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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Victor Hugo Padron-Carreron, **Petitioner,** **v.** **Kristi Noem**, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **Sirce Owen**, Acting Director of Executive Office for Immigration Review, in her official capacity; **Luis Rosa, Jr.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **Respondents.**	**Case No.** **Agency No.** [redacted] **PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

INTRODUCTION

Petitioner Victor Hugo Padron-Carreron respectfully moves this honorable Court for an *ex parte* temporary restraining order (TRO) or, in the alternative, for a preliminary injunction, requiring Respondents to immediately release him from his unlawful detention at Florence Correctional Center in Florence, Arizona or, in the alternative, schedule him for a bond hearing within seven (7) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216

(B.I.A. 2025).[1]

As more fully set forth in the Habeas Petition, Petitioner has been living in the United States for almost 20 years, since he last entered the United States in 2005 years; he has continuously resided in Tallahassee, Florida since 2005 and has 2 children born in the United States.[2] Although he has one misdemeanor offense for driving without a license in May of 2025, it has already been dismissed by the State of Florida..[3]

The Department of Homeland Security (DHS) recently changed its long-standing position with regard to the status of mandatory detention.[4] And the Bureau of Immigration Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all noncitizens present in the United States without admission – no matter how long they have resided here – are still "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).[5]

But this interpretation of the Immigration and Naturalization Act (INA) violates both procedural and substantive Fifth Amendment protections, ignores the plain statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal Court decisions in this District that have rejected these exact arguments. *See e.g.* October 3, 2025 Order entered by District Court Judge Dominic W. Lanza, requiring Respondents to grant Petitioner, who had been present in the United States for 24 years, a "prompt bond hearing", saying that it "agrees with the majority of courts that have concluded that § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance."). *See,*

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[1] ***See,*** *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed with the Habeas Petition as Exhibit 3.
[2] ***See,*** Petitioner's Evidence in Support of Bond Hearing, filed herewith as Exhibit 5.
[3] ***Id.***
[4] ***See,*** ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited 9/8/2025) (last visited September 8, 2025), filed with the Habeas Petition as Exhibit 2.
[5] ***See,*** *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed with the Habeas Petition as Exhibit 3.

Francisco Echevarria v. Pam Bondi, et al., CV-25-03252-PHX-DWL (ESW) (D. Ariz. 10/3/2025). [6]

Here, Petitioner has been living in the United States for almost 20 years, since he last entered the United States in 2005 years; he has continuously resided in Tallahassee, Florida since 2005 and has 2 children born in the United States.[7] Further, when Respondents issued a Notice to Appear, it identified Petitioner as an "alien present in the United States" despite "arriving alien" being an option.[8]

Because *Matter of Yajure Hurtado* is not binding,[9] this Court is in the best position to determine whether Petitioner Victor Hugo Padron-Carreron was properly considered for release on bond.

MEMORANDUM OF LAW

I. Statement Of Facts.

Petitioner Victor Hugo Padron-Carreron was born on [redacted] in Mexicana, Mexico and he crossed into the United States on 2005.[10] He has lived in the United States for almost 20 years, since he last entered the United States in 2005 years and has he has continuously resided in Tallahassee, Florida since 2005 and has 2 children born in the United States.[11] Although he has one misdemeanor offense for driving without a license in May of 2025, which has already been dismissed by the State of Florida..[12]

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[6] ***See,*** 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed with the Habeas Petition as Exhibit 14.

[7] ***See,*** Petitioner's Evidence in Support of Bond Hearing, filed with the Habeas Petition as Exhibit 5.

[8] ***See,*** Petitioner's Notice to Appear, filed with the Habeas Petition as Exhibit 4.

[9] In addition to BIA decisions not being binding precedent upon this Court, the Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024), made clear that federal courts must independently interpret statutes and no longer defer to an Executive Branch agency's legal interpretations under so-called *Chevron* deference to agency interpretations of statutes.

