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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**
12 **(PHOENIX DIVISION)**

13 Maberly Sagstizado-Urbina,
14
15 Petitioner,

16 v.

17 John E. Cantu, Field Office Director of
18 Enforcement and Removal Operations, Phoenix
19 Field Office, Immigration and Customs
20 Enforcement;

21 Kristi Noem, Secretary, U.S. Department of
22 Homeland Security;

23 Pamela Bondi, U.S. Attorney General;

24 Christopher Howard, Warden of Eloy Detention
25 Center;

26 Todd Lyons, Acting Director, Immigration and
27 Customs Enforcement and Removal Operations.

28 Respondents.

Case No.

**EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION**

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PI**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

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Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local Rules of this Court, Petitioner moves this Court for an order enjoining Respondents John E. Cantú, in his official capacity as Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement, Kristi Noem, in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”), Pamela Bondi, in her official capacity as the U.S. Attorney General with authority over the Executive Office for Immigration Review, and Fred Figueroa, in his official capacity as Warden of the Eloy Detention Center, where Petitioner is detained, from continuing to detain Petitioner, or ordering a bond hearing before an immigration judge. Petitioner additionally seeks to enjoin Respondents from removing her from the U.S. to any third country to which she does not have a removal order without first providing her with constitutionally-compliant procedures. Respondents should also not transfer the Petitioner outside the District of Arizona, where he is presently located. Such an order would maintain the status quo while habeas jurisdiction is litigated, and would also ensure that Petitioner remains close to legal counsel and family.

The reasons for this Motion are in the accompanying Memorandum of Points and Authorities. As this Motion shows, Petitioner warrants a preliminary injunction as she is eligible for release or a bond hearing before an immigration judge.

Petitioner is submitting a Habeas petition for same, on the same grounds, and is also filing this preliminary injunction motion to prevent irreparable injury before a hearing on his Habeas may be held.

WHEREFORE, Petitioner prays that this Court grant his request for a preliminary injunction enjoining Respondents from continuing to detain her, order a bond hearing before an

1 immigration judge in fifteen days, and enjoining Respondents from removing her to any third
2 country without first providing her with constitutionally-compliant procedures.

3 Dated: December 10, 2025

Respectfully Submitted

4 s/Jesse Evans-Schroeder
5 Attorney for Petitioner
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1 **I. INTRODUCTION**

2 Petitioner Maberly Sagastizado Urbina seeks a Preliminary Injunction (PI) that requires
3 Respondents to either release her from custody within seven days of the issuance of a PI, or order
4 a bond hearing before an immigration judge within fifteen days where the Department of
5 Homeland Security (DHS) bears the burden of demonstrating that her removal is reasonably
6 foreseeable and whether her detention is justified (i.e. whether she poses a danger or a flight risk).
7 At that hearing, the immigration judge must further consider whether, in lieu of detention,
8 alternatives to detention exist to mitigate any risk that Respondents may establish. Petitioner also
9 seeks a PI enjoining Respondents from removing Petitioner to any third country to which she does
10 not have a removal order without first providing her with constitutionally-compliant procedures.
11 Finally, Petitioner seeks a PI enjoining Respondents from transferring Petitioner outside the
12 District of Arizona, where she is presently located.
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14
15 Petitioner should prevail on this motion because she is likely to succeed on the merits of
16 her claims. The text of 8 U.S.C. § 1226(a) and § 1225(b)(2) demonstrates that he is not subject to
17 mandatory detention. Further, other federal courts have rejected the respondents' novel argument
18 that 8 U.S.C. § 1225(b) governs the detention of every noncitizen without lawful immigration
19 status.

20 Petitioner will also suffer irreparable harm in the absence of a PI. The balance of equities
21 tips in her favor, and a PI is in the public interest. Prudential exhaustion is not required here due
22 to futility, irreparable injury, and agency delay. Finally, there is no jurisdictional hurdle barring
23 relief. This Court should thus grant this motion.
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1 **II. STATEMENT OF THE FACTS**

2 Petitioner is a 38-year-old resident of Las Vegas, Nevada. She first entered the United
3 States as an unaccompanied minor at age seventeen and has resided here continuously since that
4 time.

