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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF EASTERN CALIFORNIA

ARIEL SALVADOR QUIROZ-MARTINEZ, Petitioner vs. **CHRISTOPHER CHESTNUT,** Warden of California ICE Processing Center; **SERGIO ALBARRAN,** Field Office Director of Enforcement and Removal Operations, San Francisco Field Office; **TODD M. LYONS,** Acting Director of the United States Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of the United States Department of Homeland Security; **PAMELA JO BONDI,** United States Attorney General, *in their official capacities,* Respondents	**CASE NO.** **PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby moves the Court for emergency relief in the form of a temporary restraining order directing Respondents to release Petitioner from his custody with no additional conditions of release that were not imposed prior to his detention in 2025 or to provide Petitioner with individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a).

Petitioner also seeks a temporary restraining order enjoining the Respondents from relocating Petitioner outside of the District of Eastern California pending final resolution of this case.

Petitioner further moves for the issuance of an order to show cause as to why a preliminary injunction should not issue.

This application is supported by the Memorandum of Points and Authorities, accompanying exhibits, as well as any additional submissions that may be considered by the Court.

Undersigned counsel has contacted Assistant U.S. Attorney's Office-2241 Unit at usacae.ecf2241@usdoj.gov and Cheri Buxbaum, paralegal, at cheri.buxbaum@usdoj.gov to ascertain Respondents' position regarding the TRO and is awaiting their reply.

Respectfully submitted,

Date: December 1, 2025

By: /s/ Ann Barhoum
Ann Barhoum
Attorney for Petitioner

PROOF OF SERVICE

I, the undersigned, declare that my office is in San Francisco, California. I am over the age of eighteen (18) years and not a party to the action within. My business address is 405 Sansome Street, 2nd Floor, San Francisco, CA 94111. On December 1, 2025, I served the following documents: **PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** by placing a true and correct copy in a sealed envelope, each addressed as follows:

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By mail. I am readily familiar with the business for collection and processing of correspondence for mailing in the United States Postal Service and that this document, with postage fully prepaid, will be deposited with the United States Postal Service this date in the ordinary course of business.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on December 1, 2025, at San Jose, California.

/s/ ANN BARHOUM
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Ariel Salvador QUIROZ-MARTINEZ,

Petitioner,

v.

Christopher CHESTNUT, Warden, California City ICE Processing Center; Sergio ALBARRAN, Field Office Director of Enforcement and Removal Operations, San Francisco Immigration and Customs Enforcement; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

PETITIONER'S DHS NUMBER:

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INTRODUCTION

Ariel Salvador Quiroz-Martinez seeks a Temporary Restraining Order that requires Respondents to release them from custody or to provide them with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO. On November 25, 2025, Respondent did have a bond hearing scheduled, but the Immigration Judge determined that Respondent was not eligible for a bond based on *Matter of Yajure-Hurtado*, 29 I.&N. Dec. 216 (BIA 2025).

Although Petitioner was present and residing in the United States at the time of his immigration arrest, he has been subjected to a new DHS policy issued on July 8, 2025 which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention.

The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *See* Ex. 2, ICE Interim Guidance Regarding Detention Authority for Applicants for Admission. The Petitioner is detained at the California City ICE Processing Center in California City, CA.

Despite the new DHS policy's assertions to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and is now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on bond or conditional parole. Section 1226(a) expressly applies to people who, like Petitioner, are charged as removable for having entered the United States without inspection and being present without admission.

Respondents' new legal interpretation set forth in the policy is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like

Petitioner who is present within the United States. Respondents' new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving Petitioner of statutory and constitutional rights and unquestionably constitutes irreparable injury.

On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

Petitioner therefore seeks a Temporary Restraining Order enjoining Respondents from continuing to detain him unless Petitioner is provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO.

Petitioner also seeks an Order prohibiting Respondents from relocating Petitioner outside of the Eastern District Court of California pending final resolution of this litigation.

STATEMENT OF FACTS

Petitioner has resided in the United States since December 21, 2021and lives in Fremont, California. On November 3, 2025, Petitioner was arrested San Francisco ICE ERO officers at 630 Sansome Street, #590, San Francisco, CA 9411. Petitioner is now detained at the California City ICE Processing Center in California City, CA.