[10] ***See,*** Petitioner's Bond Hearing Evidence, filed with the Habeas Petition as Exhibit 5.

[11] ***Id.***

[12] ***Id.***

Respondents arrested Petitioner on June 20, 2025 and he was transferred to the Florence Correctional Center in Florence, Arizona, where he remains in custody. [13]

On August 15, 2025, a custody redetermination hearing was held in Florence Correctional Center in Florence, Arizona, where Petitioner submitted evidence including: His Mexican passport; (B) his high school diploma; (C) his 2 U.S. born children's birth certificates; (D) tax returns and annual reports from his self-owned construction company; (E) Good Character Letters; (F) Nolle Prosse disposition of misdemeanor offense for driving without a license in May of 2025 in Wakulla County, Florida..[14]

DHS submitted evidence the following evidence: Record of Deportable/Inadmissible Alien; and (b) Notice to Appear[15]

On August 15, 2025, a written order entered denying a bond, stating that:

Respondent did not establish that the Immigration Court or an Immigration Judge would have jurisdiction to redetermine the conditions of his custody or release him on bond or parole under INA 236(a), and that he is not an 'applicant for admission' under INA 235(a)(1) and/or that he is not subject to mandatory detention under INA 235(b)(1) or 235(b)(2).

Exhibit *, Order Denying Bond.[16]

Petitioner has determined that an appeal to BIA would be futile. *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

II. LEGAL STANDARDS

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[13] ***See,*** 11-4-25 ICE Locator Page for Victor Hugo Padron-Carreron, filed with the Habeas Petition as Exhibit 7.

[14] ***See,*** Petitioner's Bond Hearing Evidence, filed with the Habeas Petition as Exhibit 5.

[15] ***See,*** DHS Bond Hearing Evidence, filed with the Habeas Petition as Exhibit 6.

[16] ***See,*** Order Denying Bond, filed with the Habeas Petition as Exhibit 1.

To obtain a preliminary injunction, a plaintiff must establish: "(1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (*en banc*), citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 at 20 (2008). The legal standards applicable to TROs and preliminary injunctions are "substantially identical.'" *Babaria v. Blinken*, 87 F. 4th 963, 976 (9th Cir. 2023), citing to *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) (*per curiam*) (*quoting Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)).

The Court considers the elements on a "sliding scale" pursuant to the Ninth Circuit's "serious question" test:

> A preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor.

Alliance for the Wild Rockies v. Cottrell, 632 F. 3d 1127, 1134-35 (9th Cir. 2011) (*citing Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*)) (internal quotations omitted). Likelihood of success on the merits is the most important factor. Where a movant fails to meet this requirement, the "court need not consider the other factors in the absence of serious questions going to the merits." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal citations and quotations omitted).

A. Petitioner Is Likely To Succeed On The Merits Of His Argument That He Is Wrongfully Detained Because He Is Not Subject To Mandatory Detention Under § 1225(B)(2).

DHS argues that Petitioner is subject to "mandatory detention" under § 1225 (b)(2)(A) by virtue of being an "applicant for admission" under § 1225 (a)(1), pursuant to a July 8, 2025 change

in DHS policy.[17] In essence, DHS now argue that ***any*** noncitizen not previously admitted to the United States is subject to mandatory detention, without the possibility of a bond hearing. However, Petitioner is likely to succeed on his claims that he is detained under 8 U.S.C. § 1226(a). He has been residing in the United States for almost 20 years, since he last entered the United States in 2005 and has never sought admission.

Further, the plain text of § 1226 demonstrates that its subsection (a) applies to Petitioner. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226 goes on to explicitly confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible.[18] While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens who may not be released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g., id.* § 1226(c)(1)(A), (C). Even if § 1226(a) did not cover inadmissible noncitizens—there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses.

Notably, recent amendments to § 1226 dramatically reinforce this argument. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See Laken Riley Act* (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility

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[17] *See,* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025), filed with the Habeas Petition as Exhibit 2.