5 While still a minor, Petitioner received a voluntary departure order from an immigration
6 judge, but did not depart because she feared persecution if she returned to El Salvador. It is unclear
7 if, despite her minor status, the immigration judge in her case advised her of the potential that she
8 would be eligible for asylum or other relief from removal.

9 Petitioner has a United States citizen (USC) spouse, who has filed an I-130, Petition for
10 Alien Relative, for her. That petition is currently pending. Petitioner is also possibly eligible for
11 cancellation of removal.
12

13 Both of Petitioner's parents are lawful permanent residents (LPR). Petitioner is also a
14 college graduate, worked (prior to her detention) as Lead Drafter at a construction company, and
15 has no criminal history. Petitioner also has strong community ties and good moral character, as
16 demonstrated by the various letters she submitted with her bond request. *See* Ex. A, Bond Motion,
17 Exh. D.
18

19 Petitioner was detained on August 12, 2025, and has been detained since that time. She is
20 currently detained at the Eloy Detention Center.

21 On August 19, 2025, Petitioner moved to reopen her immigration case based on exceptional
22 circumstances. On September 8, 2025, an immigration judge granted that motion. Though ICE
23 officials told Petitioner she would be transferred back to Las Vegas for these immigration
24 proceedings, that never occurred.
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1 Petitioner is still detained at a federal detention center in Arizona. Absent this Court's
2 intervention, she will remain detained for the duration of her removal proceedings, over 300 miles
3 from her family and community.

4 Petitioner sought a custody redetermination under 8 C.F.R. § 1236. On November 21, 2025,
5 the immigration judge denied that bond request, citing *Matter of Yajure Hurtado*.

6 III. LEGAL STANDARD

7
8 Petitioner is entitled to preliminary injunctive relief if she establishes that she is “likely to
9 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
10 that the balance of equities tips in [her] favor, and that an injunction is in the public interest.”
11 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Petitioner does not show a
12 likelihood of success on the merits, the Court may still grant relief if she raises “serious questions”
13 as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining
14 equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir.
15 2011). As shown below, Petitioner overwhelmingly satisfies both standards.

17 IV. ARGUMENT

18 Petitioner should prevail on this motion because she is likely to succeed on the merits of
19 her claims, likely to suffer irreparable harm in the absence of preliminary relief, the balance of
20 equities tips in her favor, and an injunction is in the public interest.

21
22 Respondents have violated the Immigration and Nationality Act and applicable regulations.
23 Indeed, the text of 8 U.S.C. § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is not subject
24 to mandatory detention. Further, other federal courts have rejected the Respondents’ novel
25 argument that 8 U.S.C. § 1225(b) governs the detention of every noncitizen without lawful
26 immigration status.

1 Petitioner will also suffer irreparable harm in the absence of a PI. The balance of equities tips
2 in her favor, and a PI is in the public interest. Prudential exhaustion is not required here due to
3 futility, irreparable injury, and agency delay. Finally, there is no jurisdictional hurdle barring relief.
4 This Court should thus grant this motion.

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

6 Petitioner is likely to succeed on her claim that her ongoing detention by Respondents
7 under 8 U.S.C. § 1225(b)(2), and the denial of access to bond, is unlawful.
8

9 1. Discretionary Versus Mandatory Detention in Removal Proceedings

10 Noncitizens detained by DHS while in removal proceedings generally can request a bond—
11 or “custody redetermination”—hearing before an immigration judge. 8 U.S.C. 1226(a); 8 C.F.R.
12 1236.1(d)(1). If the noncitizen does not present a danger to others, a threat to the national security,
13 or a flight risk, the immigration judge may order that individual released on conditional parole or
14 upon the posting of a monetary bond of no less than \$1,500. 8 U.S.C. 1226(a)(2)(A)-(B); *Matter*
15 *of Guerra*, 24 I&N Dec. 37 (BIA 2006).
16

