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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Anibal Gonzalez-Gonzalez,
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, Florence Service Processing Center,
Respondents.

Case No.

A No. 

PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT


INTRODUCTION

Petitioner Anibal Gonzalez-Gonzalez 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 Service Processing Center, Florence, Arizona or, in the alternative, schedule him for a bond hearing within three (3) days under 8 U. S. C. § 1 226, without regard to the holding of

1 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025)), filed with the Habeas Petition as
2 Exhibit 2.

3 The Department of Homeland Security (DHS) recently changed its long-standing
4 position with regard to bond hearings and the status of mandatory detention. See, ICE Memo:
5 Interim Guidance Regarding Detention Authority for Applications for Admission, filed with the
6 Habeas Petition as Exhibit 1. And the Bureau of Immigration Appeals (BIA) issued a
7 precedential decision on September 5, 2025, holding that all noncitizens present in the United
8 States without admission – no matter how long they have resided here – are still “applicants
9 for admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under §
10 1225(b)(2)(A). See, *Yajure Hurtado*, filed with the Habeas Petition as Exhibit 2.

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13 But this interpretation of the Immigration and Naturalization Act (INA) violates both
14 procedural and substantive Fifth Amendment protections, ignores the plain statutory language
15 of both § 1225 and § 1226, and is contrary to numerous recent Federal Court decisions in this
16 District that have rejected these exact arguments. See e.g. October 3, 2025 Order entered by
17 District Court Judge Dominic W. Lanza, requiring Respondents to grant Petitioner, who had
18 been present in the United States for 24 years, a “prompt bond hearing”, saying that it “ agrees
19 with the majority of courts that have concluded that § 1226(a), rather than § 1225(b)(2)(A),
20 applies in this circumstance.”) See, *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-
21 PHX-DWL (ESW) (D. Ariz. 10/3/2025). (gathering cases), filed with the Habeas Petition as
22 Exhibit 3.

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25 Here, Petitioner has been living in the United States for 20 years and is the father of a
26 U.S.-citizen daughter, , who is seventeen years old. See, Petitioner’s Affidavit, filed
27 herewith as Exhibit 4. Petitioner has no criminal history and has never been arrested at any
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1 time prior to his recent detention by Immigration and Customs Enforcement. *Id.* He is engaged
2 to a lawful permanent resident, Ramona, both of whom, along with his daughter, have been
3 significantly impacted by his continued detention. *Id.* Further, when Respondents issued a
4 Notice to Appear, it identified Petitioner as an “alien present in the United States” despite
5 “arriving alien” being an option. See, Petitioner’s Notice to Appear, filed herewith as Exhibit 5.
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7 *Matter of Yajure Hurtado* is not binding precedent this court. And the Supreme Court
8 decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024), made
9 clear that federal courts must independently interpret statutes and no longer defer under so-
10 called “*Chevron* deference” to agency interpretations of statutes. Therefore, this Court is in the
11 best position to determine whether Petitioner Anibal Gonzalez-Gonzalez was improperly barred
12 for consideration for release on bond.
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14 MEMORANDUM OF LAW

15 I. STATEMENT OF FACTS.

16 Petitioner Anibal Gonzalez-Gonzalez was born on [REDACTED] in Guatemala. He
17 last entered the United States in 2005 See, Petitioner’s Affidavit, filed herewith as Exhibit 4.
18 He has one U.S.-citizen daughter, age seventeen. *Id.* He has no criminal history and had never
19 been arrested prior to his current ICE detention. *Id.* Petitioner is engaged to a lawful permanent
20 resident. *Id.* His continued detention has caused hardship to his daughter and fiancée.
21

22 Respondents arrested Petitioner on August 25, 2025. *Id.* He was issued a Notice to
23 Appear which identified him as an “alien present in the United States” even though “arriving
24 alien” was an alternate option. See, Petitioner’s Notice to Appear, filed herewith as Exhibit 5.
25 Petitioner is currently detained by ICE at Florence Service Processing Center, Florence,
26 Arizona. See, ICE Detainee Locator, filed herewith as Exhibit 3.
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1 In light of the BIA holding in *Yajure Hurtado* that Immigration Judges no longer have
2 jurisdiction to conduct bond hearings, Petitioner decided to file this habeas petition instead of
3 filing a request for a bond hearing.

