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**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

Jose Ernesto Bermudez De Eugenio

Petitioner,

v.

Kristi NOEM, Secretary, Department of
Homeland Security; Todd LYONS, in his
official capacity as Acting Director of U.S.
Immigration and Customs Enforcement; Pam
BONDI, Attorney General of the United
States; Jaime RIOS, Director, Los Angeles
ICE Field Office; and Fereti SEMAIA,
Warden, Adelanto ICE Processing Center.

Respondents.

Case No.

PETITIONERS' *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioners hereby make 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. Petitioners are in pending removal proceedings and charged with having entered the United States without authorization. Despite this Court's orders of partial

1 summary judgment and class certification in *Maldonado Bautista v. Santacruz*,
2 5:25-CV-01873-SSS-BFM (C.D. Cal.), the immigrations courts are refusing to
3 find jurisdiction to hold bond redetermination hearings, and instead are applying
4 the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29
5 I&N Dec. 216 (BIA 2025), to find that individuals who entered the United States
6 without inspection or subject to mandatory detention under 8 U.S.C. § 1225(b).

7 This legal determination was rejected by the Court in *Maldonado Bautista*
8 *v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 81 at 12. The Court
9 then went on to apply that ruling when it granted class certification on
10 November 25, 2025. *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-
11 BFM (C.D. Cal.), Dkt # 82 at 14. Nevertheless, the Adelanto immigration court
12 continues to deny bond for lack of jurisdiction because there is no final decision
13 on class-wide relief.

14 Despite the orders in *Maldonado Bautista*, the immigration courts are
15 adhering to the Board of Immigration Appeals' precedent decision in *Matter of*
16 *Yajure Hurtado*, which holds that the immigration courts lack jurisdiction to
17 consider bond for noncitizens in removal proceedings who are charged with
18 having entered the United States without inspection or admission. This holding
19 violates the Immigration and Nationality Act and due process. Petitioners now
20 seek a temporary restraining order requiring that the immigration judge hold a
21 bond hearing and not deny bond due to lack of jurisdiction under 8 U.S.C. §
22 1225(b)(2)(A). Expedited relief is necessary to prevent irreparable injury before
23 a hearing on a preliminary injunction may be held.

24 Petitioners request that the Court issue a temporary restraining order
25 and order to show case re: preliminary injunction in the form of the proposed
26 order submitted concurrently with this Application. This Application is based on
27 the Petition for Writ of Habeas Corpus, Memorandum of Points and Authorities,
28 and the declaration and exhibits in support thereof.

1 Respondents were advised on December 8, 2025 that Petitioner would
2 be filing this ex parte application and of the contents of this application.

3 Robinson Decl. ¶ 3. See Local Rule 17-19.1.

4 Counsel for Respondents is as follows:

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10 Dated: December 8, 2025

/s/ Emily L. Robinson

11 Emily L. Robinson
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I. INTRODUCTION

Petitioner is an individual in pending removal proceedings who is detained in Adelanto, California. He seeks a Temporary Restraining Order that requires Respondents to provide them with individualized bond hearings before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

Although Petitioner has been present and residing in the United States for years, they are detained by immigration authorities and subject to a pending removal hearing, and ineligible for a bond hearing based on the Board of Immigration Appeals precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That precedent decision holds that noncitizens who entered the United States without inspection are ineligible for bond redetermination hearings because they are seeking admission, and fall within 8 U.S.C. § 1225(b)(2)(A). It is entirely futile for Petitioner to request a bond hearing or appeal in light of this precedent decision. Without this Court’s intervention, they will be subject to mandatory detention during the duration of their removal case based on *Matter of Yajure Hurtado*.

