MARDY M. SPROULE
California State Bar No. 207048
LAW OFFICES OF MARDY M. SPROULE
15141 Whittier Blvd, Suite 250
Tel (323)726-0999
Fax (323)726-0990
Email: Mardy.Sproule@att.net

Attorney for Petitioner, *Juan Gabriel Ramirez Caracosa*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Juan Gabriel RAMIREZ CARACOSA, Petitioner, v. Kristi NOEM, et al., Respondents.	Case No. '25CV3446 LL MMP PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Petitioner hereby makes this *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioner Juan Gabriel Ramirez Caracosa entered the United States on or about October 2006 and has resided continuously in Southern California since that date. On July 1, 2025, he was arrested as part of a largescale immigration enforcement action targeting construction workers in Los Angeles County. Specifically, Petitioner was arrested without a warrant at a private residence that was being renovated in Los Angeles, California. Petitioner was transferred from the Los Angeles B-18 Detention Facility to the Otay Mesa Detention Center, where he has remained for five months. **Ex. A, C.**

On July 8, 2025, the DHS issued a nationwide policy directive instructing Immigration and Customs Enforcement (ICE) officers to treat all individuals deemed inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) — that is, persons present in the United States without admission or parole — as "arriving aliens" who are "seeking admission" to the United States. The policy further directs that such individuals be detained pursuant to 8 U.S.C. § 1225(b)(2)(A), rendering them ineligible for release on bond during the pendency of removal proceedings, straying from a long-standing statutory interpretation and practice, which distinguished between individuals apprehended at the border and those arrested in the interior after having established residence in the United States.

Nevertheless, on August 5, 2025, Petitioner submitted his first motion to request bond before the Immigration Judge ("IJ"). On August 11, 2025, he withdrew it.

Following this directive, on September 25, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that IJ's lack Authority to hear bond requests or to grant bond to aliens...who are present in the United States without admission pursuant to INA §235(b)(2)(A), 8 U.S.C. §1225(b)(2)(A). The BIA essentially determined that such persons are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore must remain detained throughout the pendency of their removal proceedings. This decision has effectively stripped IJ's of their long-recognized authority to assess custody in these cases, resulting in prolonged and unjustified detention of individuals like Mr. Ramirez Caracosa who is now encountering ICE 19 years after his entry into the United States.

On November 20, 2025, the United States District Court, Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --

- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

Accordingly, on November 25, 2025, Petitioner submitted a second motion to request bond, and further supplemented the filing on December 1, 2025, citing bond eligibility under 8 CFR §1236, arguing that he could not be subject to mandatory detention under section 235(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b), because he was arrested in the interior of the United States and is therefore properly subject to 8 U.S.C. § 1226(a), which allows for his release on conditional parole or bond.

On December 5, 2025, the IJ denied his request for bond on the basis of lack of jurisdiction. Ex. C. The IJ further found that court in *Bautista v. Noem* , No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) "did not issue a class-wide declaratory judgment...until and unless the Bautista court issue[d] a class-wide declaratory judgement or injunction, the Bautista court's opinion and patrial grant of summary judgement does not constitute a judgment". **Ex. B.**

The refusal to allow a bond redetermination in this matter violates both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Petitioner now seeks a temporary restraining order ("TRO") requiring that the Immigration Court be allowed to hold a bond hearing. Expedited relief is necessary to prevent irreparable injury before a hearing on a preliminary injunction may be held.

Petitioner requests that this Court issue a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction in the form of the proposed order submitted concurrently with this Application. This Application is based on the Petition for Writ of Habeas Corpus and exhibits in support thereof

As described in the declaration of counsel below, I am providing advance notice of this filing to Respondents' counsel.

Dated: December 5, 2025

By: /s/ *Mardy M. Sproule*

Mardy M. Sproule, *Attorney for Petitioner Juan Gabriel Ramirez Caracosa*
Email: Mardy.Sproule@att.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

I. INTRODUCTION

Petitioner Juan Gabriel Ramirez Caracosa seeks a Temporary Restraining Order (hereinafter "TRO") that requires Respondents to release him from custody or to provide him with an individualized bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

Although Petitioner was present and residing in the United States for nineteen years at the time of his immigration arrest, at his bond hearing DHS argued that the court lacked jurisdiction to redetermine his custody because Petitioner is "present without status" subjecting him to a new DHS policy issued on July 8, 2025, titled *Interim Guidance Regarding Detention Authority for Applicants for Admission*",[1] 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 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention; and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *Id.* Petitioner is detained at the Otay Mesa Detention Center and has been denied a bond hearing based on this new policy.