[18] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182) apply to those who have not been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that, by default, § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See 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).

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 § 1182(a)(7)." 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here.

Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who have already entered and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the *en banc* Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within § 1225(b)(2)(A).

Otherwise, that language would serve no purpose, violating a key rule of statutory construction. See Shulman, 58 F.4th at 410–11. Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who are "arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving into the United States—not those already residing here. Similarly, the

title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

B. The Record And Longstanding Practice Reflect That § 1226 Governs Petitioner's Detention.

Here, DHS's long practice of considering people living in the United States for more than two years as detained under § 1226(a) further supports this reading of the statute. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

Indeed, in 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for

bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

In sum, § 1226 governs this case. Section 1225 applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission and have been residing in the United States for more than 2 years.

C. Caselaw Holds That An Alien Present In The U.S. For More Than 2 Years Is Not An "Arriving Alien".

Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C.§ 1226(a) is the "default" provision for aliens already present in the United States. In *Jennings v. Rodriguez,* 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory right to periodic bond hearings. It held that "U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held that "§ 1226 applies to aliens ***already present*** in the United States. Section 1226(a) creates a ***default rule*** for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings,* 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis,* 533 U.S. 678 (2001), the Supreme Court stated that "[w]hile removal proceedings are in progress, ***most aliens may be released on bond or paroled.*** 8 U. S. C. §§ 1226(a) (1994 ed., Supp. V)." *Id.* at 683 (emphasis added).

The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default detention statute for noncitizens in removal proceedings and applies to noncitizens "[e]xcept as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland,* 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland,* 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott,* 765 F. Supp. 3d 1091, 1095 (WD Wash.

2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

Echevarria v. Bondi, et al., No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) collects many of the District Court cases across the country holding against the government in this regard .[19] However at least seven additional cases in the Arizona District Court have recently found against the government's position:

A. Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)("in accord with numerous other courts addressing the same issue—'Respondents' narrow focus on the language of § 1225(a)(1) fails to take account of the entirety of the statutory scheme…" *citing to Echevarria v. Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3, 2025));[20]

B. Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents point to two district court opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts have reached the same conclusion as *Echevarria* and held individuals like Petitioner are not subject to mandatory detention under 1225(b)(2)(A)");[21]

C. Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)("individuals like Petitioner are not "arriving aliens" subject to mandatory detention but, rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)").[22]

D. Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)("petitioner, who had been present in the United States for years, was not an applicant for admission under 1225(b)(2)(A) or subject to mandatory detention");[23]

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[19] ***See,*** 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed with the Habeas Petition as Exhibit 14.

[20] ***See,*** 11/6/2025 Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML (D. Ariz. 11-6-25), filed herewith as Exhibit 8.

[21] ***See,*** 10/22/2025 Order entered in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025), previously filed as Exhibit 10.

[22] ***See,*** 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025), previously filed as Exhibit 11.

[23] ***See,*** Order entered 10/9/2025 in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-03394-DJH—JZB [docket no. 11] (D.C. Ariz.) filed with the Habeas Petition as Exhibit 12.

E. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)("Respondents maintain he is subject to mandatory detention under 1225(b)(2). Again, Respondents are mistaken.");[24]

F. August 11, 2025 Magistrate's Report and Recommendation in *Rocha Rosado v. Figueroa,* No. CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz. Aug. 13, 2025)(Magistrate's Report and Recommendation Adopted at 2025 WL 2349133)([t]he text of § 1226, the canons of statutory interpretation, this section's legislative history, and longstanding agency practice indicate that Rosado is subject to § 1226(a)'s 'default' rule for discretionary detention rather than § 1225's mandatory detention requirement, and that the IJ erred by finding they did not have jurisdiction to consider Rosado's detention.") *report and recommendation adopted sub nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);[25]

G. 08/04/25 Order Granting Mot. for Temporary Restraining Order, *Co Tupul v. Noem*, No. 25-AT-99908 (D. Ariz. August 4, 2025)("Petitioner alleges she has been present in the United States for 30 years and, as a result, is statutorily ineligible for expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (conditioning the Attorney General's ability to apply expedited removal procedures to non-arriving noncitizens on those noncitizens 'having been present in the United States for under two years'')".[26]

Petition has only located two cases holding to the contrary: *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). However, in *Vargas Lopez*, the court held that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a), so "his Petition fails ***regardless of the parties' arguments about the scope of § 1225(b) and § 1226(a).***" *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added).