17 Certain categories of noncitizens are subject to mandatory detention while in removal
18 proceedings. Under a provision in IIRIRA, if “an alien seeking admission is not clearly and beyond
19 a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C.
20 1229a].” 8 U.S.C. 1225(b)(2)(A). In the same bill, Congress defined “admission” and “admitted”
21 as the “lawful entry of the alien into the United States after inspection and authorization by an
22 immigration officer.” 8 U.S.C. 1101(a)(13)(A). In other words, the terms “admission” and
23 “admitted” “refer to inspection and authorization by an immigration officer at the port of entry.”
24 *Hing Sum v. Holder*, 602 F.3d 1092, 1101 (9th Cir. 2010). Thus, as the Supreme Court has
25 explained, 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are “seeking admission into
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1 the country,” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), i.e., those who are “arriving in the
2 United States.” *Clark v. Martinez*, 543 U.S. 371 (2005).

3 Consistent with the text of 8 U.S.C. § 1225(b)(2)(A), federal regulations preclude
4 immigration judges from granting bond to “arriving aliens,” 8 C.F.R. 1003.19(h)(1)(B)(ii), a
5 phrase defined in relevant part as “an applicant for admission coming or attempting to come into
6 the United States at a port-of-entry.” 8 C.F.R. 1001.1(q). The decision to preclude immigration
7 judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without
8 admission—was the product of notice and comment rulemaking in early 1997 following the
9 enactment of the IIRIRA. As the regulations were initially proposed, all “[i]nadmissible aliens in
10 removal proceedings” would have been ineligible for bond. *Inspection and Expedited Removal of*
11 *Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3,
12 1997). After receiving comments, however, the Attorney General deleted the proposed provision
13 and replaced it with one that would apply only to “[a]rriving aliens.” *Inspection and Expedited*
14 *Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum*
15 *Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997).
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18 As the Attorney General explained, “[t]he effect of this change [was] that inadmissible
19 aliens, except for arriving aliens, have available to them bond redetermination hearings before an
20 immigration judge, while arriving aliens do not.” *Id.* at 10323. In other words, “aliens who are
21 present without having been admitted or paroled (formerly referred to as aliens who entered
22 without inspection) will be eligible for bond and bond redetermination.” *Id.*
23

24 The IIRIRA also made subject to mandatory detention those noncitizens who have been
25 convicted of certain crimes or engaged in terrorist activity. For example, the IIRIRA made
26 noncitizens who are inadmissible by reason of having committed certain criminal offenses subject
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1 to mandatory detention under 8 U.S.C. 1226(c)(1)(A), and those inadmissible for having engaged
2 in terrorist activity subject to mandatory detention under 8 U.S.C. 1226(c)(1)(D). More recently,
3 under the Laken Riley Act, Pub. L. No. 119-1, Congress mandated detention for noncitizens who
4 entered without admission and were subsequently charged with, arrested for, convicted of, or
5 admitted to certain offenses. 8 U.S.C. 1226(c)(1)(E). These provisions under 8 U.S.C. 1226(c)
6 would be superfluous if all noncitizens who were present without admission were already subject
7 to mandatory detention under 8 U.S.C. 1225(b)(2)(A).
8

9 2. The Government's Novel and Widely Rejected Theory That All Noncitizens Who
10 Entered Without Admission Are Subject to Mandatory Detention

11 On Friday, July 4, 2025, President Trump signed the One Big Beautiful Bill Act, Pub. L.
12 No. 119-21, 139 Stat. 72. Among other things, the bill appropriated \$45 billion to ICE to detain
13 noncitizens through fiscal year 2029. § 90003, 139 Stat. 358.