4 **II. LEGAL STANDARDS**

5 To obtain a preliminary injunction, a plaintiff must establish: "(1) a likelihood of success
6 on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that
7 the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest."
8 *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (*en banc*), citing *Winter v. Natural*
9 *Resources Defense Council, Inc.*, 555 U.S. 7 at 20 (2008). The legal standards applicable to
10 TROs and preliminary injunctions are "substantially identical." *Babaria v. Blinken*, 87 F. 4th
11 963, 976 (9th Cir. 2023), citing to *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir.
12 2017) (*per curiam*) (quoting *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
13 839 n.7 (9th Cir. 2001)).

14 The Court considers the elements on a "sliding scale" pursuant to the Ninth Circuit's
15 "serious question" test. "A preliminary injunction is appropriate when a plaintiff demonstrates
16 that serious questions going to the merits were raised and the balance of hardships tips sharply
17 in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1134-35 (9th
18 Cir. 2011) (citing *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*))
19 (internal quotations omitted). Likelihood of success on the merits is the most important factor.
20 Where a movant fails to meet this requirement, the "court need not consider the other factors
21 in the absence of serious questions going to the merits." *Disney Enters., Inc. v. VidAngel,*
22 *Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal citations and quotations omitted).
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1 **A. Petitioner Is Likely To Succeed On The Merits Of His Argument That Him Is**
2 **Wrongfully Detained Because He Is Not Subject To Mandatory Detention Under**
3 **§ 1225(B)(2).**

4 DHS argues that Petitioner is subject to “mandatory detention” under § 1225 (b)(2)(A)
5 by virtue of being an “applicant for admission” under § 1225 (a)(1), pursuant to a July 8, 2025
6 change in DHS policy. See, ICE Memo: Interim Guidance Regarding Detention Authority for
7 Applications for Admission filed with the Habeas Petition as Exhibit 1. In essence, DHS now
8 argue that *any* noncitizen not previously admitted to the United States is subject to mandatory
9 detention, without the possibility of a bond hearing. However, Petitioner is likely to succeed
10 on his claims that he is detained under 8 U.S.C. § 1226(a). Petitioner has been residing in the
11 United States for almost 20 years, since he last entered the United States in 2005 and has
12 never sought admission.
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14 Further, the plain text of § 1226 demonstrates that its subsection (a) applies to Petitioner.
15 By its own terms, § 1226(a) applies to anyone who is detained “pending a decision on whether
16 the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226
17 goes on to explicitly confirm that this authority includes not just persons who are deportable,
18 but also noncitizens who are inadmissible. Generally speaking, grounds of deportability (found
19 in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful
20 permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182)
21 apply to those who have not been admitted to the United States. See, e.g., *Barton v. Barr*, 590
22 *U.S.* 222, 234 (2020).
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24 While § 1226(a) provides the right to seek release, § 1226(c) carves out specific
25 categories of noncitizens who may not be released— including certain categories of
26 inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., *id.* §
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1 1226(c)(1)(A), (C). Even if § 1226(a) did not cover inadmissible noncitizens—there would be
2 no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, it
3 would have only needed to address people who are deportable for certain offenses.

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

19 In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply
20 to everyone who is in the United States "who has not been admitted," 8 U.S.C. § 1225(a)(1).
21 Section 1226(a) covers those who are not now seeking admission but instead are already
22 residing in the United States—including those who are charged with inadmissibility—while §
23 1225(b)(2) covers only those "seeking admission," i.e., those who are apprehended upon
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1 arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)). A
2 contrary interpretation would ignore § 1226(a)'s plain text and structure and render
3 meaningless § 1226's language that specifically addresses individuals who have entered
4 without inspection. The text of § 1225 reinforces this interpretation. As the Supreme Court has
5 recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at
6 297, i.e., cases "at the Nation's borders and ports of entry, where the Government must
7 determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287.
8 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—
9 which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only
10 the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General
11 designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)."
12 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent
13 information to an examining immigration officer or do not have adequate documents to enter
14 the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people
15 arriving at a port of entry or who have recently entered the United States and not those already
16 residing here.