This Court has rejected the reasoning of *Matter of Yajure Hurtado* in a ruling granting partial summary judgment. *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 81. The Court then granted nationwide class certification on November 25, 2025, and explicitly stated that its ruling on partial summary judgment applied to the certified class. *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 82 at 14. Despite this, the Adelanto immigration court is refusing to apply *Maldonado Bautista* because it is not a final judgment. Tolchin Dec. Exh. 11. In fact, this is the policy represented by the Department of Justice itself in federal court. Tolchin Dec. Exh. 12. The refusal to provide a bond hearing under 8 U.S.C. § 1226(a) is a violation of

1 *Maldonado Bautista.*

2 In addition, almost every court to address this legal issue has held that the
3 denial of bond hearings to Petitioners who are charged with having entered the
4 United States without inspection violates the plain language of the Immigration and
5 Nationality Act (INA), 8 U.S.C. § 1101 et seq. Rodriguez v. Bostock, No. 3:25-CV-
6 05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Mosqueda v.*
7 *Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept.
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9 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025);
10 *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025);
11 *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,
12 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D.
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15 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
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18 *v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

19 The Court must find that 8 U.S.C. § 1225(b)(2)(A) does not apply to
20 individuals like Petitioner who previously entered and is now residing in the
21 United States. Instead, such individuals are subject to a different statute, § 1226(a),
22 that allows for release on bond or conditional parole. Section 1226(a) expressly
23 applies to people who, like Petitioner, is charged as removable for having entered
24 the United States without inspection and being present without admission.

25 The ongoing detention of Petitioner without a bond hearing is depriving him
26 of statutory and constitutional rights and unquestionably constitutes irreparable
27 injury.

28

1 Petitioner therefore seeks a Temporary Restraining Order enjoining
2 Respondents from continuing to detain him unless Petitioners are provided an
3 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §
4 1226(a) within seven days of the TRO, with instructions that the immigration
5 judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

6
7 **II. VENUE**

8 Venue is also properly in this court pursuant to 28 U.S.C. Sec. 1391(e)
9 because Respondents are employees, officers and agencies of the United States,
10 and because a substantial part of the events or omissions giving rise to the claims
11 occurred in the Southern District of California.

12
13 **III. STATEMENT OF FACTS**

14 Petitioner are ten individuals in removal proceedings who are detained in
15 Adelanto, California, and are all charged with having entered the United States
16 without inspection under 8 U.S.C. § 1182(a)(6)(A)(i).

17 Petitioner was arrested by immigration authorities and placed into removal
18 proceedings on November 7, 2025. Robinson Dec. Exh. 1. He is detained by
19 immigration officials in Adelanto, California and has been issued a Notice to
20 Appear which alleges that he entered the United States without inspection or
21 admission. 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* He is in pending removal proceedings
22 with his next hearing date set as December 22, 2025. However, according to the
23 policy of the Executive Office for Immigration review, which houses immigration
24 judges, he is not eligible for a bond redetermination hearing before an immigration
25 judge in light of the Board of Immigration Appeals' precedent decision in *Matter*
26 *of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as he is charged with having
27 entered the United States without inspection or admission. *Id.*
28

1 Upon information and belief Petitioner entered the United States on or
2 around October of 1998. He is presently 54 years old. Since that time, he has
3 committed no crimes (in the United States or anywhere in the world) and has never
4 had interactions with immigration officials. Petitioner has 5 children in the United
5 States, two with Deferred Action for Childhood Arrivals (DACA) and three who
6 are U.S. Citizens. Of those children, one is age 17 and still a minor. Petitioner also
7 has two U.S. Citizen grandchildren that he helps to provide for who are aged 15
8 and 10. Apart from the youngest, who is in his Senior Year of high school, his
9 children are high school graduates. One has an AA in graphic design, another has a
10 diploma in Heating Ventilation and Air Conditioning at UEI college, and one
11 obtained a Bachelor's degree in Business Administration at the University of
12 Irvine. All his family and clients as attest to his outstanding moral character.

13 In 2021, Petitioner feel severely ill with COVID and received intensive care
14 for a month and rehabilitation for about a month thereafter. Since that time, he has
15 suffered myriad health conditions which he has managed with various doctors. He
16 continues to have complications with his lungs along with other health conditions
17 like his eyes, high blood pressure, cholesterol, knees and joint pain. Outside of
18 custody has been referred to and/or seen a podiatrist, Rheumatologists, and
19 optometrist/ophthalmologist. These conditions have all been heightened since he has
20 been held in Detention.