The denial of bond to the Petitioner and his ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

Nationality Act (INA), 8 U.S.C. § 1101 *et seq. See Lazaro Maldonado Bautista et al v. Gabriel Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM, Dkt # 14 (C.D. Ca. Jul. 28, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025). A multitude of cases that have concluded that applying Section 1225 in this situation "(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Lepe v. Andrews*, __F. Supp. 3d__, 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (citing cases).

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 cannot be subject to mandatory detention under section 235(b) of the INA, 8 U.S.C. § 1225(b), because he was arrested in the interior of the United States, 19 years after his entry, and not at or near the border while seeking admission to the country.

Respondents' 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. Respondents' 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.

Petitioner therefore seeks a Temporary Restraining Order enjoining Respondents from continuing to detain him unless Petitioner is provided an individualized bond hearing before an IJ 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 Southern District pending final resolution of this litigation.

II. STATEMENT OF FACTS

Petitioner Juan Gabriel Ramirez Caracosa has resided in the United States since approximately October 2006. **Ex. D.** On July 1, 2025, he was arrested by immigration authorities as part of a largescale immigration enforcement operation targeting construction sites in Los Angeles County. **Ex. C.** During this action, Petitioner was detained without probable cause and subjected to questionable enforcement measures. **Ex. B.**

Petitioner is now detained at the Otay Mesa Detention Center in Otay Mesa, California, and has been placed in removal proceedings. DHS has charged him with being present in the United States without admission, in violation of 8 U.S.C. § 1182(a)(6)(A)(i); and not being in possession of a valid entry documentation, in violation of 8 U.S.C. §1182(a)(7)(A)(i). **Ex. D.** Petitioner subsequently requested two bond hearings before an IJ pursuant to 8 C.F.R. § 1236. His first bond request was filed on August 5, 2025 and later withdrawn.

His second bond request was filed on November 25, 2025. It was denied by the IJ on December 5, 2025, finding that he lacked jurisdiction and that the Central District Court of California in *Bautista v. Noem* , "did not issue a class-wide declaratory judgment...until and unless the Bautista court issue[d] a class-wide declaratory judgement or injunction, the Bautista court's opinion and patrial grant of summary judgement does not constitute a judgment". **Ex. B.**

Petitioner has now been detained in immigration custody without a right to bond for five months, despite his documented health issues, that of his two United States citizen dependent children, and over two decades of residence in the United States. **Ex. A.**

III. ARGUMENT

The requirements for granting a Temporary Restraining Order are "substantially identical" to those for granting a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Petitioner must demonstrate that (1) he is likely to succeed on the merits of his claims; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). A sliding scale test may be applied and an injunction should be issued when there is a stronger showing on the balance of hardships, even if there are "serious questions on the merits ... so long as the plaintiff also shows a likelihood of irreparable

harm and that the injunction is in the public interest." *All. for the Bs v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024).

Petitioner satisfies the criteria and a TRO should be granted.

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM.

Petitioner is likely to succeed on his claim that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2), and the denial of bond hearing before an IJ 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. Petitioner Is Not Subject To Mandatory Detention.

The plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. 8 U.S.C. § § 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) in § 1225 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) in § 1225 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 has already entered decades ago and is now residing continuously in the United States without interruption for said decades. 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.

Here, Petitioner was classified as an applicant for admission despite his arrest in the interior of the United States after having resided here for over nineteen years. The new DHS and EOIR policy on this basis ignores all this and instead focuses on the definition of "applicant for admission" at § 1225(a)(1) (*see* "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025), which defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States," 8 U.S.C. § 1225(a)(1).

Significantly, in deeming that all noncitizens who entered without inspection are necessarily encompassed by the mandatory detention provision at § 1225(b)(2), the DHS and EOIR policy ignores that the provision does not simply address applicants for admission. The new policy and the IJs' implementation ignore the statutory language in § 1226 that expressly encompasses persons who have entered the United States and are present without

admission. Thus, Petitioner will prevail regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission."

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 bond reconsideration before an IJ. Petitioner has now been in ICE detention for 5 months, with chronic health issues and separated from his two special needs children who rely on him for their support. **Ex. A.** "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). Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) ("Thus, it follows inexorably from our conclusion that the government's current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the plaintiff class will likely be

deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm."); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv- 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under §1226(a).").

C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A TRO IS IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factors weigh in his favor because his claims assert that the new policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). 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 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"). 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) (second alteration in original) (citation omitted). Indeed, Respondent "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

Prudential exhaustion does not require Petitioner to be forced to endure the very harm he is seeking to avoid by appealing the IJ bond order to the BIA and waiting many months for a decision from the BIA, when the IJ relied on BIA precedent of *Yajure-Hurtado, supra,* to deny bond. "[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.