In *Chavez v. Noem*, the court denied a temporary restraining order on the grounds that the petitioners had "not demonstrated serious questions about the application of Section 1225 to aliens present in the United States." *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court spent

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[24] ***See,*** 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL (D Arizona 0/07/2025), previously filed as Exhibit 13.

[25] ***See,*** 8/13/2025 Magistrate's Report and Recommendation in *Rocha Rosado v. Figueroa,* No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), previously filed as Exhibit 15.

[26] ***See,*** 08/04/25 Order Granting *Ex Parte* Motion for Temporary Restraining Order, *Mirta Amarilis Co Tupul v. Noem, et al.,* (D. Az. Case 2:25-cv-02748-DJH) filed with the Habeas Petition as Exhibit *.

less than 2 pages analyzing the statutory language and caselaw before concluding that "Petitioners have not shown either a likelihood of success or serious questions going to the merits [therefore] we do not address the remaining *Winter* factors." *Chavez v. Noem*, 2025 WL 2730228 at *5.

Thus, neither *Vargas Lopez* nor *Chavez v. Noem* is particularly instructive. Of course, neither case is binding precedent on this Court.

D. BIA's Determinations Are Not Entitled To Deference.

Obviously, decisions by IJs and the BIA are not binding on the Federal Judiciary, and vice-versa. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The legal relationship between federal courts and the BIA was fundamentally restructured on June 28, 2024, when the Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024), which expressly overruled *Chevron*[27] deference to agency interpretations of statutes. The majority opinion, authored by Chief Justice John Roberts, held that Federal Courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority". *Loper Bright,* 603 U.S. at 207.

Thus, determining whether or not DHS's new internal policy of treating all noncitizens as "applicants for admission" under § 1225 (a)(1) and thereby subject to "mandatory detention" under 8 U.S.C. § 1225 (b)(2)(A) is properly decided by the Federal Courts. The recent decision of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) is not binding on this Court.[28]

E. Petitioner Will Suffer Irreparable Harm Absent An Injunction.

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

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[27] *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[28] ***See,*** *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed with the Habeas Petition as Exhibit 3.

Since Petitioner's detention he has been detained at the Florence Correctional Center in Florence, Arizona, similar to a criminal detention, under the pretense that his detention is mandatory. The Supreme Court has established that the "loss of freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner's ongoing loss of liberty, he has demonstrated significant irreparable harm. This factor weighs in his favor.

F. The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of liberty, separation from family, significant stress and anxiety, and difficulty in communicating with his attorney.

The government, by contrast, faces minimal hardship: the administrative costs associated with three bond hearings. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." What is more, because the policy preventing Petitioner from obtaining bond "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) (Moreno I); *see also Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in Moreno II and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v.*

Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013). Indeed, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145."

CONCLUSION

For all the foregoing reasons, Petitioner Victor Hugo Padron-Carreron respectfully requests the Court grant this motion for a Temporary Restraining Order and require Respondents to immediately release him from his unlawful detention at Florence Correctional Center in Florence, Arizona or, in the alternative, schedule him for a bond hearing within seven (7) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).[29]

DATED this 10th Day of November, 2025

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[29] *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed with the Habeas Petition as Exhibit 3.

LIST OF NEW EXHIBITS	
Exhibit 16	**Rule 65(b) Declaration of Nera Shefer**
Exhibit 17	**Declaration of Petitioner Victor Hugo Padron-Carreron**