21 He also developed cataracts on his left eye and had surgery in 2023. Since
22 then, he reports that has been going to checkups every 6 months and was
23 prescribed eye drops called Restasis. He recently had eye exams done to determine
24 the pulsing and eye discomfort he began to develop. Since being detained he has
25 been losing vision in one eye. He is already missed or is missing a number of
26 appointments with specialists during his detention. Upon information and belief,
27 Petitioner is being told he cannot have access to his medications as they are
28

1 “outside medications” and it is likely all his conditions are not being treated at this
2 time. According to his providers at the DLP Eye Group in Van Nuys, California,
3 he has warning signs for glaucoma, which needs professional care and becomes
4 urgent with a moment’s notice. There is already vision loss in the left eye requiring
5 the treatment of a neuro-ophthalmologist. He is the primary financial provider for
6 his home, which includes support to his grandchildren and adult children. He has
7 no convictions anywhere in the world and has no reason not to comply with
8 immigration authorities should he be released.

9
10 **IV. ARGUMENT**

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

14 Petitioners must demonstrate that (1) they are likely to succeed on the merits
15 of their claims; (2) they are likely to suffer irreparable harm in the absence of
16 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
17 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
18 (2008). A sliding scale test may be applied and an injunction should be issued
19 when there is a stronger showing on the balance of hardships, even if there are
20 “serious questions on the merits ... so long as the plaintiff also shows a likelihood
21 of irreparable harm and that the injunction is in the public interest.” *All. for the*
22 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
23 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.
24 2024).

25 Petitioners satisfy the criteria and a TRO should be granted.
26
27
28

1 A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF
2 THEIR CLAIMS.

3 Petitioner is likely to succeed on their that his ongoing detention by
4 Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before an
5 immigration judge is unlawful.

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

9 I. Petitioners' Detention Without the Right to a Bond Hearing
10 Before an Immigration Judge Violates *Maldonado Bautista*

11 The Court's November 20 and November 25, 2025 orders in *Maldonado*
12 *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), expressly apply the
13 order on Partial Summary Judgment on a class wide basis and invalidate the
14 argument that § 1225(b)(2) applies to those who entered without inspection.

15 On November 20, 2025, the Court in *Maldonado Bautista v. Santacruz*,
16 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt # 81, issue and order granting partial
17 summary judgment to the named plaintiffs. In that order, the Court rejected the
18 argument that noncitizens who entered the United States without inspection are
19 ineligible for bond based on 8 U.S.C. § 1225(b)(2), an found that they were
20 eligible for bond hearings before immigration judges under 8 U.S.C. § 1226(a).
21 The Court expressly found that those who entered the United States without
22 inspection were not applicants for admission under 8 U.S.C. § 1225(b)(2). The
23 Court stated:

24 In response, Respondents argue Petitioners are “applicants for admission”
25 because § 1225(b)(2) is a “catchall provision” that applies to all applicants
26 for admission not covered by § 1225(b)(1). [Opp. at 21, (citing *Jennings*,
27 583 U.S. at 287)]. According to Respondents, “applicants for admission”
28 “fall into one of two categories, those covered by § 1225(b)(1) and those
covered by § 1225(b)(2).” [Opp. at 21 (citing *Jennings*, 583 U.S. at 297)].
Such an argument relies on the assumption that “applicants for admission”

1 encompasses *all* noncitizens coming into and already in the United States. If
2 this assumption is true, then Respondents are correct. But this cannot be
3 correct.

4 Respondents' argument is at odds with the plain language of the INA.
5 Neither party contends with the definition section of the INA, which readily
6 resolves this dispute over statutory interpretation.

7 Dkt # 81 at 12. This is a rejection of the Board's decision in *Matter of Yajure*
8 *Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025) ("The Immigration Judge properly
9 held that he lacked authority to hear the respondent's request for a bond as the
10 respondent is an applicant for admission and is subject to mandatory detention
11 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)..."). As such, the
12 legal ruling that a noncitizen who entered without inspection is subject to §
13 1225(b)(2) was rejected in *Lazaro Maldonado Bautista*.

14 That legal ruling now applies nationwide to all noncitizens who entered
15 without inspection and meet the class definition which was certified on November
16 25, 2025 in *Maldonado Bautista*. Tolchin Dec. Exh. 14. The class is defined as:

17 All noncitizens in the United States without lawful status who (1) have
18 entered or will enter the United States without inspection; (2) were not or
19 will not be apprehended upon arrival; and (3) are not or will not be subject
20 to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time
21 the Department of Homeland Security makes an initial custody
22 determination.