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20 Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in
21 the United States. The title explains that this paragraph addresses the "[i]nspection of other
22 [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not
23 address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress
24 confirmed that it did not intend to sweep into this section individuals like Petitioner, who have
25 already entered and are now residing in the United States. An individual submits an "application
26 for admission" only at "the moment in time when the immigrant actually applies for admission
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1 into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in
2 *Torres*, the *en banc* Court of Appeals rejected the idea that § 1225(a)(1) means that anyone
3 who is presently in the United States without admission or parole is someone "deemed to have
4 made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive
5 here too, as only those who take affirmative acts, like submitting an "application for admission,"
6 are those that can be said to be "seeking admission" within § 1225(b)(2)(A).
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8 Otherwise, that language would serve no purpose, violating a key rule of statutory
9 construction. See *Shulman*, 58 F.4th at 410–11. Furthermore, subparagraph (b)(2)(C)
10 addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who
11 are "arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
12 underscores Congress's focus in § 1225 on those who are arriving into the United States—not
13 those already residing here. Similarly, the title of § 1225 refers to the "inspection" of
14 "inadmissible arriving" noncitizens. See *Dubin v. United States*, 599 U.S. 110, 120–21 (2023)
15 (emphasis added) (relying on section title to help construe statute). Finally, the entire statute is
16 premised on the idea that an inspection occurs near the border and shortly after arrival, as the
17 statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4),
18 or officers conducting "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3),
19 (b)(1), (b)(2), (d); see also *King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's
20 "broader structure . . . to determine [the statute's] meaning").
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23 **B. The Record And Longstanding Practice Reflect That § 1226 Governs Petitioner's**
24 **Detention.**

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

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9 Indeed, in 1997, after Congress amended the INA through the Illegal Immigration
10 Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and
11 Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under
12 the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies
13 explained that “[d]espite being applicants for admission, [noncitizens] who are present without
14 having been admitted or paroled (formerly referred to as [noncitizens] who entered without
15 inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323
16 (emphasis added). The agencies thus made clear that individuals who had entered without
17 inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C.
18 § 1226 and its implementing regulations.
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21 In sum, § 1226 governs this case. Section 1225 applies only to individuals arriving in the
22 United States as specified in the statute, while § 1226 applies to those who have previously
23 entered without admission and have been residing in the United States for more than 2 years.
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25 **C. Caselaw Holds That An Alien Present In The U.S. For More Than 2 Years Is Not
26 An “Arriving Alien”.**

27 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the
28 “default” provision for aliens already present in the United States. In *Jennings v. Rodriguez*,

1 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was
2 a statutory right to periodic bond hearings. It held that “U. S. immigration law authorizes the
3 Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1)
4 and (b)(2). It also held that “§ 1226 applies to aliens **already present** in the United States.
5 Section 1226(a) creates a **default rule** for those aliens by permitting—but not requiring—the
6 Attorney General to issue warrants for their arrest and detention pending removal
7 proceedings.” *Jennings*, 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis*, 533 U.S.
8 678 (2001), the Supreme Court stated that “[w]hile removal proceedings are in progress, **most**
9 **aliens may be released on bond or paroled**. 8 U. S. C. §§ 1226(a) (1994 ed., Supp. V).” *Id.*
10 at 683 (emphasis added).
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13 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in
14 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute for
15 noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in
16 [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022).
17 *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F.
18 Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir.
19 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).
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21 *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz.
22 Oct. 3, 2025) collects many of the District Court cases across the country holding against the
23 government in this regard. See, 10/3/2025 Order entered in *Francisco Echevarria v. Pam*
24 *Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed with the Habeas
25 Petition as Exhibit 3. However at least nine additional cases in the Arizona District Court have
26 recently found against the government’s position:
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- 1) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)(“dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention”), gathering cases, filed with the Habeas Petition as Exhibit 7;
- 2) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)(“the vast majority of courts concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention”), gathering cases, filed with the Habeas Petition as Exhibit 8;
- 3) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)(“dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention”), gathering cases, filed with the Habeas Petition as Exhibit 9;
- 4) 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)), filed with the Habeas Petition as Exhibit 10;
- 5) Order granting habeas petition in *Lopez-Cruz v. Noem, et al.*, No. 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)(“dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention. This Court agrees with this conclusion.”), filed herewith as Exhibit 11;
- 6) 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)”), filed with the Habeas Petition as Exhibit 12;
- 7) 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 tot he general removal statute, 8 U.S.C. § 1226(a)”), filed with the Habeas Petition as Exhibit 13;