The DHS placed Petitioner in removal proceedings before the San Francisco Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being

inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

Respondents commenced removal proceedings against Petitioner in immigration court, entitling Petitioner to present an asylum claim with the due process rights under 8 U.S.C. §1229a. Petitioner filed his asylum application with the immigration court on March 21, 2024. Petitioner went to his ICE check-in on November 3, 2025, to change his address with the ICE field office at 630 Sansome Street, San Francisco, CA. He had previously changed his address with the San Francisco Immigration Court on October 6, 2025.

Following Petitioner's arrest and transfer to the California City ICE Processing Center in California City, CA. ICE issued a change of address form showing that the California City ICE Processing Center in California City, CA is Petitioner's new address. ICE never issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

Pursuant to *Matter of Yajure Hurtado*, the immigration judge determined that he is unable to consider Petitioner's bond request.

ARGUMENT

I. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER

The Court should grant a temporary restraining order enjoining ICE from removing Mr. Quiroz Martinez from the California area and ordering the IJ to provide Petitioner with a bond hearing.

In order to grant this motion, the Court need not reach a final determination on any of Petitioner's claims, but simply must determine whether they have pled their claims sufficiently to allow the Court time to fully adjudicate the pending claims. The Third Circuit considers four

factors in determining whether to grant a temporary restraining order: "(1) whether the movant has a reasonable probability of success on the merits; (2) whether the movant will be irreparably harmed by denying the injunction; (3) whether there will be greater harm to the nonmoving party if the injunction is granted; and (4) whether granting the injunction is in the public interest." *Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 170–71 (3d Cir. 2001) (upholding grant of preliminary injunction).[1]

These factors weigh heavily in favor of granting a temporary restraining order, because Mr. Quiroz Martinez has a high likelihood of success on the merits, the hardship Mr. Quiroz Martinez and his family are already facing is devastating, and the government will experience no hardship if ordered to comply with regulations and guidance it has itself promulgated.

A. Petitioner Is Likely to Succeed on the Merits of His Claim.

Petitioner is likely to succeed on their claims that their ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and no bond hearing before an immigration judge is unlawful.

The text, context, and legislative and statutory history of the Immigration and Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs his detention.

1. <u>The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is not subject to mandatory detention.</u>

First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioners. 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).

[1] Courts in the Third Circuit apply the same standard for considering grants of temporary restraining orders and preliminary injunctions. *See, e.g. Int'l Foodsource, LLC v. Grower Direct Nut Co. Inc.*, No. 16 Civ. 3140, 2016 WL 4150748, at *6 (D.N.J. Aug. 3, 2016).

Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioner, who is inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., § 1226(c)(1)(A), (C).

If Respondents' position that § 1226(a) did not apply to inadmissible noncitizens such as Petitioner who is present without admission in the United States were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 reinforce that this section covers people like Petitioner who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. *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 presence without admission) or § 1182(a)(7) (the inadmissibility 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 § 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 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); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025) Order Granting Ex Parte Application for TRO and OSC, Dkt. 12 at 7 ("If Respondents are correct that Congress meant for § 1225 to govern all aliens present in the United States who had not been admitted, it would render the exception made under §1226(c)(1)(E) unnecessary. This does not stand to reason for, as Respondents aptly note, 'a statute should be construed so that effect is given to all its provisions.'" (citations omitted.) *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).

Despite the clear statutory language, DHS issued a new policy on July 8, 2025 instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an "applicant for admission" and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

See Ex. 2, "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025. The new policy was implemented "in coordination with" the Department of Justice. *Id.*

The new policy is also inconsistent with the canon against superfluities. Under this "most basic [of] interpretive canons, . . . '[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("[C]ourt[s] 'must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" (citation omitted)). But by concluding that the mandatory detention provision of § 1225(b)(2) applies to Petitioner, DHS and EOIR violate this rule.

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." Section 1226(a) covers those who are present within and residing within the United States and who are not at the border seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), 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. § (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 Petitioners, 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 who 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").

On September 5, 2025, the Board of Immigration Appeals issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that 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." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

2. The legislative history further supports the application of § 1226(a) to Petitioner's detention.

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies to Petitioner. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104- 469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) 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 (emphasis added); see also H.R. Rep. No. 104-828, at 210 (same).

3. The record and longstanding agency practice reflect that § 1226 governs Petitioner's detention.

DHS's long practice of considering people like the Petitioner as detained under §1226(a) further supports this reading of the statute. Typically, in cases like that of the Petitioner, DHS issues a Form I-286, Notice of Custody Determination, or Form I-200 stating that the person is detained under § 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is consistent with longstanding practice. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within 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, agency regulations have long recognized that people like Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the regulatory basis for the immigration court's jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. Specifically, EOIR 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 10323.3.