23 *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt #
24 82. Petitioner is a member of this class, as he is alleged to have entered the United
25 States without inspection in the Notice to Appear and is not otherwise precluded
26 from bond.

27 Further, the November 25, 2025, class certification Court order confirms
28 that the court's prior November 20, 2025 order on partial summary judgment

1 applies to the nationwide class. The court stated explicitly “[w]hen considering this
2 determination with the MSJ Order, the Court extends the same declaratory relief
3 granted to Petitioners to the Bond Eligible Class as a whole.” Dkt # 82 at 14. As
4 such, the court’s November 20, 2025, ruling on partial summary judgment that
5 noncitizens who entered without inspection are eligible for bond hearings before
6 the immigration judge under § 1226(a) applies nationwide. Dkt # 81.

7 There is no merit to the position that class-wide declaratory relief was not
8 issued, as the November 25, 2025, did just that. Dkt # 82 at 14. The Court
9 explicitly extended declaratory relief to the certified class. *Id.* Hence, the position
10 from the Adelanto immigration court judges and the Department of Justice that
11 class-wide declaratory judgment was not issued is incorrect.

12
13 2. The Text Of § 1226(a) and § 1225(b)(2) Demonstrate That
14 Petitioner Is Not Subject To Mandatory Detention.

15 Alternatively, if the Court finds that *Maldonado Bautista v. Santacruz*, is not
16 binding, then it should hold that as a matter of independent statutory analysis,
17 Petitioners are eligible for bond hearings before the immigration judge under §
18 U.S.C. § 1226(a).

19 First, the plain text of § 1226 demonstrates that subsection (a) applies to
20 Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending
21 a decision on whether the [noncitizen] is to be removed from the United States.” §
22 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not
23 just noncitizens who are deportable pursuant to § U.S.C. § 1227(a), but also
24 noncitizens, such as Petitioner, who are inadmissible pursuant to § U.S.C. §
25 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out
26 specific categories of noncitizens from being released— including certain
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1 categories of inadmissible noncitizens—and subjects them instead to mandatory
2 detention. See, e.g., § 1226(c)(1)(A), (C).

3 If the Board’s position that § 1226(a) did not apply to inadmissible
4 noncitizens such as Petitioner who is present without admission in the United
5 States were correct, there would be no reason to specify that § 1226(c) governs
6 certain persons who are inadmissible; instead, the statute would only have needed
7 to address people who are deportable for certain offenses. Notably, recent
8 amendments to § 1226 dramatically reinforce that this section covers people like
9 Petitioners who DHS alleges to be present without admission. The Laken Riley
10 Act added language to § 1226 that directly references people who have entered
11 without inspection, those who are inadmissible because they are present without
12 admission. See Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).
13 Specifically, pursuant to the LRA amendments, people charged as inadmissible
14 pursuant to § 1182(a)(6) (the inadmissibility ground for presence without
15 admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid
16 documentation to enter the United States) *and* who have been arrested, charged
17 with, or convicted of certain crimes are subject to § 1226(c)’s mandatory detention
18 provisions. See 8 U.S.C. § 1226(c)(1)(E). By including such individuals under §
19 1226(c), Congress further clarified that § 1226(a) covers persons charged under §
20 1182(a)(6) or (a)(7). In other words, if someone is *only* charged as inadmissible
21 under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of §
22 1226(c)(1)(E) do not apply, then § 1226(a) governs that person’s detention. See
23 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at
24 *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide
25 that § 1226(a) covers people like Petitioner because the “‘specific exceptions’ [in
26 the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted
27 of the enumerated crimes logically leaves those inadmissible noncitizens not
28

1 criminally implicated under Section 1226(a)’s default rule for discretionary
2 detention.”); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24,
3 2025) (“if, as the Government argue[s], . . . a non-citizen’s inadmissibility were
4 alone already sufficient to mandate detention under section 1225(b)(2)(A), then the
5 2025 amendment would have no effect.” 2025 WL 2084238, at *7; *Gomes v.*
6 *Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)
7 (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559
8 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if
9 the statute at issue did not otherwise cover the excepted conduct).