- 1 8) 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
2 present in the United States for years, was not an applicant for admission under
3 1225(b)(2)(A) or subject to mandatory detention"); filed with the Habeas
4 Petition as Exhibit 14.
- 5 9) Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-
6 SPL (D Arizona 10/07/2025)("Respondents maintain he is subject to mandatory
7 detention under 1225(b)(2). Again, Respondents are mistaken."); filed with the
8 Habeas Petition as Exhibit 15.
- 9 10) Magistrate's Report and Recommendation in *Rocha Rosado v. Figueroa*, No.
10 CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz. Aug. 13,
11 2025)(Magistrate's Report and Recommendation Adopted at 2025 WL
12 2349133)([t]he text of § 1226, the canons of statutory interpretation, this
13 section's legislative history, and longstanding agency practice indicate that
14 Rosado is subject to § 1226(a)'s 'default' rule for discretionary detention rather
15 than § 1225's mandatory detention requirement, and that the IJ erred by
16 finding they did not have jurisdiction to consider Rosado's detention.") *report*
17 *and recommendation adopted sub nom.* 2025 WL 2349133 (D. Ariz. Aug. 13,
18 2025); filed with the Habeas Petition as Exhibit 16.

19 Petitioner has located only 5 publicly available cases holding to the contrary. In *Vargas*
20 *Lopez v. Trump*, --F. Supp. 3d--, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court held
21 that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a), so "his
22 Petition fails **regardless of the parties' arguments about the scope of § 1225(b) and §**
23 **1226(a).**" *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added).

24 In *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), the
25 court denied a temporary restraining order on the grounds that the petitioners had "not
26 demonstrated serious questions about the application of Section 1225 to aliens present in the
27 United States." *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court spent less than
28 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.

1 *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830 (E.D. Mo. Nov. 10, 2025) was
2 concerned with whether the habeas petition had been properly filed in that court's jurisdiction
3 and never reached the application of § 1225(b) to the petitioner. *Pipa-Aquise v. Bondi*, No. 25-
4 1094, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025) and *Pena v. Hyde*, No. 25-11983, 2025 WL
5 2108913 (D. Mass. July 28, 2025) were each shorter than two pages long and neither contained
6 any significant analysis.
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8 Thus, none of these are particularly instructive. Neither are they binding precedent on
9 this Court.

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

11 Obviously, decisions by the BIA are not binding on the Federal Judiciary, and vice-versa.
12 *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The legal relationship between federal courts and
13 the BIA was fundamentally restructured on June 28, 2024, when the Supreme Court issued its
14 decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which expressly
15 overruled *Chevron [24] Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).
16 deference to agency interpretations of statutes. The majority opinion, authored by Chief Justice
17 John Roberts, held that Federal Courts must "exercise their independent judgment in deciding
18 whether an agency has acted within its statutory authority". *Loper Bright*, 603 U.S. at 207.
19

20 Thus, determining whether or not DHS's new internal policy of treating all noncitizens
21 as "applicants for admission" under § 1225 (a)(1) and thereby subject to "mandatory detention"
22 under 8 U.S.C. § 1225 (b)(2)(A) is properly decided by the Federal Courts. The recent decision
23 of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) is not binding on this Court.
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25 **E. Petitioner Will Suffer Irreparable Harm Absent An Injunction.**
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1 Parties seeking preliminary injunctive relief must also show they are “likely to suffer
2 irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm
3 is the type of harm for which there is “no adequate legal remedy, such as an award of
4 damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

5
6 Since Petitioner’s detention, he has been detained at the Florence Service Processing
7 Center, Florence, Arizona, similar to a criminal detention, under the pretense that his detention
8 is mandatory. The Supreme Court has established that the “loss of freedoms, for even minimal
9 periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347,
10 355 (1976). Thus, by virtue of Petitioner’s ongoing loss of liberty, he has demonstrated
11 significant irreparable harm. This factor weighs in his favor.