In sum, § 1226 governs this case. Section 1225 and its mandatory detention

provision 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 are now present and residing in the United States.

B. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.

In the absence of a TRO, Petitioner will continue to be unlawfully detained by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ. Petitioner has now been detained without a bond hearing since June 12, 2025.

"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). Petitioner's continued detention without the bond hearing that should have been provided to him pursuant to § 1226 constitutes an ongoing violation of his constitutional right to due process. Petitioner's continued detention also brings devastating consequences for his economic livelihood, and his family. Because he is detained, Petitioner cannot continue his employment as an associate in the meat department at the Osaka Marketplace and as an employee of the Tawa Retail Group, Inc. Petitioner experiences significant stress and anxiety stemming from the ongoing and potential consequences of Respondents' unlawful conduct—including their inability to continue his employment, earn an income, and avoid detention, incarceration, and deportation. *See* Declaration of Claudia Perez, ¶ In *Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1192 (N.D. Cal. 2015), the Northern District held that "[e]motional distress, anxiety, depression, and other psychological problems can constitute irreparable injury."

C. The Balance of Equities Tips in Petitioner's Favor and a TRO is in the Public Interest.

The factors are considered because the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors also weigh heavily in favor of granting a preliminary injunction. Because the policy preventing Petitioners 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 821, 832 (9th Cir. 2022) (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"). *See Doe v. Noem*, No. 25-00023, 2025 WL 1161386, at *7 (W.D. Va. Apr. 21, 2025) ("[W]hile the Executive Branch has broad authority to enforce immigration laws, there is no public interest in allowing them to act outside the law.").

Based on the foregoing, the balance of these remaining factors weighs in favor of granting the requested interim relief.

II. Prudential Exhaustion is Not Required.

Prudential exhaustion does not require Petitioners to be forced to endure the very harm they are seeking to avoid by requesting and appealing the IJ bond orders to the Board of Immigration Appeals and waiting many months for a decision from the BIA. "[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).

In addition, a court may waive an exhaustion requirement when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action." *McCarthy v. Madigan*, 503 U.S. 140, 146-47 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731, 739-41 (2001). "Such prejudice may result . . . from an unreasonable or indefinite time frame for administrative action." *Id.* at 147 (citing cases).

Here, the exceptions regarding irreparable injury and agency delay apply and warrant waiving any prudential exhaustion requirement.

A. Futility

Futility is an exception to the prudential exhaustion requirement. Petitioner has been subject to *Matter of Yajure Hurtado* where the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. Petitioner has also been subjected to the DHS policy issued on July 8, 2025 instructing all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The DHS policy states it was issued "in coordination with the Department of Justice (DOJ)." *See* Ex. 2.

Given these facts, any request to the Immigration Judge for a bond hearing, as well as any subsequent appeals to the BIA, would be futile

B. Irreparable injury

Irreparable injury is an exception to any prudential exhaustion requirement. Each day that Petitioner is ordered mandatorily detained, each day he remains in detention is one in which his statutory and constitutional rights have been violated. Similarly situated district courts have

repeatedly recognized this fact. As one court has explained, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, "if Petitioner is correct on the merits of his habeas petition, then Petitioner has already been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be repaired." *Villalta v. Sessions*, No. 17-CV- 05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar).

Petitioner asserts both statutory and constitutional claims and have a "fundamental" interest in a bond hearing, as "freedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" *Hernandez v. Sessions,* 872 F.3d 976, 993 (9th Cir. 2017) (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Moreover, the irreparable injury Petitioners face extends beyond a chance at physical liberty. There are several "irreparable harms imposed on anyone subject to immigration detention[.]" Hernandez, 872 F.3d at 995. These include "subpar medical and psychiatric care in ICE detention facilities." *Id.*

CONCLUSION

For the foregoing reasons, the motion for a temporary restraining order should be granted.

DATED this 1ST of December 2025.

/s/ Ann Barhoum
Attorney for Petitioner

WORD COUNT CERTIFICATION

The undersigned counsel of record for Petitioner certifies that this Memo contains4,997 words.

/s/ Ann Barhoum
Ann Barhoum
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 1, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by mail to the following individuals:

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A copy of this Memorandum in Support of Application for TRO and OSC, with all related filings was sent by electronic mail to the U.S. Attorney's Office—2241 Unit at usacae.ecf2241@usdoj.gov and Cheri Bauxbaum, paralegal, at cheri.buxbaum@usdoj.gov.

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