14 On Tuesday, July 8, 2025, Acting ICE Director Todd Lyons issued a memorandum stating
15 that DHS and the Department of Justice had "revisited" the government's legal position regarding
16 the statutory basis for detaining noncitizens who were present in the country without being
17 admitted. According to Lyons, the government now believed that noncitizens present without
18 admission are subject to mandatory detention under 8 U.S.C. 1225(b), rather than discretionary
19 detention under 8 U.S.C. 1226(a), because, under 8 U.S.C. 1225(a)(1), they are deemed
20 "applicant[s] for admission." The memo further stated that this change in legal interpretation might
21 "warrant re-detention of a previously released alien in a given case."
22

23 On September 5, 2025, the BIA issued a precedential decision adopting ICE's novel
24 argument that all noncitizens who are present without admission are subject to mandatory
25 detention under 8 U.S.C. 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
26 The BIA acknowledged that 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are "seeking
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1 admission,” but, like ICE, concluded that the provision applied to all noncitizens who are present
2 without admission as they are also “applicant[s] for admission” under 8 U.S.C. 1225(a)(1). 29 I&N
3 Dec. at 218. The BIA acknowledged that its interpretation rendered superfluous multiple
4 provisions of 8 U.S.C. 1226(c), including one recently enacted in the Laken Riley Act, but it stated
5 that “redundancies are common in statutory drafting.” 29 I&N Dec. at 221-22 (quoting *Barton v.*
6 *Barr*, 590 U.S. 222 (2020)).

7
8 A motion to reconsider had been filed in *Matter of Yajure Hurtado*. The motion challenges
9 the Board’s statutory analysis, and asks it to withdraw its decision because (a) the underlying
10 removal proceedings had concluded by the time the Board issued its decision, making the case
11 moot, and (b) the decision conflicts with longstanding regulations issued by the Attorney General.¹

12 To date, federal district judges have issued over 280 decisions either outright rejecting the
13 government’s novel interpretation,ⁱ or finding that noncitizens challenging the government’s
14 interpretation were substantially likely to prevail on the merits.ⁱⁱ These judges have not been
15 unsparing in their criticism of the government’s newfound position. One called it a “nonstarter.”
16 *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another called
17 it “willfully blind.” *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md.
18 Aug. 24, 2025). Another called it “a policy argument, projected onto Congress.” *Romero v. Hyde*,
19 No. 25-11631, ___ F. Supp. 3d ___, 2025 WL 2403827 at *28 (D. Mass. Aug. 19, 2025). And another
20 noted that the government “could not identify any federal court that has adopted their novel reading
21 of § 1225(b)(2)(A).” *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 at *20 (E.D.
22 Mich Sept. 9, 2025).

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26 ¹ The Board’s Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it
27 contravenes the statutory language and legislative history, and it deviates from longstanding
28 agency practice and regulations.

1 The district court in *Maldonado Bautista v. Santacruz*, et al, 5:25-cv-01873 (C.D. Cal. Nov.
2 20, 2025) (Sykes, J.), has granted nationwide class certification and summary judgment on this
3 issue. Specifically, the court has declared illegal the Immigration and Customs Enforcement
4 policy, and the Board of Immigration Appeals decision in *Matter of Yajure-Hurtado*, 29 I. & N.
5 Dec. 216 (BIA 2025), requiring detention without bond of all persons who entered without
6 inspection or admission. Thus, class members nationwide now have a binding judgment declaring
7 they are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and are entitled to consideration
8 for release on bond.
9

10 The court there expressly extended the declaratory relief to the Bond Eligible Class, which
11 is nationwide and encompasses:

12 All noncitizens in the United States without lawful status who (1) have entered or
13 will enter the United States without inspection; (2) were not or will not be
14 apprehended upon arrival; and (3) are not or will not be subject to detention under
15 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland
16 Security makes an initial custody determination.

17 Petitioner in this case is thus a class member and covered by the declaratory relief granted
18 in *Maldonado Bautista*.