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13 **F. The balance of hardships and public interest weigh heavily in Petitioner’s favor.**

14 The final two factors for a preliminary injunction—the balance of hardships and public
15 interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418,
16 435 (2009). Here, Petitioner faces weighty hardships: loss of liberty, separation from family,
17 significant stress and anxiety, and difficulty in communicating with his attorney.

18
19 The government, by contrast, faces minimal hardship: the administrative costs
20 associated with three bond hearings. “[T]he balance of hardships tips decidedly in plaintiffs’
21 favor” when “[f]aced with such a conflict between financial concerns and preventable human
22 suffering.” What is more, because the policy preventing Petitioner from obtaining bond “is
23 inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in
24 favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
25 (W.D. Wash. 2019) (*Moreno I*); see also *Moreno Galvez*, 52 F.4th at 832 (affirming in part
26 permanent injunction issued in *Moreno II* and quoting approvingly district judge’s declaration
27
28

1 that "it is clear that neither equity nor the public's interest are furthered by allowing violations
2 of federal law to continue"). This is because "it would not be equitable or in the public's interest
3 to allow the [government] . . . to violate the requirements of federal law, especially when there
4 are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th
5 Cir. 2013). Indeed, Defendants "cannot suffer harm from an injunction that merely ends an
6 unlawful practice." *Rodriguez*, 715 F.3d at 1145."
7

8 CONCLUSION

9 For all the foregoing reasons, Petitioner Anibal Gonzalez-Gonzalez respectfully
10 requests the Court grant this motion for a Temporary Restraining Order and require
11 Respondents to immediately release him from his unlawful detention at the Florence Service
12 Processing Center in Florence, Arizona or, in the alternative, schedule him for a bond
13 hearing within three (3) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of*
14 *Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).
15

16 Dated: 4th day of December, 2025
17 Attorney for Petitioner

18 By: /s/ Erica Sanchez
19 Erica Sanchez, Of Counsel
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26 Attorney for Petitioner
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LIST OF NEW EXHIBITS	
Exhibit 18	Rule 65(b) Declaration of Erica Sanchez, Counsel to Petitioner

EXHIBIT 18

1 Erica Sanchez, Of Counsel
2 Shefer Law Firm, P.A.
3 800 SE 4th. Ave #803
4 Hallandale Beach, Florida 33009
5 Telephone: (480) 866-1111
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Anibal Gonzalez-Gonzalez,
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 Florence Service Processing Center, in his official capacity;
Respondents.

Case No.

A No. 

Rule 65(b) Declaration of Attorney Erica Sanchez

I, Erica Sanchez, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge, information, and belief:

1. I am counsel for Petitioner, Anibal Gonzalez-Gonzalez.
2. I file this Declaration in Support of Petitioner's *Ex Parte* Motion for A Temporary Restraining Order or, in the Alternative, a Preliminary Injunction.

■ 2 attachments (442 KB)

251203_TRO_Gonzalez.pdf; 251203_Habeas_Gonzalez.pdf;

Dear Ms. Katherine R. Branch,

I represent Mr. Anibal Gonzalez Gonzalez. In an effort to provide notice pursuant to Federal Rule of Civil Procedure 65(b)(1)(B), I am writing to inform you that I intend to file an Ex Parte Application for Temporary Restraining Order, together with a Petition for Writ of Habeas Corpus, on his behalf.

The motion seeks immediate release from unlawful detention at the Florence Correctional Center in Florence, Arizona on the basis that immediate and irreparable harm will occur before the government can be heard.

Attached please find:

1. The Habeas Petition (draft), and
2. The Ex Parte Motion for Temporary Restraining Order (draft).

If you wish to respond or confer, please contact me as soon as possible. Due to the time-sensitive nature of this matter, I expect to file the motion with the Court within a day, unless I hear otherwise.

Regards,

Erica Sanchez
Attorney for Petitioner