10 Despite the clear statutory language, the Board issued its precedent decision
11 on September 5, 2025 in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA
12 2025), finding that noncitizens who entered the United States without inspection
13 were ineligible for bond redetermination hearings because they were seeking
14 admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

15 The new decision is also inconsistent with the canon against superfluities.
16 Under this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed
17 so that effect is given to all of its provisions, so that no part will be inoperative or
18 superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314
19 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101
20 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)
21 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
22 making every effort not to interpret a provision in a manner that renders other
23 provisions of the same statute inconsistent, meaningless or superfluous.’” (citation
24 omitted)). But by concluding that the mandatory detention provision of §
25 1225(b)(2) applies to Petitioners, DHS and EOIR violate this rule.

26 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read
27 to apply to everyone who is in the United States “who has not been admitted.”
28

1 Section 1226(a) covers those who are present within and residing within the
2 United States and who are not at the border seeking admission. The text of § 1225
3 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
4 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
5 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
6 Government must determine whether a[] [noncitizen] seeking to enter the country
7 is admissible,” *id.* at 287.

8 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
9 paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving
10 [noncitizens]”—encompasses only the “inspection” of certain “arriving”
11 noncitizens and other recent entrants the Attorney General designates, and only
12 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” §
13 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who
14 misrepresent information to an examining immigration officer or do not have
15 adequate documents to enter the United States. Thus, subsection (b)(1)’s text
16 demonstrates that it is focused only on people arriving at a port of entry or who
17 have recently entered the United States and not those already residing here.
18 Paragraph (b)(2) is similarly limited to people applying for admission when they
19 arrive in the United States. The title explains that this paragraph addresses the
20 “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking
21 admission,” but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By
22 limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not
23 intend to sweep into this section individuals like Petitioners, who have already
24 entered and are now residing in the United States. An individual submits an
25 “application for admission” only at “the moment in time when the immigrant
26 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d
27 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of
28

1 Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in
2 the United States without admission or parole is someone “deemed to have made
3 an actual application for admission.” *Id.* (emphasis omitted). That holding is
4 instructive here too, as only those who take affirmative acts, like submitting an
5 “application for admission,” are those who can be said to be “seeking admission”
6 within § 1225(b)(2)(A). Otherwise, that language would serve no purpose,
7 violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

8 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
9 [noncitizens] arriving from contiguous territory,” i.e. those who are “arriving on
10 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
11 underscores Congress’s focus in § 1225 on those who are arriving into the United
12 States—not those already residing here. Similarly, the title of § 1225 refers to the
13 “inspection” of “inadmissible arriving” noncitizens. *See Dubin v. United States*,
14 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
15 construe statute).

16 Finally, the entire statute is premised on the idea that an inspection occurs
17 near the border and shortly after arrival, as the statute repeatedly refers to
18 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
19 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
20 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
21 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
22 meaning”).

23 The new precedent decision in *Matter of YAJURE HURTADO*, 29 I&N
24 Dec. 216 (BIA 2025), requires immigration judges to deny bond to Petitioner
25 because his is charged with having entered the United States without inspection,
26 focusing on the definition of “applicant for admission” at § 1225(a)(1) which
27 defines an “applicant for admission” as a person who is “present in the United
28

1 States who has not been admitted or who arrives in the United States,” 8 U.S.C. §
2 1225(a)(1). But as the Ninth Circuit has explained, “when deciding whether
3 language is plain, [courts] must read the words in their context and with a view to
4 their place in the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*,
5 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that
6 context underscores that the definition in (a)(1) is limited by other aspects of the
7 statute to those who undergo an initial inspection at or near a port of entry shortly
8 after arrival—and that it does not apply to those who are arrested in the interior of
9 the United States months or years or decades later.