19 It is not difficult to understand why federal district courts have rejected the government's
20 novel interpretation. By its terms, 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are
21 "seeking admission," and Congress defined "admission" as the "lawful entry of the alien into the
22 United States after inspection and authorization by an immigration officer." 8 U.S.C.
23 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already
24 residing in the country would read the word 'entry' out of the definitions of 'admitted' and
25 'admission.'" *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (citing 8
26 U.S.C. 1101(a)(13)(A)). As importantly, if "the [BIA was] correct that § 1225(b)'s mandatory
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1 detention provisions apply to all persons who have not been admitted into the United States, that
2 would render superfluous those provisions of § 1226 that apply to certain categories of
3 inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E).” *Hasan v. Crawford*, ___ F. Supp. 3d
4 ___, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.). The BIA’s interpretation
5 would also “render the Laken Riley Act a meaningless amendment, since it would have prescribed
6 mandatory detention for noncitizens already subject to it.” *Aceros v. Kaiser*, 2025 WL 2637503 at
7 *28 (N.D. Cal. Sept. 12, 2025).

8
9 Indeed, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner.
10 Section 1226(a) permits the release of noncitizens who are detained “pending a decision on
11 whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). While §
12 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens—
13 including certain categories of noncitizens who are inadmissible under 8 U.S.C. § 1182(a)—and
14 subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C). If § 1226(a) could
15 never apply to inadmissible noncitizens, there would be no reason to specify that § 1226(c) governs
16 certain persons who are inadmissible; instead, § 1226(c) would only have needed to address people
17 who are deportable for certain offenses under 8 U.S.C. § 1227(a).

18
19 Recent amendments to § 1226 dramatically reinforce that this section covers people like
20 Petitioner, whom DHS alleges to be present without admission. Specifically, the Laken Riley Act
21 added language to § 1226 that directly references those who are inadmissible under § 1182(a)(6)
22 because they are present without admission or under § 1182(a)(7) because of the lack of valid
23 documentation. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. §
24 1226(c)(1)(E). By including such individuals under § 1226(c) and carving them out of § 1226(a)
25 if they have been arrested, charged with, or convicted of certain crimes, Congress reaffirmed that
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1 § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). *See Rodriguez Vazquez v. Bostock*,
2 No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining
3 these amendments explicitly provide that § 1226(a) covers people like Petitioner because the
4 “‘specific exceptions’ [in the LRA] for inadmissible noncitizens who are arrested, charged with,
5 or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not
6 criminally implicated under Section 1226(a)’s default rule for discretionary detention.”); *Diaz*
7 *Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (“if, as the Government
8 argue[s], . . . a non-citizen’s inadmissibility were alone already sufficient to mandate detention
9 under section 1225(b)(2)(A), then the 2025 amendment would have no effect.” 2025 WL 2084238,
10 at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)
11 (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
12 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not
13 otherwise cover the excepted conduct).
14

15 Unlike 8 U.S.C. § 1226, 8 U.S.C. § 1225(b) requires the detention of certain individuals
16 who are arriving at U.S. ports of entry or who recently entered the United States. As relevant here,
17 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who are “seeking admission” to the United
18 States.² *See Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (rejecting
19 DHS’ contention that an individual who entered the United States without inspection “is
20 automatically understood to be ‘seeking admission’ within the meaning of § 1225(b)(2)(A),
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24 ² 8 U.S.C. § 1225(b)(1) concerns “expedited removal of inadmissible arriving [noncitizens],”
25 including those who present themselves for inspection upon “arriving” and other individuals
26 designated by the Attorney General who have been present in the United States for less than two
27 years, and who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C. §
28 1225(b)(1)(A)(i). Subsection (b)(1) does not require Petitioner’s detention because he did not
present himself for inspection.

1 without need[ing] to affirmatively apply for admission or parole”); *Arazola Gonzalez v. Noem*,
2 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood
3 of success on the merits of argument that “[t]o ignore the ‘seeking admission’ language [in 8
4 U.S.C. § 1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of
5 statutory construction”); *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are presently “coming
6 or attempting to come into the United States”).

