading of the statute.
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1 Typically, in cases like that of Petitioner, DHS issues a Form I-286, Notice of
2 Custody Determination or Form I-200 stating that the person is detained under §
3 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is
4 consistent with longstanding practice. For decades, and across administrations,
5 DHS has acknowledged that § 1226(a) applies to individuals who entered the
6 United States unlawfully, but who were later apprehended within the borders of the
7 United States long after their entry. Such a longstanding and consistent
8 interpretation “is powerful evidence that interpreting the Act in [this] way is
9 natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014)
10 (Scalia, J., dissenting); see also *Bankamerica Corp. v. United States*, 462 U.S. 122,
11 130 (1983) (relying in part on “over 60 years” of government interpretation and
12 practice to reject government’s new proposed interpretation of the law at issue).
13 Indeed, agency regulations have long recognized that people like Petitioner are
14 subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
15 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
16 fact, the Executive Office for Immigration Review (EOIR) confirmed that §
17 1226(a) applies to Petitioner and proposed class members’ cases when it
18 promulgated the regulations governing immigration courts and
19 implementing § 1226 decades ago. Specifically, EOIR explained that “[d]espite
20 being applicants for admission, [noncitizens] who are present without having been
21 admitted or paroled (formerly referred to as [noncitizens] who entered without

1 inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at
2 10323.3

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4 In sum, § 1226 governs this case. Section 1225 applies only to individuals
5 arriving in the United States as specified in the statute, while § 1226 applies to
6 those who have previously entered without admission and are now residing in the
7 United States. The BIA’s attempt to bootstrap individuals who have resided in the
8 U.S. for years into expedited removal runs afoul of the law.

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10 **B. Petitioner will suffer irreparable harm absent an injunction.**

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12 Parties seeking preliminary injunctive relief must also show they are “likely
13 to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at
14 20. Irreparable harm is the type of harm for which there is “no adequate legal
15 remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d
16 1053, 1068 (9th Cir. 2014).

17
18 Detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno*
19 *Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II),
20 aff’d in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez*
21 *v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); see also *Rodriguez v. Robbins*, 715 F.3d
22 1127, 1145 (9th Cir. 2013).

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25 Petitioner’s detention constitutes such a harm, as “civil commitment for any
26 purpose constitutes a significant deprivation of liberty that requires due process
27 protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). Indeed, “[f]reedom
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1 from imprisonment—from government custody, detention, or other forms of
2 physical restraint—lies at the heart of the liberty” that the Due Process Clause
3 protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For this reason, the
4 Supreme Court has repeatedly made clear that prolonged deprivations of liberty—
5 like those that noncitizens regularly experience—require a timely hearing to test
6 the legality of detention before a “neutral and detached magistrate.” *Gerstein v.*
7 *Pugh*, 420 U.S. 103, 112 (1975); see also *Cnty. of Riverside v. McLaughlin*, 500
8 U.S. 44, 55–56 (1991) (similar); *Gonzalez v. United States Immigr. & Customs*
9 *Enft*, 975 F.3d 788, 823–26 (9th Cir. 2020) (holding that *Gerstein* applies to the
10 detention of noncitizens on a detainer); *Zadvydas*, 533 U.S. at 690 (detention
11 requires a hearing before an independent decisionmaker to assess whether the
12 detention “bear[s] [a] reasonable relation” to a valid government purpose, such as
13 preventing flight or protecting the community against dangerous individuals
14 (alterations in original) (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)));
15 *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding Bail Reform Act’s
16 pre-trial civil detention scheme precisely because it required the government to
17 justify detention in a “full-blown adversary hearing” before a “neutral
18 decisionmaker”—a federal judge).

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Petitioner’s claims raise constitutional concerns, for civil detention “violates
due process outside of ‘certain special and narrow nonpunitive circumstances.’”
Rodriguez v. Marin, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted). These