1. Futility

Futility is an exception to the prudential exhaustion requirement. Petitioner has been subjected to the new Department of Homeland Security (DHS) policy issued on July 8, 2025, instructing all ICE officers to treat any person arrested within the United States and charged under 8 U.S.C. § 1182(a)(6)(A)(i) as an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. This policy was issued "in coordination with the DOJ" according to the agency's memorandum titled Interim Guidance Regarding Detention Authority for Applicants for Admission (ICE, July 8, 2025).

Because IJ's operate within the EOIR—a component of the DOJ—the new DHS policy has effectively bound all immigration courts. Petitioner has been denied a bond hearing by an IJ pursuant to this policy, which has been uniformly applied nationwide to individuals charged under § 1182(a)(6)(A)(i), even when, as here, the arrest occurred deep within the interior of the United States decades after his entry.

On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), explicitly holding that individuals who entered the United States without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that IJs lack jurisdiction to conduct bond redetermination hearings in such cases. Consequently, on October 7, 2025, the BIA determined that the IJ did not have the authority to consider Petitioner's

request for custody redetermination. The BIA foreclosed relief through a binding precedential decision consistent with the DHS policy issued in coordination with the DOJ.

On November 20, 2025, the United States District Court, Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) . The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

In response to this case, IJ's have informed class members currently in detention seeking bond hearings that they (the IJ's) have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

Petitioner therefore has no further available administrative remedy and properly invokes this Court's habeas jurisdiction to challenge his unlawful detention and the categorical denial of a bond hearing.

2. Irreparable Injury

Irreparable injury is an exception to any prudential exhaustion requirement. Because Petitioner was denied bond by the IJ 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). Other district courts have echoed these points.[2]

Petitioner asserts both statutory and constitutional claims and has 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*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

Moreover, the irreparable injury Petitioner faces 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.* As indicated above, Petitioner chronic medical conditions for which he has not been able to seek treatment. **Ex. A.**

3. Agency Delay

Third, the BIA's delays in adjudicating bond appeals would warrant excusing any exhaustion requirement. A court's ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the Ninth Circuit has explained, Supreme Court precedent "permits a court under certain

---

[2] *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F.Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr. 17, 2020); *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec. 24, 2018).

prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.'" *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)). Of course, as noted above, Petitioner's interest here in physical liberty is a "fundamental" one. *Hernandez*, 872 F.3d at 993. Moreover, the Supreme Court has explained that "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this fundamental interest and the Supreme Court's admonition that only speedy relief is meaningful, on average the BIA takes over half a year in most cases to adjudicate an appeal of a decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up in a detention facility with conditions "similar . . . to those in many prisons and jails" and separated from family. *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g.*, *Hernandez*, 872 F.3d at 996.

District courts facing situations like the one at issue here acknowledged that the BIA's months-long review is unreasonable and results in ongoing injury to the detained individual. *See, e.g.*, *Perez*, 445 F. Supp. 3d at 286.

Indeed, as one district judge observed, "the vast majority of . . . cases . . . have 'waived exhaustion . . . where several additional months may pass before

the BIA renders a decision on a pending appeal [of a custody order]." *Montoya Echeverria*, 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301, at *5); *see also Hechavarria*, 358 F. Supp. 3d at 237–38 (citing *McCarthy* and BIA delays as reason to waive prudential exhaustion requirement). Additionally, the issues presented in this petition are questions of statutory interpretation which are "unlikely to require agency consideration to generate a proper record to reach a proper decision." *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 11.

E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

Finally, nothing in the Immigration and Nationality Act precludes this Court from granting the TRO.

The "zipper clause" at 8 U.S.C. § 1252(b)(9), which channels "[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioner does not seek review of orders of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5. Petitioner does not challenge Respondents authority to remove him

from the United States. He challenges his classification under §1225(b)(2) instead of §1226(a) and the IJ's determination that he lacks authority to provide a bond hearing under §1225(b)(2). Thus, §1252(b)(9) does not provide a jurisdictional bar.

The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the Attorney General may take: him 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). Like *Maldonado Bautista, supra,* Petitioner's challenge to his detention does not fall within these discrete actions. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

Finally, 8 U.S.C. § 1252(a), titled "Judicial Review of Orders of Removal," Section 1252(a)(2) contains four subsections, which outlines

categories of claims that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873- SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6.

As such, the Court has jurisdiction over Petitioner's challenge to his detention.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Application for a Temporary Restraining Order and Order to Show Cause.

Dated: December 5, 2025

Respectfully Submitted,
S/ Mardy M. Sproule

Attorney for *Juan Gabriel Ramirez Caracosa*
Email: Mardy.Sproule@att.net