7
8 8 U.S.C. § 1225 further defines its scope by reference to “inspections”—a term not defined
9 in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8
10 U.S.C. § 1225 (titled “Inspection by immigration officers; expedited removal of inadmissible
11 arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2) (referring to “inspections” in their
12 titles); § 1225(b)(2)(A), (b)(4) (referring to “examining immigration officers”); § 1225(d)(1)
13 (authorizing immigration officials to search certain conveyances in order to conduct “inspections”
14 where noncitizens “are being brought into the United States”); *see also* *Dubin v. United States*,
15 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute).
16 Many statutory provisions, various regulations, and agency precedent also discuss “inspection” in
17 the context of admission processes at ports of entry, further supporting the conclusion that § 1225
18 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8
19 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also*
20 *King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act’s “broader structure . . . to determine
21 [the statute’s] meaning”).
22

23
24 The statutory and regulatory text’s use of the present and present progressive tenses further
25 excludes noncitizens apprehended in the interior, because they are no longer in the process of
26 arriving in or seeking admission to the United States. *See* 8 U.S.C. § 1225(b)(2)(C) (addressing
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1 the “[t]reatment of [noncitizens] *arriving* from contiguous territory,” i.e. those who are “*arriving*
2 on land”) (emphasis added). As the Supreme Court recognized, this mandatory detention scheme
3 applies “at the Nation’s borders and ports of entry, where the Government must determine whether
4 a [] [noncitizen] seeking to enter the country is admissible,” and § 1225 is concerned “primarily
5 [with those] seeking entry.” *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

6 The Board in *Matter of Yajure Hurtado* ignored the “seeking admission” requirement and
7 instead focused solely on whether an individual who enters the United States without inspection
8 is “applicant for admission,” as § 1225(b)(2)(A) also requires. But as the Ninth Circuit has
9 explained, “when deciding whether language is plain, [courts] must read the words in their context
10 and with a view to their place in the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*,
11 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). In context, the differential
12 phrasing of “applicant for admission” and “seeking admission” in the same statutory subsection is
13 significant, because “applicant for admission” is a term of art that has been analyzed as such by
14 both the Supreme Court and the Ninth Circuit Court of Appeals. *See DHS v. Thuraissigiam*, 591
15 U.S. 103, 109 (2020); *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018); *see also Torres v.*
16 *Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (an individual submits an “application for
17 admission” only at “the moment in time when the immigrant actually applies for admission into
18 the United States.”). By contrast, an individual who has not presented at a port of entry and has
19 not filed any affirmative application for immigration benefits is not “seeking” anything under the
20 plain meaning of the word. *See Merriam Webster’s Dictionary* (2025) (defining “seek” as, inter
21 alia, “to go in search of” or “to try to acquire or gain”).

22 Thus, Petitioner prevails regardless of the scope of § 1225(a)(1)’s definition of “applicant
23 for admission.” This is because classification as an “applicant for admission” is not sufficient to
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1 render someone subject to mandatory detention under § 1225(b)(2). The “applicant for admission”
2 must *also* be “seeking admission,” and that is clearly not the case for Petitioner.

3 In sum, § 1226 governs this case. The mandatory detention provision of § 1225 applies
4 only to individuals arriving in the United States as specified in the statute, while § 1226 applies to
5 those who previously entered without admission.

6 **B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF**
7 **A PRELIMINARY INJUNCTION.**

8 In the absence of a PI, Petitioner will continue to be unlawfully detained by Respondents
9 under § 1225(b)(2) and denied the freedom the IJ has already established is appropriate. Petitioner
10 has now been in custody following his detention for over 115 days. “Freedom from
11 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
12 the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678,
13 690 (2001). Further, it “is well established that the deprivation of constitutional rights
14 unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
15 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005); *see*
16 *also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (concluding that Plaintiffs who
17 showed unconstitutional deprivation of physical liberty “also carried their burden as to irreparable
18 harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv- 01873-SSS-BFM (C.D. Calif.
19 July 28, 2025), Order Granting TRO, Dkt. 14 at 9 (“[T]he Court finds that the potential for
20 Petitioners’ continued detention without an initial bond hearing would cause immediate and
21 irreparable injury, as this violates statutory rights afforded under § 1226(a).”).