10 Significantly, in deeming that all noncitizens who entered without inspection
11 are necessarily encompassed by the mandatory detention provision at § 1225(b)(2),
12 the Board ignores that the provision does not simply address applicants for
13 admission. Instead, the language “applicant for admission” in (b)(2)(A) is further
14 qualified by clarifying the subparagraph applies only to those “seeking
15 admission”—in other words, those who have applied to be admitted or paroled.
16 The new decision ignores this text, just as it ignores the statutory language in §
17 1226 that expressly encompasses persons who have entered the United States and
18 are present without admission. Thus, Petitioner prevails regardless of the scope of
19 § 1225(a)(1)’s definition of “applicant for admission.” This is because
20 classification as an “applicant for admission,” is not sufficient to render someone
21 subject to mandatory detention under § 1225(b)(2). The “applicant for admission”
22 must *also* be “seeking admission,” and that is clearly not the case for Petitioner.
23

24
25 3. The Legislative History Further Supports The Application Of §
26 1226(a) To Petitioners’ Detention.
27
28

1 The legislative history of the Illegal Immigration Reform and Immigrant
2 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, §§ 302–03,
3 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited
4 construction of § 1225 and the conclusion that § 1226(a) applies to Petitioners. In
5 passing the Act, Congress was focused on the perceived problem of recent arrivals
6 to the United States who did not have documents to remain. *See* H.R. Rep. No.
7 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably,
8 Congress did not say anything about subjecting all people present in the United
9 States after an unlawful entry to mandatory detention if arrested. This is important,
10 as prior to IIRIRA, people like Petitioners were not subject to mandatory
11 detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest
12 noncitizens for deportation proceedings, which applied to all persons physically
13 present within the United States). Had Congress intended to make such a
14 monumental shift in immigration law (potentially subjecting millions of people to
15 mandatory detention), it would have explained so or spoken more clearly. *See*
16 *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468–69 (2001). But to the extent it
17 addressed the matter, Congress explained precisely the opposite, noting that the
18 new § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1)
19 regarding the authority of the Attorney General to arrest, detain, and release on
20 bond a[] [noncitizen] *who is not lawfully in the United States.*” H.R. Rep. No. 104-
21 469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210
22 (same).

23 4. The Record And Longstanding Agency Practice Reflect That §
24 1226 Governs Petitioners’ Detention.

25 The Board has a long practice of considering people like the Petitioner as
26 detained under §1226(a) further supports this reading of the statute. Even as
27 recently as June 30, 2025, the Board held in *Matter of Akhmedov*, 29 I&N Dec.
28

1 166 (BIA 2025), that an immigration judge had jurisdiction under 8 U.S.C. §
2 1226(a) to conduct a bond redetermination hearing for a noncitizen who was
3 charged with entering the United States without inspection or admission. For
4 decades, and across administrations, the Board has acknowledged that § 1226(a)
5 applies to individuals who are present without admission after entering the United
6 States unlawfully, but who were later apprehended within the United States long
7 after their entry. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025); *Matter of R-*
8 *A-V-P-*, 27 I. & N. Dec. 803, 806 (BIA 2020); *In Re: Hugo Leonel Lacan-Batz*,
9 No. : AXXX XX3 200 - BOS, 2009 WL 1863766, at *1 (BIA June 19, 2009)
10 (unpublished); *In Re: Jorge Luis Contreras-Linares*, No. : AXX XX6 969 - ELOY,
11 2003 WL 23508582, at *1 (BIA Dec. 18, 2003) (unpublished). Such a
12 longstanding and consistent interpretation “is powerful evidence that interpreting
13 the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573
14 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United*
15 *States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
16 interpretation and practice to reject government’s new proposed interpretation of
17 the law at issue).

18 Indeed, agency regulations have long recognized that people like Petitioners
19 are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
20 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
21 fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the
22 regulations governing immigration courts and implementing § 1226 decades ago.
23 Specifically, EOIR explained that “[d]espite being applicants for admission,
24 [noncitizens] who are present without having been admitted or paroled (formerly
25 referred to as [noncitizens] who entered without inspection) will be eligible for
26 bond and bond redetermination.” 62 Fed. Reg. at 10323.3

1 In sum, § 1226 governs this case. Section 1225 and its mandatory detention
2 provision applies only to individuals arriving in the United States as specified in
3 the statute, while § 1226 applies to those who have previously entered without
4 admission and are now present and residing in the United States.

5
6 B. PETITIONERS WILL SUFFER IRREPARABLE HARM IN THE
7 ABSENCE OF A TRO.

8 In the absence of a TRO, Petitioner will continue to be unlawfully detained
9 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.

