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Maria Alvarado Rodriguez

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Maria Alvarado Rodriguez,

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

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR 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 enjoining Respondents Unknown Individual #1, in his or her official capacity as Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement, 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, and Unknown Individual #2, in his or her official capacity as Warden of the Eloy Detention Center, where Petitioner is detained, from continuing to detain Petitioner. Respondents should also not transfer the Petitioner outside the District of Arizona, where she is presently located. Such an order would maintain the status quo while habeas jurisdiction is litigated and would also ensure that Petitioner remains close to legal counsel and family.

The reasons for this Motion are in the accompanying Memorandum of Points and Authorities. As this Motion shows, Petitioner warrants a preliminary injunction as she is eligible for release.

Petitioner is submitting a Habeas petition for same, on the same grounds, and is also filing this preliminary injunction motion to prevent irreparable injury before a hearing on her Habeas may be held. Petitioner has provided a copy of her 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. Exh. E (Letter to Katherine Branch, Affidavit by Petitioner's Attorney).

WHEREFORE, Petitioner prays that this Court grant her request for a preliminary

injunction enjoining Respondents from continuing to detain her, order a bond hearing before an immigration judge in fifteen days, and enjoining Respondents from removing her to any third country without first providing her with constitutionally-compliant procedures.

Dated: November 7, 2025

Respectfully Submitted,

Gregory P. Fay
Attorney for Petitioner

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I. INTRODUCTION

Petitioner Maria Alvarado Rodriguez ("Ms. Alvarado"), an asylum applicant and caregiver, seeks a Preliminary Injunction (PI) that requires Respondents to release her from custody within seven days of the issuance of a PI or in the alternative, release her subject to the conditions set by the Immigration Judge. Finally, Petitioner seeks a PI enjoining Respondents from transferring Petitioner outside the District of Arizona, where she is presently located.

Ms. Alvarado should prevail on this motion because she is likely to succeed on the merits of her claims. The plain text of 8 U.S.C. § 1226(a) and § 1225(b)(2) demonstrates that she is not subject to mandatory detention. Indeed, over one hundred 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. *See Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 LX 205416 at *24 (E.D. Mich. Oct. 17, 2025) (collecting cases).

Ms. Alvarado will also suffer irreparable harm in the absence of a PI. Each additional day she spends unlawfully detained has grave consequences on her well-being. The balance of equities tips in her favor, and a PI is in the public interest. Prudential exhaustion is not required here due to futility given the BIA's recent precedential decision on the matter, irreparable injury to Ms. Alvarado, and agency delay in adjudicating appeals. Finally, there is no jurisdictional hurdle barring relief. This Court should thus grant this motion.

II. STATEMENT OF THE FACTS

Petitioner, Ms. Alvarado, is a 41-year-old caregiver who fled threats of political violence in her native Peru. She entered the United States without being admitted in 2022 and has remained here ever since that date. For the past three years, she has resided in California with her U.S. citizen cousin, Sara Solis, and quickly became an integral part of her family's daily life. Exh. D (Solis

Dec.) ("She is a loving and calming presence in the home."). Ms. Alvarado cares for Sara's two young daughters, ages ten and six, and helps with cooking and cleaning for the whole family. She lends a hand with her Sara's cleaning business whenever needed, accompanies the family members to doctors' appointments and makes sure that her Sara's mother takes her blood pressure medication. *Id.* Her abrupt detention has left the family in a downward spiral. The young girls frequently ask when Maria will return and insist on saving treats and celebrations until she comes home. *Id.* Ms. Alvarado's absence has caused immense stress on her cousin and cousin's mother, each of whom has had to seek medical treatment for stress-induced complications since Ms. Alvarado was detained. *Id.*

Since arriving in the United States, Ms. Alvarado has followed every legal procedure possible: she timely filed an application for asylum, has no criminal history whatsoever, and on information and belief, has complied with all reporting requirements that ICE has dictated. Despite this demonstrated record of compliance—including voluntarily reporting to an ICE contractor office when she was unexpectedly called to appear—ICE arrested and detained her on September 24, 2025, three years after her entry into the United States. She was placed in "full restraints," before being subject to a more thorough interview. Exh. A (I-213). Petitioner was then transferred to the Eloy Detention Center in Arizona, where she remains. With each additional day in detention, Ms. Alvarado's mental health and formerly positive spirit continue to decline. She doesn't sleep and reports feeling depressed. Exh. D (Solis Dec.).

On September 29, 2025, ICE served Ms. Alvarado with a Notice to Appear before and Immigration Judge, initiating removal proceedings and charging her with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled and

§ 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid visa or other entry document. Exh. B (NTA).

Ms. Alvarado has been detained for over 45 days without being provided an opportunity for release on bond. On October 24, 2025, an immigration judge denied Ms. Alvarado a bond hearing for lack of jurisdiction, Exh. C (Bond Order), in accordance with the recent Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The IJ held, however, that "[i]n the alternative, should the Court be later determined to have jurisdiction, the Court would grant bond in this case in the amount of $1500, or any other alternatives to detention as designated by the Department of Homeland Security." *Id.*

III. LEGAL STANDARD

Petitioner is entitled to preliminary injunctive relief if she establishes that she 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 [her] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant relief if she raises "serious questions" as to the merits of her claims, the balance of hardships tips "sharply" in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As shown below, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

Petitioner should prevail on this motion because she is likely to succeed on the merits of her claims, likely to suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in her 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, a rapidly growing consensus of 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 PI. The balance of equities tips in her favor, and a PI is 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 HER CLAIM

Petitioner is likely to succeed on her claim that her 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." *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 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. 139 Stat. 358, § 90003.