22 Detainees in civil ICE custody are held in “prison-like conditions” which have real
23 consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). During her
24 two decades in the U.S., Petitioner has gone to college, been gainfully employed, and married a
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1 USC spouse. She also has two USC parents here in the country. Further, Petitioner has extensive
2 community ties here, and has good moral character. Continued detention in such “prison-like”
3 conditions which separate Petitioner from her family and community constitute an irreparable
4 harm

5 Petitioner will also suffer irreparable harm were she removed to a third country without
6 first being provided with constitutionally-compliant procedures to ensure that her right to apply
7 for fear-based relief is protected. Individuals removed to third countries under DHS’s policy have
8 reported that they are now stuck in countries where they do not have government support, do not
9 speak the language, and have no network.³ Thus, preliminary injunctive relief is necessary to
10 prevent Petitioner from suffering irreparable harm by remaining in unlawful and unjust detention,
11 and by being summarily removed to any third country where she may face persecution or torture.
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13 C. THE BALANCE OF EQUITIES TIPS IN PETITIONER’S FAVOR AND A
14 PI IS IN THE PUBLIC INTEREST.

15 Because the government is a party, these two factors are considered together. *Nken v.*
16 *Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs
17 in her favor because her claim asserts that the new policy violates federal laws. *See Valle del Sol*
18 *Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioner
19 from realizing any bond an immigration judge may grant “is inconsistent with federal law, . . . the
20 balance of hardships and public interest factors weigh in favor of a preliminary injunction.”
21 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019).
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26 ³ NPR, “Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5,
27 2025), available at: <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.
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1 Further, any burden imposed by requiring the Respondents to release Petitioner from
2 custody or providing a hearing before an immigration judge is both *de minimis* and clearly
3 outweighed by the substantial harm she will suffer as she continues to be detained. *See Lopez v.*
4 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair
5 procedures to all persons, even though the expenditure of governmental funds is required.”).

6 Finally, if preliminary relief is not entered, the government would effectively be granted
7 permission to detain Petitioner or to summarily remove her to any third country, in violation of
8 the requirements of Due Process.

10 D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

11 Prudential exhaustion does not require Petitioner to be forced to endure the very harm she
12 is seeking to avoid by awaiting an immigration judge or Board decision, where the Board’s recent
13 precedential decision makes the outcome of that appeal a foregone conclusion. “[T]here are a
14 number of exceptions to the general rule requiring exhaustion, covering situations such as where
15 administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result.”
16 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Administrative exhaustion
17 is not required where a request for relief before the agency would be futile because the agency has
18 “predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the
19 exceptions regarding futility, irreparable injury, and agency delay warrant waiving any prudential
20 exhaustion requirement.

23 1. Futility

24 The BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders prudential
25 exhaustion futile in bond cases involving individuals who entered the United States without
26 inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025).

1 The BIA's decision in *Matter of Yajure Hurtado* "predetermine[s]" the outcome of DHS's
2 administrative appeal. *McCarthy*, 503 U.S. at 148. Prudential exhaustion is therefore unnecessary,
3 and the Court should take jurisdiction over Petitioner's case.