1 constitutional concerns reflect irreparable harm, with strong likelihood of success
2 on his claim that he is being held under § 1226(a) and not § 1225(b)(2). *See Baird*
3 *v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a
4 constitutional claim, a likelihood of success on the merits usually establishes
5 irreparable harm”).
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8 Detention has also taken an emotional and mental toll on Petitioner, who
9 reports significant emotional trauma and physical struggles. Such “emotional
10 stress, depression and reduced sense of well-being” further support a finding of
11 irreparable harm. *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988); see
12 also *Moreno II*, 492 F. Supp. 3d at 1181–82 (“[S]tress, devastation, fear, and
13 depression” arising from unlawful immigration policy are the type of “harms [that]
14 will not be remedied by an award of damages.”).
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17 **C. The balance of hardships and public interest weigh heavily in Petitioner’s**
18 **favor.**
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20 The final two factors for a preliminary injunction—the balance of hardships
21 and public interest—“merge when the Government is the opposing party.” *Nken v.*
22 *Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner face weighty hardships: loss of
23 liberty, separation from family, significant stress and anxiety, and difficulty in
24 obtaining an attorney.
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26 The government, by contrast, faces minimal hardship: the administrative
27 costs associated with three bond hearings. “[T]he balance of hardships tips
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1 decidedly in Petitioner’s favor” when “[f]aced with such a conflict between
2 financial concerns and preventable human suffering.” *Hernandez*, 872 F.3d at 996
3 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).
4

5 What is more, because the policy preventing Petitioner from posting their bond “is
6 inconsistent with federal law, . . . the balance of hardships and public interest
7 factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*,
8 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); see also *Moreno*
9 *Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in *Moreno II*
10 and quoting approvingly district judge’s declaration that “it is clear that neither
11 equity nor the public’s interest are furthered by allowing violations of
12 federal law to continue”). This is because “it would not be equitable or in the
13 public’s interest to allow the [government] . . . to violate the requirements of
14 federal law, especially when there are no adequate remedies available.” *Valle del*
15 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in
16 original) (citation omitted). Indeed, Respondents “cannot suffer harm
17 from an injunction that merely ends an unlawful practice.” *Rodriguez*, 715 F.3d at
18 1145. “The public interest benefits from an injunction that ensures that individuals
19 are not deprived of their liberty and held in immigration detention because of . . . a
20 likely [illegal bond] process.” *Hernandez*, 872 F.3d at 996.
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26 Accordingly, the balance of hardships and the public interest
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28 overwhelmingly favor injunctive relief to ensure that Respondents comply with

1 federal law and afford Petitioner release on bond.

2 **II. Prudential exhaustion is not required.**

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

15 As with the irreparable harm analysis, “in cases involving a constitutional
16 claim, a likelihood of success on the merits . . . strongly tips the balance of equities
17 and public interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at
18 1048.

19 **A. Irreparable Injury**

20 The first exception to any prudential exhaustion requirement that applies
21 here is that of irreparable injury. Each day Petitioner remains in detention is one in
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1 which their statutory rights have been violated and they could be free. Similarly
2 situated district courts have repeatedly recognized this fact. As one court has
3 explained, “because of delays inherent in the administrative process, BIA review
4 would result in the very harm that the bond hearing was designed to prevent:
5 prolonged detention without due process.” *Hechavarria v. Whitaker*, 358 F. Supp.
6 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, “if
7
8 Petitioner is correct on the merits of his habeas petition, then Petitioner has already
9 been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional
10 day that Petitioner is detained without a [lawful] bond hearing would cause
11 him harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05390-LHK,
12 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and
13 brackets omitted); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D.
14 Cal. 2018) (similar). Other district courts have echoed these points.

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18 The district courts that have recognized that irreparable harm exists here are well-
19 supported by Ninth Circuit case law. At issue in this case is civil detention, which
20 “violates due process outside of ‘certain special and narrow nonpunitive
21 circumstances.’” *Rodriguez*, 909 F.3d 5 See, e.g., *Perez v. Wolf*, 445 F. Supp. 3d
22 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y.
23 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D.
24 Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal.
25 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-JSC, 2020 WL 2759731, at
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1 *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR,
 2 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-
 3 01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr. 17, 2020); *Lopez Reyes v.*
 4 *Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D.
 5 Cal. Dec. 24, 2018). at 257 (quoting *Zadvydas*, 533 U.S. at 690). Petitioner has a
 6 “fundamental” interest in such a hearing, as “as “freedom from imprisonment is at
 7 the ‘core of the liberty protected by the Due Process Clause.’”
 8 *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80
 9 (1992)). This point is “beyond dispute.” *Id.*; see also *Marin*, 909 F.3d at 256–57.
 10 Moreover, the irreparable injury Petitioner faces extends beyond a chance at
 11 physical liberty. These are several “irreparable harms imposed on anyone subject to
 12 immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar
 13 medical and psychiatric care in ICE detention facilities,” as well as the “collateral
 14 harms to children of detainees whose parents are detained.” *Id.*