10 “Freedom from imprisonment—from government custody, detention, or
11 other forms of physical restraint—lies at the heart of the liberty” that the Due
12 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
13 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
14 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
15 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
16 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
17 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
18 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
19 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
20 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
21 government's current policies [which fail to consider financial ability to pay
22 immigration bonds] are likely unconstitutional—and thus that members of the
23 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
24 the absence of the injunction—that Plaintiffs have also carried their burden as to
25 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
26 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
27 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
28 Petitioners’ continued detention without an initial bond hearing would cause

1 immediate and irreparable injury, as this violates statutory rights afforded under §
2 1226(a).”)

3
4 C. THE BALANCE OF EQUITIES TIPS IN PETITIONER’S FAVOR
AND A TRO IS IN THE PUBLIC INTEREST.

5 Because the government is a party, these two factors are considered
6 together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established
7 that the public interest factor weighs in their favor because their claims assert that
8 the Board’s decision has violated federal laws. *See Valle del Sol Inc. v. Whiting*,
9 732 F.3d 1006, 1029 (9th Cir. 2013). Because the decision that prevents Petitioners
10 from obtaining bond “is inconsistent with federal law, . . . the balance of hardships
11 and public interest factors weigh in favor of a preliminary injunction.” *Moreno*
12 *Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*);
13 *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part
14 permanent injunction issued in *Moreno II* and quoting approvingly district judge’s
15 declaration that “it is clear that neither equity nor the public’s interest are furthered
16 by allowing violations of federal law to continue”). This is because “it would not
17 be equitable or in the public’s interest to allow the [government] . . . to violate the
18 requirements of federal law, especially when there are no adequate remedies
19 available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)
20 (second alteration in original) (citation omitted). Indeed, Respondents “cannot
21 suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*
22 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

23
24 D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

25 Prudential exhaustion does not require Petitioners to be forced to endure the
26 very harm his is seeking to avoid by seeking a bond hearing before the
27 immigration judge, when Board precedent requires that the immigration judge
28 deny for lack of jurisdiction. Further, appealing the IJ bond orders to the Board of

1 Immigration Appeals and waiting many months for a decision from the BIA is
2 entirely futile. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See*
3 *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“[W]here the
4 agency's position on the question at issue appears already set, and it is very likely
5 what the result of recourse to administrative remedies would be, such recourse
6 would be futile and is not required.”)

7 Further, irreparable injury is an exception to any prudential exhaustion
8 requirement. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Here, the
9 exceptions regarding irreparable injury and agency delay apply and warrant
10 waiving any prudential exhaustion requirement.

11 Each day that Petitioner remains in detention is one in which his statutory
12 and constitutional rights have been violated. Similarly situated district courts have
13 repeatedly recognized this fact. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237
14 (W.D.N.Y. 2019); *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL
15 4355182, at *3 (N.D. Cal. Oct. 2, 2017); *Cortez v. Sessions*, 318 F. Supp. 3d 1134,
16 1139 (N.D. Cal. 2018) (similar).

17 Petitioner asserts both statutory and constitutional claims and have a
18 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
19 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
20 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

21 Moreover, the irreparable injury Petitioner faces extends beyond a chance at
22 physical liberty. There are several “irreparable harms imposed on anyone subject
23 to immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar
24 medical and psychiatric care in ICE detention facilities.” *Id.*

25
26 E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

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

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

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

23 Finally, 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,”
24 Section 1252(a)(2) contains four subsections, which outlines categories of claims
25 that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these
26 subsections precluding judicial review apply to this matter, as the specified
27 statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two
28

1 provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of
2 jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-
3 SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining
4 Order, Dkt. 14 at 6.

5 As such, the Court has jurisdiction over Petitioner’s challenge to his
6 detention.

7
8 **V. CONCLUSION**

9 For the foregoing reasons, the Court should grant Petitioners’ Application
10 for a Temporary Restraining Order and Order to Show Cause and order that
11 Petitioners be provided an individualized bond hearing before an immigration
12 judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO, with
13 instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to
14 consider bond.

15
16 Dated: December 8, 2025

Respectfully Submitted,

17
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF EMILY L. ROBINSON; AND [PROPOSED] ORDER by email to the following individual:

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Deputy Chief, Complex and Defensive Litigation Section
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s/ Stacy Tolchin
Stacy Tolchin
Counsel for Petitioner

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo complies with the word limit of L.R. 11-6.1.

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