4 2. Irreparable injury

5 Because Petitioner was denied access to a bond, each day she remains in detention is one
6 in which her statutory and constitutional rights have been violated. Similarly situated district courts
7 have repeatedly recognized this fact. As one court has explained, "because of delays inherent in
8 the administrative process, BIA review would result in the very harm that the bond hearing was
9 designed to prevent: prolonged detention without due process." *Hechavarría v. Whitaker*, 358 F.
10 Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, "if Petitioner is
11 correct on the merits of his habeas petition, then Petitioner has *already* been unlawfully deprived
12 of a [lawful] bond hearing [,] [and] . . . each additional day that Petitioner is detained without a
13 [lawful] bond hearing would cause him harm that cannot be repaired." *Villalta v. Sessions*, No. 17-
14 CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and
15 brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018)
16 (similar).
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19 3. Agency delay

20 Third, the BIA's delays in adjudicating bond appeals warrant excusing any exhaustion
21 requirement. A court's ability to waive exhaustion based on delay is especially broad here given
22 the "fundamental" interest in physical liberty that is at stake for Petitioner. *Hernandez*, 872 F.3d
23 at 993. The BIA's months-long review is unreasonable and results in ongoing injury to Petitioner.
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25 *See, e.g., Perez*, 445 F. Supp. 3d at 286.

26 D. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF
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1 Finally, there is no jurisdictional bar under the INA because Petitioner does not seek review
2 of a removal order, but of custody, and his challenge does not fall within the discrete actions
3 specified in the bar to review at 8 U.S.C. § 1252(g). *Maldonado Bautista et al.*, No. 5:25-cv-01873-
4 SSS-BFM, Order Granting TRO (addressing “zipper clause” at 8 U.S.C. § 1252(b)(9)).

5 **V. CONCLUSION**

6 For these reasons, the Court should grant Petitioner’s Motion for a Preliminary Injunction.
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9 Dated: December 10, 2025

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11 Respectfully Submitted,

12 s/Jesse Evans-Schroeder

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15 Attorney for Petitioner
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WORD COUNT CERTIFICATION

The undersigned counsel of record for Petitioner certifies that this Memo contains 6609 words, which complies with the word limit of L.R. 11-6.1.

s/Jesse Evans-Schroeder

Attorney for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY THAT I SEVED A COPY OF PETITIONER'S *MOTION FOR A PRELIMINARY INJUNCTION* by mail to the following individual:

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3 ⁱ *Castellanos Lopez v. Warden*, No. 25-2527 (S.D. Cal. Oct. 27, 2025) (Huie, J.); *Esquivel-Ipina v.*
4 *Larose*, No. 25-2672 (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Benitez-Cornejo v. Cantu*, No.
5 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash.
6 Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. Ind. Oct. 8, 2025) (Evans
7 Barker, J.); *Eliseo v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v.*
8 *Bondi*, No. 25-3726, (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252,
9 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Minn.
10 Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. Oct. 1, 2025)
11 (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025)
12 (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash.
13 Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept.
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16 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025)
17 (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025)
18 (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025)
19 (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden,
20 J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept. 26, 2025) (Hittner, J.); *Gamez Lira*
21 *v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065
22 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafila v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine
23 Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept.
24 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19,
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27 (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9,
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(Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025)
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(Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025)
(Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)
(McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)
(Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
(Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025)
(Rubin, J.); *Romero v. Hyde*, No. 25-11631, ___ F.Supp.3d ___, 2025 WL 2403827 (D. Mass. Aug.
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(Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick,
J.); *Diaz Martinez v. Hyde*, No. 25-11613, ___ F.Supp.3d ___, 2025 WL 2084238 (D. Mass. July 24,
2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025)
(Kobick, J.).

25 ⁱⁱ *Arce-Cervera v. Noem*, 25-1895 (D. Nev. Oct. 28, 2025); *Martinez Lopez v. Noem*, No. 3:25-
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28 J.); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith*

1 No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D.
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4 (*Seeborg*, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek,
5 J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros*
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13 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248,
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17 No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779
18 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*,
19 No. 25-2325 (S.D. Cal. Sep. 24, 2025) (Bencivengo, J.) (denying temporary restraining order);
20 *Villanueva v. Chestnut*, No. 25-2 (E.D. Cal. Oct. 24, 2025) (Sheriff, J.) (same).

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