On 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 only that "redundancies are common in statutory drafting." 29 I. & N. Dec. at 221–22 (quoting *Barton v. Barr*, 590 U.S. 222 (2020)).[1]

1. To date, over 100 federal district judges—including judges in this district—have either outright rejected the government's novel interpretation,[2] or found that noncitizens

[1] A motion to reconsider has 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] *Lopez v. Warden, Otay Mesa Det. Ctr.*, No. 25-cv-2527-RSH-SBC, 2025 LX 211493, at *11 (S.D. Cal. Oct. 27, 2025) (Huie, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672, 2025 LX 485778 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 LX 205416 at *24 (E.D. Mich. Oct. 17, 2025) (McMillion, 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)

challenging the government's interpretation were substantially likely to prevail on the merits.[3] These judges have been forthright in their dismissal of the government's novel interpretation of a

(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 (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.).

[3] *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 LX 204422, at *40 (E.D. Cal. Oct. 16, 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*

decades-old statute. One called it a "nonstarter." *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another deemed it "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md. Aug. 24, 2025). Yet 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). Indeed, one Court 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).

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see Sixtos Chavez v. Noem, No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

Indeed, the plain text of § 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 § 1226(a) provides the right to seek release, § 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 § 1226(c) governs certain persons who are inadmissible; instead, § 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. *See* Exh B (NTA). Specifically, the Laken Riley Act added language to § 1226 that directly references those who are inadmissible under § 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 thereby 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.[4] *See 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").

Chapter 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

[4] 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 she did not present herself for inspection and has been present for more than two years.

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"); *Contreras-Cervantes,* 2025 LX 419218, at *10-11 ("[T]he title of the statute is instructive and especially valuable [where] it reinforces what the text's nouns and verbs independently suggest.) (internal citations and quotation marks omitted); *Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (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.[5] 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 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.

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[5] The Board's Decision in *Matter of Yajure Hurtado*—an agency interpretation of a statute—is not entitled to deference by this Court. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). Deference is not otherwise required because the decision contravenes the statutory language and legislative history, and it deviates from longstanding agency practice and regulations.

As a rapidly growing consensus of federal courts agree, § 1226 governs this case. The mandatory detention provision of § 1225 applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who previously entered without seeking admission.

B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A PRELIMINARY INJUNCTION.

In the absence of a PI, Ms. Alvarado, a political asylum applicant with no criminal history, will continue to be unlawfully detained by Respondents under § 1225(b)(2) and denied the freedom the IJ has already determined would be appropriate. Ms. Alvarado has now been in custody following her detention for over 45 days. "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, 2025 WL 2670875, (C.D. Cal. July 28, 2025) at *4–5 (granting TRO) ("[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). Ms. Alvarado, who has no criminal record whatsoever, is suffering greatly in these conditions. Exh. D (Solis

Dec.). Each day spent in detention has had grave consequences on her physical and emotional well-being; she is unable to sleep and depressed. *Id.* Her family is likewise enduring tremendous emotional and physical hardship with Ms. Alvarado's abrupt and indefinite absence. Ms. Alvarado's two young nieces, ages ten and six, are struggling to move forward without their caregiver. *Id.* Ms. Alvarado's cousin, Sara, and Sara's mother, have both experienced medical episodes from the stress of Ms. Alvarado's detention. *Id.* Continued detention in such "prison-like" conditions which separate Ms. Alvarado from her family and community constitute an irreparable harm.

Thus, preliminary injunctive relief is necessary to prevent Petitioner from suffering irreparable harm by remaining in unlawful and unjust detention.

C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A PI IS 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 her favor because her 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 is both *de minimis* and clearly outweighed by the substantial harm she will suffer if she 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.").

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 she 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); *Cervantes Rodriguez v. Noem*, 2025 WL 3022212 (W.D. Mich. Oct. 29, 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 release on bond, each day she remains in detention is one in which her 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. Indeed, the BIA appeals process may be so lengthy that an underlying immigration case is sometimes adjudicated before the bond appeal, thereby mooting the appeals process entirely. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025) (noting that bond appeals can often take six months or more and excusing exhaustion); *see also Gomes*, 2025 WL 1869299, at *5. 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.

D. 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 her 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.*, 2025 WL 2670875 at *10 (addressing "zipper clause" at 8 U.S.C. § 1252(b)(9)).

V. CONCLUSION

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

Dated: November 7, 2025

Respectfully Submitted,

s/ Gregory P. Fay

Gregory P. Fay
Attorney for Petitioner

MOTION LENGTH CERTIFICATION

The undersigned counsel of record for Petitioner certifies that this Motion and accompanying Memorandum does not exceed seventeen (17) pages, exclusive of attachments and any required statement of facts, which complies with LR Civ. 7.2.

s/Gregory P. Fay

Gregory P. Fay
Attorney for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY THAT I SERVED A COPY OF PETITIONER'S *MOTION FOR A PRELIMINARY INJUNCTION* by mail to the following individual:

Chief, Civil Division, U.S. Attorney's Office
District of Arizona
40 N. Central Ave., Ste. 1200
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s/Gregory P. Fay

Attorney for Petitioner