15 **B. Agency Delay**

16 Second, the BIA’s delays in adjudicating bond appeals warrant excusing any
 17 exhaustion requirement. The court’s ability to waive exhaustion based on delay is
 18 especially broad here given the interests at stake. As the Ninth Circuit has
 19 explained, Supreme Court precedent “permits a court under certain prescribed
 20 circumstances to excuse exhaustion where ‘a claimant’s interest in having a
 21 particular issue resolved promptly is so great that deference to the agency’s
 22

1 judgment [of a lack of finality] is inappropriate.’ ” *Klein v. Sullivan*, 978 F.2d 520,
2 523 (9th Cir. 2002).

3
4 Moreover, the Supreme Court has explained that “[r]elief [when seeking
5 review of detention] must be speedy if it is to be effective.” *Stack v. Boyle*, 342
6 U.S. 1, 4 (1951).

7
8 Despite this fundamental interest and the Supreme Court’s admonition that
9 only speedy relief is meaningful, the BIA takes over half a year in most cases to
10 adjudicate an appeal of a decision denying bond. Its own data demonstrates this
11 fact.
12

13 Waiting several months, half a year, or even a year to review a custody
14 determination is not reasonable; to the contrary, it exhibits significant disregard for
15 the “fundamental” interests at stake. The Ninth Circuit has signaled that the
16 protections afforded to criminal Respondents in pre-trial civil detention should
17 apply in the civil immigration context. In *Gonzales v. U.S. Immigration & Customs*
18 *Enforcement*, the Court of Appeals held that the Fourth Amendment “requires a
19 prompt probable cause determination by a neutral and detached magistrate to
20 justify continued detention” of a noncitizen facing removal. 975 F.3d at 798; see
21 also *id.* at 823–26. Similar principles demonstrate why the BIA’s review here is so
22 patently unreasonable. The protections and quick review of detention orders
23 afforded criminal Respondents are rooted in the Fifth Amendment’s
24 Due Process Clause, see *Salerno*, 481 U.S. at 746–47, and many of those principles
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1 unquestionably apply to noncitizens, see, e.g., *Zadvydas*, 533 U.S. at 690–91
 2 (repeatedly citing *Salerno* and other Fifth Amendment civil detention caselaw).
 3
 4 Thus, as with the rights at issue in *Gonzalez*, the rights of federal criminal
 5 Respondents facing pretrial civil detention demonstrate that the BIA’s months- or
 6 even years-long review of a noncitizen’s civil detention is an
 7
 8 “unreasonable . . . timeframe for administrative action.” *McCarthy*, 503 U.S. at
 9 147.

10 Finally, Petitioner notes that under either basis for waiving exhaustion, the
 11 history of appeals related to this issue supports him. Respondents have unclean
 12 hands and should not benefit from their failure to abide by appellate authority. This
 13 reality only further underscores the need for immediate relief and the propriety of
 14 waving any exhaustion requirement.
 15
 16

17 CONCLUSION

18 For the foregoing reasons, Petitioner respectfully requests the Court grant his
 19 motion for a preliminary injunction and:
 20

- 21 1. Issue an order as to Petitioner, requiring that Respondents release him or allow
 22 him to post a bond of \$3,000.00 within 3 days;
 23
 24 3. Issue an injunction the enjoins Respondents from denying his bond based on
 25 *Matter of Hurtado*.
 26
 27
 28

1 Respectfully submitted,

2
3 /s/ Jeremy Mondejar

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CERTIFICATION FOR EMERGENCY MOTION

(1) Petitioner is unlawfully detained, and every day his irreparable harm is compounded, where no remedy of law can make him whole;

(2) Jeremy Mondejar, ESQ.
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(3) and Petitioner, through counsel, has attempted to meet-and confer

1 with Respondents, who remain unreachable and who have made it
2 abundantly clear that they will not consider voluntarily releasing any
3 detained immigrants who entered without inspection. Petitioner has
4 been unable to resolve the matter without court action. A copy of this
5 motion was sent to the U.S. Attorney who represents the Respondents
6 in matters pending before this Court related to similarly situated
7 immigrants on November 7, 2025.
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12

13 /s/ Jeremy Mondejar

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